2009

SENATE
FINANCE

MINUTES

2009 SENATE FINANCE COMMITTEE

MEMBER			NO.	BLDG.	STAFF	PHONE	
Sen.	Charles	Albertson	525	LOB	Cindy Davis Steve Webb	733-5705	
Sen.	Austin	Allran	516	LOB	Carole Walker	733-5876	
Sen.	Tom	Apodaca	1127	LB	Airen Blaine	733-5745	
Sen.	Bob	Atwater	312A	LOB	Carol Resar	715-3036	
Sen.	Philip	Berger	1026	LB	Barbara Eldridge Cody Hand Sarah Clapp Darrell Malcolm	733-5708	
Sen.	Harris	Blake	517	LOB	Anna Kidd	733-4809	
Sen.	Julia	Boseman	309	LOB	Laura Holt-Kabel Beverlee ~~Chardon Groveman~~	715-2525	
Sen.	Andrew	Brock	1101	LB	Janet Black	715-0690	
Sen.	**Daniel**	**Clodfelter**	**408**	**LOB**	**Jessica Schmidt** **Wanda Jovner**	**715-8331**	**CO-CHAIR**
Sen.	Harry	Brown	521	LOB	Susanne Gunter	715-3034	
Sen.	Charlie	Dannelly	2010	LB	Dee Hodge Wayne Yancey	733-5955	
Sen.	Don	East	1120	LB	Anne Misenheimer	733-5743	
Sen.	Tony	Foriest	322	LOB	Jackie Ray	301-1446	
Sen.	Linda	Garrou	627	LOB	Gail Bishop Andrew Dugan	733-5620	
Sen.	Eddie	Goodall	1414	LB	Cara Philon	733-7659	
Sen.	Steve	Goss	1118	LB	Nancy Pulley Cindy Garrison	733-5742	
Sen.	**Fletcher**	**Hartsell**	**518**	**LOB**	**Gerry Johnson**	**733-7223**	**V. CHAIR**
Sen.	**David**	**Hoyle**	**300-A**	**LOB**	**Penny Williams** **Jan Sommer**	**733-5734**	**CO-CHAIR**
Sen.	Neal	Hunt	1102	LB	Kathy Davis	733-5850	
Sen.	**Clark**	**Jenkins**	**308**	**LOB**	**Carolyn Gooden**	**715-3040**	**CO-CHAIR**
Sen.	Eleanor	Kinnaird	2115	LB	Kathie Young Maria Kinnaird	733-5804	
Sen.	Floyd	McKissick	621	LOB	Bernie David-Yerumo	733-4599	
Sen.	Martin	Nesbitt	300-B	LOB	Jan Lee ~~Jessica Bennett~~ Claudette Parrish	715-3001	
Sen.	Jean	Preston	1121	LB	Suzanne Castleberry	733-5706	
Sen.	William	Purcell	625	LOB	Becky Hedspeth	733-5953	
Sen.	Joe Sam	Queen	1117	LB	Sara Sheppard	733-3460	
Sen.	Tony	Rand	300-C	LOB	Evelyn Costello Judy Tardiff Amy Bason	733-9892	
Sen.	David	Rouzer	520	LOB	Judy Edwards	733-5748	
Sen.	Bob	Rucho	515	LOB	Helen Long	733-5655	
Sen.	**Larry**	**Shaw**	**311**	**LOB**	**Barbara Lee**	**733-9349**	**V. CHAIR**
Sen.	R. C.	Soles	2022	LB	Joan Leatherman Mona Fitzgerald Janet Blalock	733-5963	

2009 SENATE FINANCE COMMITTEE

Sen.	Josh	Stein	1028	LB	Candace Finley	715-6400	
Sen.	Richard	Stevens	406	LOB	Mary Marchman Jessica Schmidt	733-5653	
Sen.	A. B.	Swindell	629	LOB	Mo Hudson Jesica Macaluso	715-3030	
Sen.	Jerry	Tillman	628	LOB	Yvonne Hall	733-5870	
Sen.	David	Weinstein	2108	LB	Vickie Spears Will Quick	733-5651	
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SENATE FINANCE COMMITTEE
Wednesday, February 18, 2009 at 2:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 2:00 PM on February 18, 2009, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator Hoyle presided and started the initial meeting of the Senate Finance Committee by asking members and staff to introduce themselves.

North Carolina's Economy: Past & Current Market Trends

Brent Lane, UNC Center for Competitive Economies' Executive Director, was recognized to give an overview of the State's economic history; employment, services and job growth trends, shifting populations, and economic incentives effectiveness. Mr. Lane and Jason Jolley, UNC Center for Competitive Economies' Senior Research Director, were available to answer questions. A copy of the power point is attached.

The meeting adjourned at 2:45 PM.

Senator David Hoyle, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	February 18, 2009	2:00 PM	544 LOB

The following will be considered:

"North Carolina's Economy: Past & Current Market Trends" - Brent Lane, Executive Director, UNC Center for Competitive Economies

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, February 18, 2009, 2:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

"North Carolina's Economy: Past & Current Market Trends"

- Brent Lane, Executive Director, UNC Center for Competitive Economies

Adjournment

VISITOR REGISTRATION SHEET

Environmental Review Commission — January 22, 2009

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NC DoR
Karen Wells	Arts North Carolina
Mark Johnson	News & Observer / Charlotte Observer
Paula Wolff	Paulatics
Joel Maynard	GPAA / Hanes
Kori Gould	NC Bar Association
Anita Watkins	UNC GA
John Monaghan	Piedmont Natural Gas
Dick Culbertson	attorney
Brian Balfour	Civitas
R. Rogers	NCCWMTF

VISITOR REGISTRATION SHEET

Feb 18th

Environmental Review Commission — January ~~22~~, 2009

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCAPPA
[signature]	NCAPPA
[signature]	DS
Butch Gunnells	NC Rev A
Rita Harris	Commerce
Joanna Stevens	Stevens
[signature]	EHNR
[signature]	RWC
R. Paul Wilms	CUGR,
Lisa Martin	NCHBA
Jessi Hays	NCHBA
[signature]	[illegible]

VISITOR REGISTRATION SHEET

Environmental Review Commission — January 22, 2009

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	JD, AL, PA
[signature]	GSK
K Wright	BCBSNC
[signature]	Bar. Assn.
Mickey Mouse	
Kathy Neal	Commerce
Mia Bailey	ElectriCities of NC, Inc.
[signature]	NC Council
[signature]	State Bd of Ed
CHUCK ALLEN	US AIRWAYS
Allison Waller	Charlotte Chamber

VISITOR REGISTRATION SHEET

Environmental Review Commission — January 22, 2009

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMISSION ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Edgar Miller	CTNC
Leandra White	AOC
Jeb Kelly	Sierra Club
Becki Gray	John Locke Foundation
Jim Stegall	U.C.P.S.
David Boaz	NWC
Kelli Kukura	NC League of Municipalities
David Barnes	Poyner Spruill
Mark Fleming	BCBSNC
CAROLINE HOWE	GOVERNOR'S OFFICE
Daniel Baum	K+L GATES

North Carolina's Economy: Past & Current Market Trends

February 18 2009

Finance Committee

Brent Lane, Center Director
Jason Jolley, Senior Research Director
UNC Center for Competitive Economies (C^3E)

Background

- Joint Select Committee on Economic Development Incentives hired UNC to examine incentive performance
- Analyzed outcomes of 5,000 companies incented 1996-2006
- Work with legislature through 2009 session to optimize incentives in current economy

NC Economic History

- 20th century NC was both the most rural and the most industrialized state
- Disaggregated economy allowed NC to remain a "state of small towns"
- "Balance Growth" has been an implicit...and sometimes explicit...state policy
- "More and better jobs where people live"

NC's Economy is Big

- Population of 9,061,032 (10th)
- GSP of $400 Billion (9th) passing GA, VA, MI, MA since 2003
- NC would be 23rd largest national economy
- Workforce of 4,600,000
- 60,000 new jobs/year needed to "break even"

Relevant Trends

- Historic high job growth rate slowing
- Shift to service economy is reducing wages
- Economic shift to metro areas is concentrating income and jobs
- Economic development targets changing

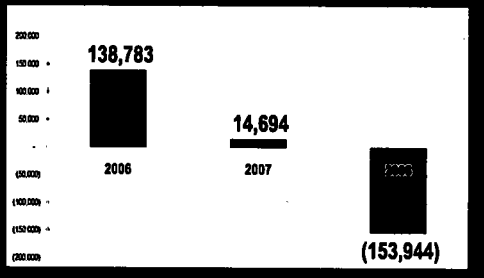
Historic high job growth rate slowing

Until recently NC's challenge hasn't been job creation....

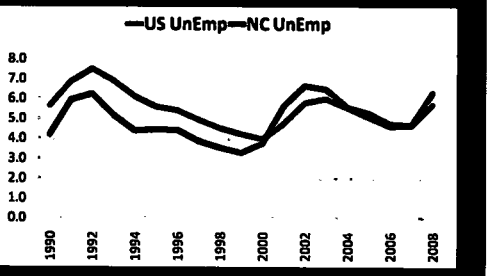
- 1990-2006 NC employment growth rate (1.8%) exceeded US (1.5%)
- Average 61,000 net new jobs annually

But the growth rate slowed from 2.1% (90-96) to 1.4% (97-06).....and is now crashing

Current Employment Trend



NC Unemployment 1990-2008



Shifting to Services

NC is losing goods-producing jobs and gaining service jobs

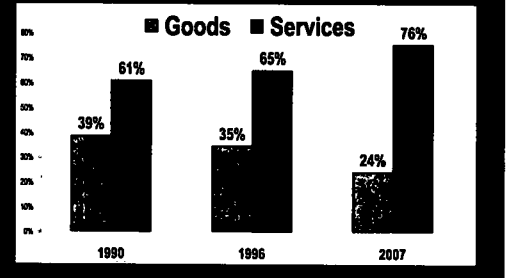
1990 to 2007:

- Lost 187,000 goods-producing jobs
- Gained 975,000 service jobs

Goods producing jobs pay better than service jobs

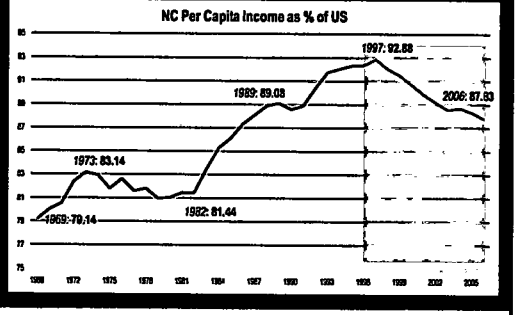
- Goods = $44,006
- Service = $36,888

Shifting to Services



Declining Relative Per Capita Income

From 93% of US in 1997 to 87% in 2007



Shifting to Metros

More and better jobs are moving to NC metros… even faster than people are moving in

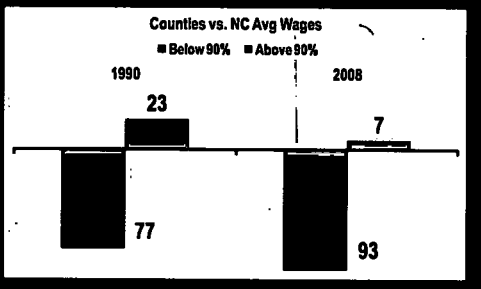
Metro jobs paying higher wages than non-metro

- $41,087 compared to $30,675 in 2008
- Gap of 24% in 1990 grew to 34% in 2008

Buncombe, Durham, Forsyth, Guilford, Mecklenburg, New Hanover, Wake

- 35% of NC's population
- 50% of NC's jobs

Shifting to Metros



Shifting to Metros

Implications for economic development

- Higher public service costs to "bedroom" rural counties without tax base growth
- Increased commute times & costs with questionable sustainability
- Non-incumbent employment benefit

Job Growth in Metro Areas

North Carolina job growth is a people magnet

- 1995 and 2000 - 919,000 people moved to NC
- 75-80% of new job creation in metro areas goes to non-residents
- Much of the benefit of economic development accrues to new residents
- New residents impose higher public service costs given capacity limits

Shifting Economic Development Targets

- Firms are smaller and more workforce-specific
  - "Less scale/more skill"
- Match to incumbent employment maximizes attraction and economic benefit
- Industry cluster strategy has catalytic effect on regional suppliers
- Prime target: growth mode headquarters in "traded" industry

North Carolina Ranked "Best Business Climate" 7 of last 8 years by *Site Selection* magazine

Site Selection's 2008 Top State Business Climate Rankings

1 North Carolina	2	4	4	8	5	30
2 Tennessee	6	3	6	2	2	37
T3 Alabama	5	13	13	7	15	53
T3 Texas	1	5	1	25	30	53
5 Indiana	8	11	14	10	6	73

Next: Economic Incentives

Our capacity to effect NC economy is limited

- NC has 500,000+ businesses
- Direct assistance possible to only a few thousand companies
- Targeted incentives affect a few dozen firms
- Incentives and development strategies must adapt to changing economic conditions to create maximum benefit

HOUSE AND SENATE JOINT FINANCE COMMITTEE MEETING
Wednesday, February 25, 2009 at 1:00 PM
Room 643, Legislative Office Building

MINUTES

The House and Senate Finance Committees met jointly at 1:00 PM on February 25, 2009, in Room 643 of the Legislative Office Building. Twenty-six member of the House Finance Committee attended the meeting and twenty-six members of the Senate Finance Committee were present. Senator Dan Clodfelter presided.

The Stimulus Package and North Carolina's Future

Roland Stephen, Assistant Director for Research and Policy, Institute for Emerging Issues, was recognized for a broad overview of the State's economic challenges. He stated that the federal stimulus was a small economic help. Overwhelming infrastructure needs will require the modernization of the State's current revenue laws in order for the State to have a positive fiscal future. A copy of his power point is attached.

Summary of the Fiscal Impact of the Tax Provisions in the Stimulus Package

Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized. He said that even with the expected $6.1 billion of federal stimulus, the State will still have to overcome a deficit. This is in part due to federal mandates on how and where the stimulus money can be used versus the variety of areas where the State needs to spend the money. Senator Clodfelter requested an outline of Mr. Boardman's remarks which should include funding allocations and highlighted deficits.

Office of Economic Recovery and Investment Remarks

Dempsey Benton, Director of the Governor's Office of Economic Recovery and Investment, was recognized. He provided a handout with a timeline for the next 180 days for overseeing North Carolina's dispersal of the federal stimulus funds. He will have oversight of the funds and will provide efficiency, transparency and fiscal responsibility in accounting for the expenditure of the funds. His handout also laid out the funding categories and funding sources by department. A copy of Mr. Benton's handout is attached.

The meeting adjourned at 2:20 PM.

Senator Daniel Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

House Pages

JOINT FINANCE

Name Of Committee: _____ Date: 2-25-09

1. Name: Aaron Edds
   County: Cumberland
   Sponsor: Brison
2. Name: _____
   County: _____
   Sponsor: _____
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

HOUSE Sgt-At-Arms SENATE

1. Name: DUSTY RHODES — Robert Young
2. Name: FRED NIVES — Leslie Wright
3. Name: ROD FINGER — Charles Marsalis
4. Name: JOHN BRANDON

~~Allen~~
~~Allen~~
Stames
Jones

→ Tillis
→ Rhuet
→ Stames — I do we lose stimulus $ if we don't conform to tax changes
→ Gibson

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelli Kukuna	NC League of Municipalities
Erin Schwattpely	UNC
Anita Watkins	UNC
[illegible]	JD AL, PA
Tracy Kimbrell	Parker Poe
Wendy Kelly	SRO Wilder
David Barnes	Bynum Sprouill
Jim Stewart	NC Chamber
V L McBride	AOTA
Gene Causby	NCSCA
Heather Barrett	Hunton & Williams

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Amy Fuller	Hunton & Williams
Palmer Bell	
Dick Carlton	atty.
Dale Carroll	NCDOC
RITA HARRIS	NCDOC
DAVID DUNN	UNC CHARLOTTE
Betsy Bailey	Professional Engineers
Katie Lalsson	Professional Engineers
Kimi Crouch	NC Bar Association
Johanna Reese	DOT
SAM WHITE	AOC

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Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Michael Healy	DOC
Chris Nida	NCLM
John Bowdish	AstraZeneca
[illegible]	Bean & Asso.
Mia Bailey	Electricities of NC, Inc
[illegible]	[illegible]
Sam McEwen	NCDOR
Jeff Davenport	NCDOR
Gail Beamon	NCDOR
Daniel Baum	K+L Gates
[illegible]	NMRC

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Benjamin McCallum	Rowland Area CDC P.O. Box 773 Rowland, NC 28383
Joe Lanier	SZO Wicker
Emily Doyle	NCRAPA
C Brackett	NCSBA
Cady Thomas	NC Assn of REALTORS
Chris Fleury	NC Nurse Assoc of NC
Will Culpepper	Moore & Van Allen
Michelle Goryn	Institute for Emerging Issues
Anita Brown Graham	"
Diane Cherry	"
Elaine Mejia	NC Justice Center

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Policy Watch
Steve Jackson	Budget & Tax Center
Deatrice Williams	CUCA
Annaliese Dolph	DRNC
Patricia Sommers	Relative of Rep Jennifer Weiss
Mark Hensley	Children & Family Services Assoc
Elizabeth Biser	DENR
Nathan Kauffman	OSBM
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Pub. Safety
Brian Balfour	Civitas
Edgar Miller	CTNC

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
TARINI PARTI	Daily Tar Heel
BRIAN AUSTIN	Daily Tar Heel — Press
Laura Marcinek	Daily Tar Heel — Press
Erica Perel	Daily Tar Heel
Patrick Yancey	APECNC / LLPP
PAULA A. WOLF	Paulatics
Sara Schmidt	Action for Children
Lucas Isbecker	Triangle Bus. Journal
Steve Shaw	Triangle Business Journal
Anthony Ansori	NCACC
Mason Trantham	NCACC

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chrissy Pearson	Gov's office
[illegible]	NC Justice Ctr
Sheyna Altervitz	AARP
Bill Wilson	AARP
[illegible]	NCPCM
[illegible]	Gas Boys, Inc.
Martin Phanna	NC DJJDP
[illegible]	WCSR
[illegible]	WCSR
David Boaz	MWC
[illegible]	MWC
[illegible]	SOS

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	John Locke Foundation
Dan Simpson	Carolinas AGC
	Poyner Spruill
	Inform Inc.
	BPMHL
	Covenant w/ NC's Children
Brian Lenz	NCAE
Roz Savitt	NC Child Care Coalition
Nancy Thompson	Weyerhaeuser
Hugh Tilson	NCHA

VISITOR REGISTRATION SHEET

Joint House and Senate Finance Committee — Feb. 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hollis	K+L Gates
Steve Brewer	EM Sarg
Ed Sandy	BSP

AGENDA

Joint House & Senate Finance Committee

Wednesday, February 25, 2009
Room 643 LOB
1:00 p.m.
Chaired by: Senator Clodfelter

House Co-Chairs

Representative Pryor Gibson ***Representative William Wainwright***
Representative Paul Luebke ***Representative Jennifer Weiss***

Senate Co-Chairs

Senator Dan Clodfelter ***Senator David Hoyle***
Senator Clark Jenkins

I. Call to Order

II. Introduction of Pages

III. The Stimulus Package and North Carolina's Future
Roland Stephen, Assistant Director for Research and Policy, Institute for Emerging Issues

IV. Summary of the Fiscal Impact of the Tax Provisions in the Stimulus Package
Barry Boardman, Fiscal Research Division

V. Office of Economic Recovery & Investment Remarks
Dempsey Benton, Governor's Office

VI. Committee Discussion

VII. Adjournment

NC STATE UNIVERSITY

iei Institute for Emerging Issues

The Stimulus Package and North Carolina's Future

Roland Stephen

February 25, 2009

NC STATE UNIVERSITY

iei Institute for Emerging Issues

Who We Are and What We Do

- The Institute for Emerging Issues (IEI) is a public policy, think-and-do tank.
- We convene and support leaders who tackle the biggest issues facing North Carolina's future.

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Goals of the Presentation

- Review the major challenges confronting NC: Finance, Energy, Infrastructure, Housing and School Construction
- Identify policies that address the challenges
- Align expected stimulus dollars with the policies

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Issues to Keep in Mind

- The current economic climate will last longer than anticipated
- The stimulus package is small in comparison to NC's needs
- Distinction must be made between short run fixes and long run solutions

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North Carolina is Growing and Changing

- **Population Change**: Urbanization, Composition, Dependency Ratio
- **Economic Transformation**: Knowledge and Service-based economy
- **Financial Demands**: Healthcare, K-12, Higher Education, Infrastructure

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North Carolina is Growing and Changing (cont.)

- **Natural Resource Constraints:** Energy, Water, Open Space
- **Increased Exposure to Risk**: Financial, Environmental

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Critical Opportunities

Our response to the immediate crisis must be aligned with long term policies aimed at a resilient and prosperous economy.

Key issues include:

- Tax and Finance
- Energy
- Water
- Transportation
- Housing
- School Construction

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NC's Expected Share of Stimulus*

- Education $1.9 billion
- Transportation $855 million
- Water $138 million
- Energy $183 million
- Health and Human Services $2.5 billion
- Community Development $124 million
- Other $456 million

*To be received and expended by September 2010.

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State and Local Finance

- 08-09 Revenue shortfall between $1.8 - $2.2 billion below May 2008 projections.
- State health plan, non-recurring items from 08-09 budget and other one-time costs could add $1 billion to the shortfall.
- Stimulus bill will provide some monies in support of existing obligations and program growth.
- Stimulus bill includes tax relief that could cost the state $300 million.

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State Revenues

Goal: Stable, Sufficient, Fair

- Improve the balance among sources of revenue: Reduce dependence on the income tax.

- Broaden the tax base: Combined reporting, AIG and taxation of services, elimination of exemptions and differential rates.

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Local Revenues and Responsibilities

Goal: Clear and appropriate division of revenues and responsibilities

- Match revenues to responsibilities.
- Ensure adequate state funding for state responsibilities (schools)
- Provide local revenues for new local responsibilities (roads).

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NC's Infrastructure Needs

- **$9.8 billion** in school construction & maintenance needs.
- **$65 billion** in transportation needs
- **$16.6 billion** water/sewer needs
- Additional 2,550 MW of renewable energy technology needed by 2021 to meet requirements of SB 3

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NC Energy Policy

NC's energy component of the stimulus bill will be approx. $183 million. This funding should address:

- Improving energy efficiency in buildings
- Reforming the utility regulatory environment (decoupling)
- Recruiting and sustaining new energy businesses (focused industrial recruitment efforts at DOC and leadership in the Gov's office)

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NC Energy Policy

Con't.

- Developing a green workforce (energy focus for the NC Community College System and money for technical education program)
- Creating financing efforts (focus on small business centers and economic incentive programs, investment certainty for renewable energy generation and energy efficiency)
- Education about smart grid, grid operations & infrastructure

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NC Water and Sewer Systems

NC's water-sewer component of the stimulus bill will be approx. $137 million and should address:

- Vision and strategic plan for drinking water, wastewater and stormwater infrastructure
- Coordinated, single portal for grant distribution and community loan profile

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NC Transportation Systems

NC's transportation component of the stimulus bill will be approx. $854 million and should address:

- Implementation of a statewide logistics strategy integrated into an overall transportation plan
- Additional local and regional options for financing transportation improvements (such as local cost-share of any light rail system through a half cent sales tax)

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NC Housing and School Construction

- NC's housing component of the stimulus bill will be approx. $124 million and must incorporate energy efficiency practices
- NC's school construction bonds included in the finance provisions of stimulus bill

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Conclusion

- Federal stimulus package is a small drop in the bucket in terms of NC needs
- NC should use this down payment to focus time and energy toward long term solutions

Timeline of Important ARRA Implementation Dates

Date	Days After Enactment	Action
Tuesday February 17	0	HR1, The American Recovery and Reinvestment Act is signed. Governor Perdue establishes the Office of Recovery and Investment. Initial estimation of block grants and state allocations.
Tuesday March 3	14	Federal Agencies receiving begin submitting weekly reports of block grant allocations, and updating breakdowns of funding and major actions taken to date. Reports continue until May 12.
Tuesday March 10	21	Highway Infrastructure Investment Grants and Transit Capitol Assistant Grants apportioned by Federal Secretary of Transportation. Projects must be identified.
Thursday March 19	30	Federal Agencies are required to link "opportunities" posting from recovery.gov to application on respective agency websites. Several grant programs announced or funds obligated. Sec. of Defense reports on obligations of Military Construction Funds in the ARRA. Certification of MOE of Transportation projects due.
Saturday April 18	60	Various programs obligated, temporary rules due, or grant requirements established, e.g. Federal Secretary Transportation must publish criteria for discretionary grants.
Friday May 1	73	Federal Agencies must provide a specific "Recovery Program Plan" for each Recovery Act program established by the ARRA.
Friday May 8	80	Monthly financial reports begin on recovery.gov.
Wednesday June 17	120	"Use it or Lose it" deadline for obligation of 50% of highway funds and Transit Capital Assistance Grants apportioned by ARRA.
Wednesday July 15	148	Recipient reporting begins. Subsequent reports are due not more than 10 days after the close of each quarter. State reporting requirements are outlined in Section 1512 of the ARRA

North Carolina Direct Allocation Funding 2/24/09

Subject	Amount
State Fiscal Stabilization Fund (SFSF) (Total)	1,420,454,235
Education (SFSF)	1,161,931,000,564
Gen Purpose (Flex Fund) (SFSF)	258,522,671
Medicaid 2009(estimated)	918,000,000
Medicaid 2010/11(estimated)	1,337,000,000
Medicaid DSH	14,630,000
Highways & Bridges	735,527,000
Transit Capital Grants (Total)	103,304,000
TCG Urban	70,248,738
TCG Rural	33,055,504
Drinking Water SRF	65,625,000
Clean Water SRF	71,279,000
Weatherization	136,715,178
State Energy Program	70,430,139
Emergency Food & Shelter	3,069,986
Commodity Assistance/ TEFAP	3,325,602
Food Stamp Admin.	9,400,000
Immunization	11,379,391
Foster Care/Adopt. Asst.	11,774,000
Elderly Nutrition	3,669,000
Independent Living	402,340
Child Care	67,543,000
Head Start	16,823,828
Community Services BG	26,245,000
Community Development BG entitlement	7,102,123
Community Development BG nonentitlement	12,333,793
Title I (Grants to LEAs)	257,456,360
Title I (School Improvement)	76,673,000
Special Education Part B	314,410,039
Special Education Part C	12,730,682
Special Education Preschool	12,071,141
Voc. Rehab.	18,029,008
Ed. Tech.	16,359,000
School Lunch Equipment	2,878,955
Work Study	4,777,000
McKinney-Vento Funds (Homeless Education)	1,290,000
Public Housing Capital Fund	83,848,000
HOME	52,095,000
Homelessness Prevention	29,225,000
Crime Victims Assistance	1,095,000
Crime Victims Compensation	667,488
Internet Crimes Against Children	744,080
Violence Against Women	6,350,000
Byrne/JAG	56,839,952
UI State Admin Grants	14,761,000
Employment Service	10,873,000
Service for Older Americans	3,166,307
WIA-Adult (Workforce Invest.)	10,441,582
WIA-Youth (Workforce Invest.)	25,323,937
Dislocated Workers	39,839,549
Total	**6.1 Billion**
Child Support Enforcement	52,700,000
Food Stamp Benefits	616,000,000

Need Based, Discretionary, and Competitive Funding Sources by Department

Federal Dept.	Grant Name	Amount	Notes
Transportation	Federal Highway Admin. Grants	$60 Million	To qualify for grants projects must be completed within 2 years of the act
	Capital Investment Grants	$750 Million	Grants for eligible New Starts and Small Starts projects in construction/final design stages.
	Assistance to Small Shipyards Grants	$100 Million	Grants to qualified shipyards under section 3508 of Public Law 110–417 or 46 USC 54101.
	FAA-Discretionary Airport Grants	$1.3 Billion	Grants for the procurement, installation, and commissioning of runway incursion prevention devices. Priority: projects completed in 2 years.
	Surface Transportation Supplemental Grants	$1.5 Billion	Grants to surface transportation modes with significant national, metropolitan or regional impact. Criteria within 90 days/app.s due within 180 days of publication.
	High-speed & Intercity Rail	$8 Billion	Interim guidance of grant terms, conditions and procedures due from the Secretary within 120 days
Federal Dept.	**Grant Name**	**Amount**	**Notes**
Education	School Improvement Grants	$650 Million	Grants for Technology improvements by LEAs; Funds are to be available for school years 2009-10 and 2010-11
	Impact Aid	$100 Million	Funding is to be targeted to projects that are "shovel ready."
	State Incentive Fund	$5 Billion	Discretionary grants to states based on state strategies to help struggling students meet proficiency targets, high school graduation rates, and reduction of the achievement gap. States must use at least 50% of award sub-grants to LEAs, relative to Title I share.
	Innovation Fund	$650 Million	Discretionary grants to recognize LEAs, a nonprofit in a partnership with an LEA, or group of schools that make significant gains to close the achievement gap.
	Pell Grant	$15.64 Billion	Funding to make up for current shortfalls.
	Teacher Quality Enhancement	$100 Million	Grants to reward reform in teacher preparation, licensing and alternative routes to certification.
	P-16 Alignment	$250 Million	Grants to develop longitudinal data systems for K-College student performance.
	Impact Aid for K-12 Modernization	$60 Million	Emergency repairs and modernization grants

Federal Dept. Environment	Grant Name	Amount	Notes
	Brownfields Projects	$ 100 Million	Competitive grants; allows for 3.5% set-aside for federal administration.
	Diesel Emission Grants	$300 Million	Competitive grants; State grant /loan program matching provision is waived
	UST	$200 Million	Waives state matching requirement.
	Fossil Energy Research and Development Program	$50 Million	Grants for site characterization activities in geologic formations

Federal Dept. Defense	Grant Name	Amount	Notes
	Defense Health Program	$400 Million	Money to improve, repair and modernize military medical facilities/ invest in energy efficiency.
	Army Construction: Warrior Transition Complexes	$100 Million	Defense Construction funds may be obligated and expended to carry out planning and design and military construction projects in the United States not otherwise authorized by law. The Secretary of Defense must submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading within 30 days after the date of enactment of the ARRA.
	Army Construction: Child Development Centers	$80 Million	
	Navy and Marine Corps Construction: Troop Housing	$100 Million	
	Navy and Marine Corps Construction: Child Development Centers	$80 Million	
	Navy and Marine Corps Construction: Energy Conservation and Alternative Energy Projects	$100 Million	
	Air Force Construction: Troop Housing	$100 Million	
	Air Force Construction: Child Development Centers	$80 Million	
	Defense Wide Construction: Hospitals	$1.33 Billion	
	Defense Wide Construction: Energy Conservation	$120 Million	

Investment Program	
Army National Guard Construction	$50 Million
Air National Guard Construction	$50 Million
Family Housing Construction, Army	$34.5 Million
Family Housing Operation and Maintenance, Army	$3.9 Million
Family Housing Construction, Air Force	$80.1 Million
Family Housing Operation and Maintenance, Air Force	$16.4 Million
Homeowners Assistance Fund	$555 Million

Funding for existing programs established by 42 USC 3374

Federal Dept.	Grant Name	Amount	Notes
Homeland Security	TSA: Aviation Security	$1 Billion	Money for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment.
	Coast Guard: Acquisition, Construction, and Improvements	$98 Million	Money for shore facilities and aids to navigation facilities; for priority procurements due to materials and labor cost increases/costs to repair, renovate, assess, or improve vessels.
	Coast Guard: Alteration of Bridges	$142 Million	Money for alteration or removal of obstructive bridges, as authorized by 33 U.S.C. 516. Funds awarded to bridges that are ready to proceed to construction.
	FEMA-State and Local Programs	$300 Million	Public Transportation and Rail and Port Authority Security Grants.
	FEMA-Firefighter Assistance Grants	$210 Million	Grants for non-federal fire stations not to exceed $15 million per grant.
	FEMA-Emergency Food and Shelter	$100 Million	To carry out emergency food/shelter prgms. under the McKinney-Vento Homeless Assistance Act

Federal Dept.	Grant Name	Amount	Notes
Veterans Affairs	VA-State Extended Care Facilities	$150 Million	Grants for construction of state extended care facilities for veterans.

SENATE FINANCE COMMITTEE
Wednesday, March 4, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 4, 2009, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator Clark Jenkins presided. Brian Harris and William Cooper of Fayetteville, and Gabrina Johnson of Cary served as pages.

Senator Clodfelter was recognized. He passed out copies of the State Tax Notes, February 23, 2009 article, "Where Are North Carolina's Audit Guidelines?". A copy of the handout is attached.

Welcome and Introduction of the Deputy Secretary of Commerce

Dale B. Carroll, Deputy Secretary of the Department of Commerce, was recognized. He briefly outlined some requests of the Commerce Department, such as more flexibility in the recruitment "tool box" and more marketing resources. He was available to answer questions.

An Evaluation of North Carolina's Economic Development Incentive Programs

Jason Jolley, UNC Center for Competitive Economies' Senior Research Director, was recognized to summarize the findings of UNC's economic incentives analysis. The recommendations were to retain the research and development tax credit, eliminate the 3J (Bill Lee) statutory credits in 2010, expand the JDIG and One NC programs, begin a reduction of the corporate tax rate, increase the Department of Commerce's economic development research and marketing funding, and create a legislative oversight function to oversee economic development programs. A copy of his power point presentation is attached.

The meeting adjourned at 1:58 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	March 4, 2009	1:00 PM	544 LOB

The following will be considered:

An Evaluation of North Carolina's Economic Development Incentive Programs
Brent Lane, UNC Center for Competitive Economies' Executive Director

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[illegible]
Katherine Jones	North Carolina Housing Fin Agency
Rebekah King	NCHFA
Chris Harder	DOC
Holly Crosby	DOC
Heather Barrett	Hunton & Williams
Katherine Davis	ElectriCities
Preston Howard	MCIC
Bob Slocum	NCFA
Karl Knapp	NCLM
Shawn Miller	CUCA

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Pearson	NCEDA
Rick Gaskill	NC Bar Assn.
Jack Cozart	Womble
Allison Waller	Charlotte Chamber
Cynthia Crowders	NCICL
Mallory Hatcher	NWC
Mia Bailey	Electricities of NC, Inc
Patrick Reeder	NCACC
Anthony Allen	NCACC
Mark Lanier	UNCW
Stephanie McGarrah	NCDOC

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nor Savitt	NCCCC
Joyce Peters	IPAssoc
Andrew Cagle	DCAssoc.
Lezli Williamson	NCANPHA
Lon Weiler	NCALTCF
Gene Ainsworth	A&A
JOHN SHAW	SELF
Patrick Baffic	NMRSS
Lu-Ann	MCIC
Tracy Kimbrell	Parker Poe
Lisa Piercy	Duke Energy

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rita Harris	Commerce
Dale Carroll	Commerce

AGENDA

Senate Finance Committee

Wednesday, March 4, 2009
Room 544 LOB
1:00 p.m.

I. Call to Order

II. Introduction of Pages

III. Welcome & Introduction of the Secretary of Commerce
Deputy Secretary Dale B. Carroll, Department of Commerce

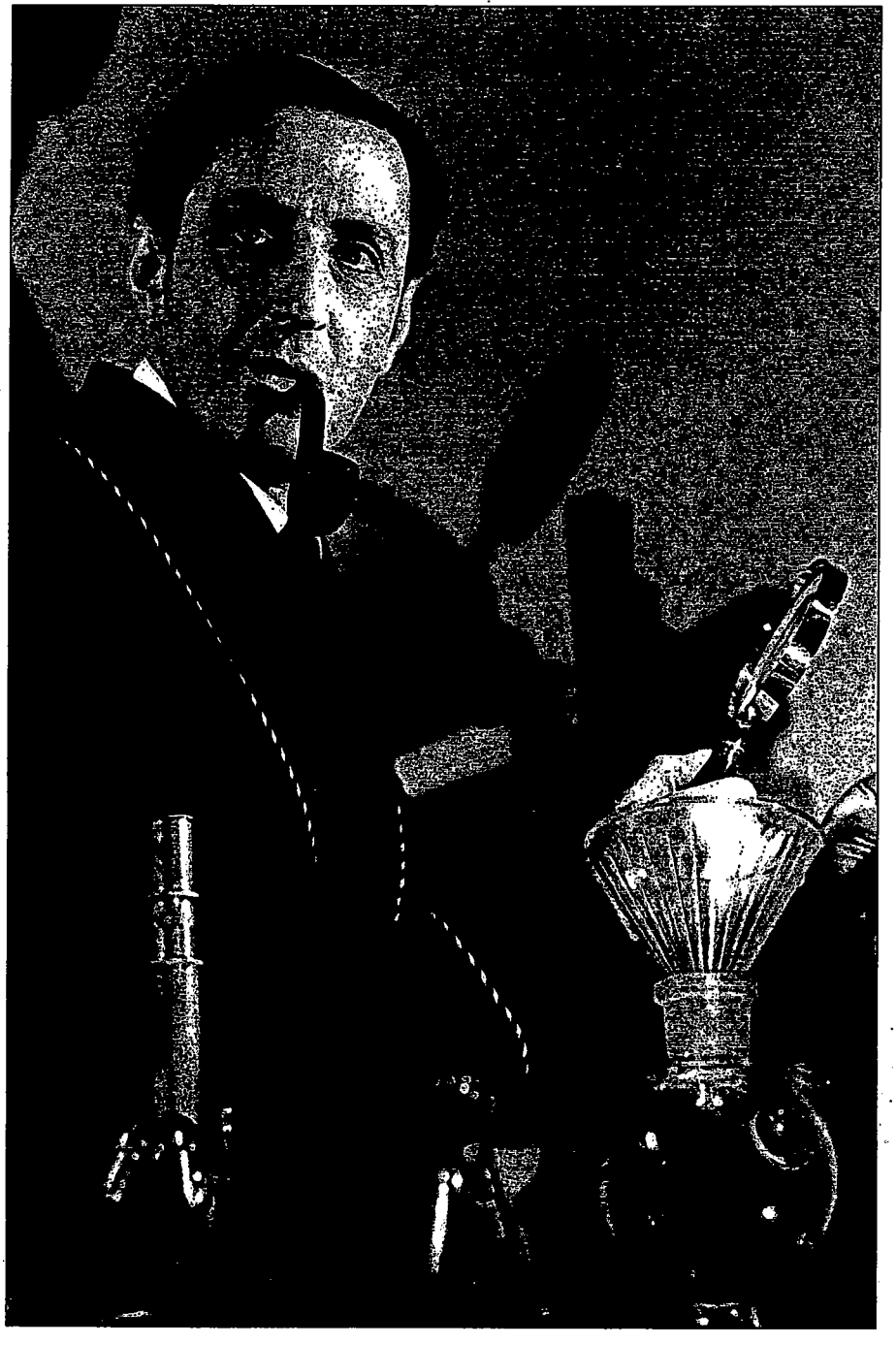
IV. An Evaluation of North Carolina's Economic Development Incentive Programs
Brent Lane, Executive Director, UNC Center for Competitive Economies

V. Committee Discussion

VI. Adjournment

state tax notes
Volume 51, Number 8 ■ February 23, 2009

Where Are North Carolina's Audit Guidelines?



UDITPA And Financial Instruments, Part II

Interpreting State Tax Credits

Property Taxes: What Policymakers Should Know

Wisconsin Governor Proposes Combined Reporting

Businesses Paid A Lot of Taxes In 2008

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North Carolina DOR Plays Hide the Ball With Forced Combination Guidance

by Jennifer Carr

Jennifer Carr is State Tax Notes *legal editor.*

In North Carolina a contentious corporate income tax case is winding its way through the trial court. The substantive issue is whether a corporation, known primarily for operating grocery stores, will have its corporate tax returns forcibly combined. Although the substantive matter is perhaps more important in the long run, an interesting side issue has arisen in the litigation. During discovery the taxpayer received information based on which it alleges that Department of Revenue officials intentionally operated without any established legal standards or procedures so they could arbitrarily impose combined filing on taxpayers. Although the secondary claims will probably not affect the taxpayer's ultimate tax liability, the discovery raises troubling questions about the North Carolina DOR's procedures, or lack thereof.

Complaint

In December 2007 Delhaize America Inc. (DZA) filed suit in the Wake County Superior Court seeking a refund of income taxes, interest, and negligence penalties for tax year 2000.[1] In the complaint, DZA says it filed a multistate corporation income tax return and that as the result of an audit, the secretary of revenue combined the corporate group's returns and issued an assessment for additional tax. According to the complaint, the source of the assessment was the treatment of fees and royalties charged to DZA by its affiliate, FL Food Lion Inc., for product development and design and the right to use some intangibles.

> ***The court will also have to address DZA's allegations that the department intentionally declines to publish taxpayer guidance on what standards will be used to force combined reporting.***

DZA argues that the two provisions cited by the secretary of revenue as grounds for combining the returns — G.S. section 105-130.6 and G.S. section 105-130.16 — provide an insufficient basis for the secretary's actions.[2] DZA contends that G.S. section 105-130.6 allows combination only after a specific finding of facts, which the secretary failed to make. According to DZA, G.S. section 105-130.16 authorizes consolidation only when a corporation's activities "distort its true net income and the net income properly attributable to the State." DZA claims the significant corporate restructuring it underwent between 1996 and November 2004 was designed to "divide the company's assets into separate functional and operational entities in order to more efficiently run [DZA's] businesses." DZA also claims that it had "sound business and competitive reasons" for its corporate restructuring but the auditor's report ignored the overall plan and instead focused on the fact that the restructuring resulted in a lower aggregate North Carolina tax liability.

[1] *Delhaize America Inc. v. Hinton*, 07CVS 020801, Wake County Superior Court (complaint filed Dec. 28, 2007). The case was designated as a complex business case and transferred to the business court.

[2] G.S. section 105-130.6 says, "If the Secretary finds as a fact that a report by a corporation does not disclose the true earnings of the corporation on its business carried on in this State, the Secretary may require the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates."

On the whole, the DZA complaint is a fairly straightforward corporate income tax dispute. The secretary's answer offers no insight into how the state plans to fight DZA's claims except that it generally disputes DZA's statutory interpretation and repeatedly refers to the audit report to support its actions. In addition to the substantive issues raised in DZA's complaint, the court will also have to address DZA's allegations that the department intentionally declines to publish taxpayer guidance on what standards will be used to force combined reporting. DZA makes its allegations in the form of an amended complaint.

Amended Complaint

Last month DZA filed a memo in support of its motion to amend its complaint. DZA seeks to add as defendants North Carolina's former secretary of revenue, its assistant secretary of tax administration, and its director of corporate, excise, and income tax. DZA also seeks to add unknown department officials and add claims for violations of North Carolina's Administrative Procedures Act (APA).[3] As the basis for the amended complaint, DZA cites information obtained in discovery that it believes shows the DOR and its officials made a "conscious decision to maintain a veil of secrecy around whatever criteria they use to force combinations of affiliated corporations."[4]

In support of that claim, DZA submits several statements, primarily from e-mails, in which DOR officials appear to say they will not create combination criteria and will keep secret any internal standards they may use.[5] DZA further alleges that the DOR is not only keeping taxpayers in the dark regarding combination standards, but it is also declining to properly train its own auditors as to what factors they should look for in considering combination. DZA argues that that information creates good cause for amending the company's complaint because it affects DZA's due process rights and suggests violations of the state APA. DZA further argues that none of the defendants would be prejudiced by the new claims because there is still time for discovery and the defendants are being sued only in their official capacities.

Analysis

On the whole the allegations raised in DZA's motion to amend create a troubling picture. Exhibits submitted by DZA indicate a culture in which auditors were operating without proper guidance and upper-level officials failed to understand their mission. For example, in one e-mail, a DOR official contends that issuing combination guidance "would be like handing a gun to the guy who is about to rob you."[6] In another instance, a DOR employee, e-mailing a person outside the department, offers to share some guidelines auditors had received on combination so long as the recipient promises to "not EVER divulge the source from whence it came" and to not share the information with others.[7] Finally, an unsigned document that appears to be from department officials to auditors says emphatically that it is "NOT GUIDELINES" for requiring combined reports. Instead, the information should be considered "factors that go into our decision" that "in absolutely no circumstance should be . . . communicated to a taxpayer, in any way, for any reason."[8] The document goes on to list some potential questions to ask, including whether there has been an intercompany transfer of assets and how the transfer affected tax liability in North Carolina and other states.

> ***Exhibits submitted by DZA indicate a culture in which auditors were operating without proper guidance and upper-level officials failed to understand their mission.***

Obviously the exhibits DZA submitted with the motion to amend its complaint represent only one party's take on the issue and likely denote the more egregious statements found in the discovery documents. Even taking that into account, the exhibits are still troubling. If the DOR has made a conscious decision to keep taxpayers in the dark regarding the audit methods and combination criteria, that is a poor decision. First, taxpayers have a fundamental

[3]The amended complaint also argues potential claims under 42 U.S.C. section 1983.

[4]Plaintiff's memorandum in support of its motion to amend complaint at 2.

[5]A sample statement is: "But part of [not creating audit guidelines] is a legit fear that if we communicate 'guidelines' to our audit staff, that these will eventually fall into the hands of the dreaded Jung Hoard (also known as t/ps and their representatives) and will be used against us." E-mail from David Simmons to four DOR employees, Mar. 21, 2006. The phrase "Jung Hoard" appears to be a reference to the evil marauders, the Jun Horde, in the 1982 science fiction/fantasy film *The Beastmaster*.

[6]E-mail from David Simmons, assistant director (interstate) of the Examination Division, to Interstate Managers, Mar. 22, 2006.

[7]E-mail from Eric Wayne, a manager in the Audit Department, to Al Milak, an administrative officer in the Corporate Tax office, Sept. 14, 2007. Emphasis in the original.

[8]*Combination! What Do I Ask?*, June 2007, attached as Exhibit 4 in DZA's memorandum in support of motion to amend complaint. Emphasis in the original.

right to know the law, not only as written in the statutes but also as applied by the DOR. Second, an ill-defined system in which taxpayers are left to guess the DOR's position likely results in an inconsistent application of tax law. When auditors lack a set of clear operating standards, similarly situated taxpayers could have different outcomes. A lack of standards would also likely generate more litigation, increased enforcement costs, and inefficiency generally. None of those are positive outcomes; they are indications of poor tax compliance procedures.

> ***In one e-mail a DOR official contends that issuing combination guidance 'would be like handing a gun to the guy who is about to rob you.'***

Also, the statements of DOR officials seem to demonstrate a fundamental misunderstanding of their role in the revenue system. Their role is to ensure maximum compliance with the tax laws. Yet the e-mails create the impression that the officials perceive their role as ensuring maximum revenue collection. The two roles are not identical. Obviously the audit and collections process is adversarial, but unlike a dispute between two private parties, the DOR is part of both the rulemaking and enforcement mechanisms. Therefore, it is vital to the health of the tax system that the department publish the standards under which it makes decisions. Without published standards, the adversarial process dissolves into a guessing game for taxpayers at best. At worst, it can be a lawless, arbitrary revenue collection regime with potentially significant interest and penalties for noncompliance.

In one e-mail a DOR official contends that issuing combination guidance 'would be like handing a gun to the guy who is about to rob you.'

The DOR's desire to keep its procedures from the public is particularly irksome in light of its position on DZA's motion for a protective order, which the company filed in May 2008. DZA filed a motion to protect information that allegedly detailed its business strategies or that was otherwise confidential. A protective order was ultimately granted. Before the court's decision, the DOR submitted a brief strenuously opposing DZA's motion. In its brief, the DOR said that the case was "extremely important to the citizens of [North Carolina] — both fiscally and as a matter of tax policy."[9] The DOR also objected to DZA's "desire to conduct its tax litigation in secret . . . especially in light of the inherently public nature of this lawsuit and its vital significance to North Carolina."[10]

Clearly there are grounds for distinguishing the DOR's apparently contradictory positions on confidentiality. For instance, in the protective order dispute the parties were interpreting specific statutes and case law regarding protective orders. The debate over the DOR's failure to issue guidance lacks a similarly specific legal context. However, the idea that the citizens of North Carolina need to know every detail of DZA's business practices while the DOR can decline to disclose the standards under which it will assess DZA's liability is highly questionable. It is clearly more important for purposes of good governance that North Carolina's citizens and taxpayers have access to the DOR's decision-making criteria than to specific information about DZA's business practices. And even though the case is proceeding under a protective order, it is not difficult for an interested party to understand the litigation, including DZA's legal argument and the basis for its position. The DOR, however, appears to desire to keep the basis for its decision-making from public view.

> ***Taxpayers have a fundamental right to know the law, not only as written in the statutes but also as applied by the DOR.***

It's not as if the department has published nothing on the application of the combination statute, TG.S. 105-130.6. However, what it has published lacks specifics and mostly just restates the statutory language without further explanation.[11] Compared with the *Combination! What Do I Ask?* document given to auditors, the public guidance on audit procedures and standards is deficient.[12] That's not to say that the information given to auditors would be sufficient were it the basis for taxpayer guidance. That document is also lacking specificity, but at least it provides some information as to what auditors should look for, potential follow-up inquiries, and other explanations of processes and standards. That material, despite its incompleteness, should be made available to taxpayers. The DOR should not be required to publish its litigation strategy for each

[9]Brief opposing protective order at 1.

[10]*Id.* at 3.

[11]"Franchise Tax, Corporate Income Tax, Privilege Tax, Insurance Premium Tax, Excise Tax Rules and Bulletins Taxable Years 2007 & 2008," North Carolina Department of Revenue, pp. 68-70.

[12]*Supra* note 8.

individual taxpayer, but it must at least release the guidelines under which it operates.

Effect

In its motion to amend its complaint, DZA claims a violation of the state's APA. Despite the troubling information revealed in discovery, it will be difficult to make a case under that provision. The North Carolina APA governs all agency rule adoptions and requires substantial compliance with its provisions.[13] A rule for APA purposes is defined generally as a "regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly . . . or that describes the procedure or practice requirements of an agency."[14] Although the general definition appears to be applicable, the APA also contains a series of exceptions to the rule definition, including "statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations or inspections."[15]

Although the department should create and publish all its audit and forced combination guidelines as a matter of public policy, its failure to do so is probably not a violation of the law.

Although North Carolina courts appear not to have interpreted the exception in the context of a tax dispute, case law suggests it would be given a fairly robust meaning. For instance, the North Carolina Court of Appeals has held that that exception and one other applied to a memo issued by an Alcoholic Beverage Control Commission official stating the commission's opinion that video gambling machines violated state law.[16] In reaching that decision, the court concluded that the memo at issue was nothing more than a setting forth of guidelines to be followed when investigating potential violations and was a "nonbinding interpretive statement" that fell within the exceptions. Therefore, the memo was not a rule-making necessitating prior notice — as required by the APA.

Although the department should create and publish all its audit and forced combination guidelines as a matter of public policy, its failure to do so is probably not an APA violation. A court would likely determine the information to be criteria or guidelines to be used by the staff of an agency in performing audits. That would put it within the rule exception, especially given the fairly robust interpretation the exceptions have been given by North Carolina courts. Although the guidelines need not follow the APA rulemaking requirements, that does not mean they should not be created and published as a matter of tax policy. It means only that the APA notice and comment requirements are inapplicable.

Given that the DOR's operation under ill-defined, unpublished guidelines is unlikely to be deemed an APA violation, it is also unlikely that the claims raised in DZA's amended complaint will affect the outcome regarding its tax liability. However ill-advised the DOR's failure to publish taxpayer guidance on the combined reporting requirements, it is arguably lawful. Therefore, it's difficult to imagine a court using the new information as a basis for undoing the DOR's audit decisions and its assessment. Should that occur, DZA would have to proceed with a more traditional forced combined reporting defense. The Legal Front will have updates as the case develops. ☆

[13]The APA is found in G.S. chapter 150B.
[14]APA section 150B-2(8a).
[15]APA section 150B-2(8a)g.

[16]*Ford v. North Carolina Department of Crime Control*, 445 S.E.2d 425 (1994).

An Evaluation of North Carolina's Economic Development Incentive Programs

UNC Economic Incentives Analysis
March 4, 2009

Brent Lane, Director
Jason Jolley, Senior Research Director
UNC Center for Competitive Economies (C^3E)

Background

Joint Select Committee On Economic Development Incentives

- Created in wake of Google project
- Activated after Goodyear/Firestone deals
- Hired C^3E in January 2008 for 18 months to examine which incentives work best
- C^3E engaged in multi-institutional approach utilizing colleagues from other UNC System institutions.

Incentive Portfolio Adjustment Recommendations

- Retain Research and Development Tax Credit
- Eliminate Article 3J statutory credits (scheduled to "sunset" in 2011) effective 2010
- Expand JDIG and One NC programs with increased amounts targeted to distressed counties
- Phased reduction of corporate tax rate to competitive neutral rate of 6.5%
- Increase economic development research and marketing budgets for proactive targeting
- Institute legislative oversight function for economic development programs

Key Legislative Questions

- How have incentives been used?
- Which incentives achieve the greatest return?
  - Quality Job Creation
  - Distressed Areas Benefit
  - NC Competitiveness
- Are there changes and/or alternatives that better achieve economic priorities?

NC Economic Incentive Types

Statutory Incentives

- Tax credits to qualifying businesses for job creation, training and investment
- Lee Act (Article 3J)

Discretionary Incentives

- Cash grants to new and expanding businesses for job creation and/or retention
- Job Development Investment Grant (JDIG)
- One North Carolina Fund

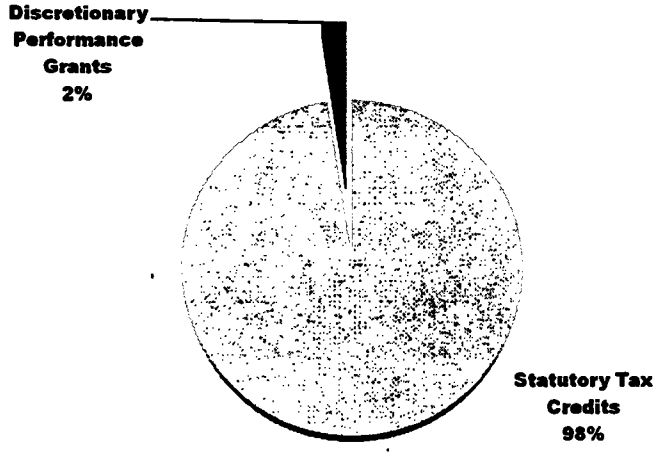
NC Incentives Portfolio

1996 - 2006: $2 billion in economic incentives

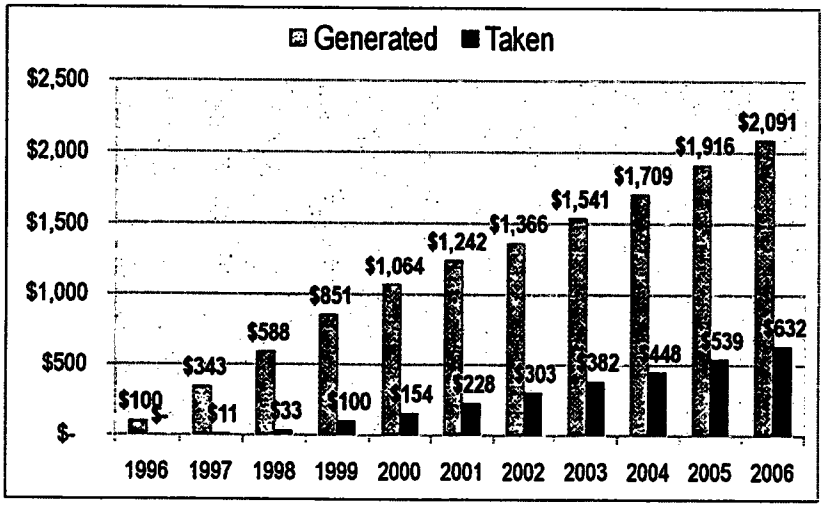
- 5,000+ incented companies
- Constitute "portfolio" of investment strategies
  - Pre and post incentive quarterly employment and wage history for each incented firm. 250,000 data points
  - Surveys/Case studies of incented firms
- Which incentives /companies best achieve NC's economic development priorities?

Findings

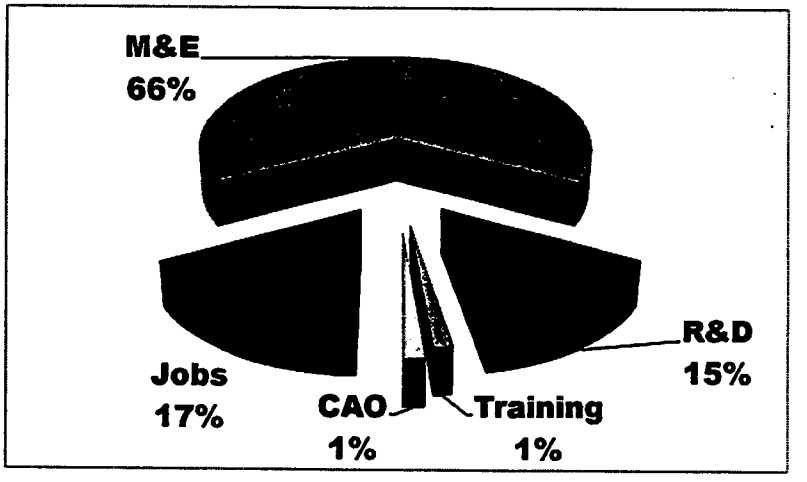
Incentive Portfolio Allocation



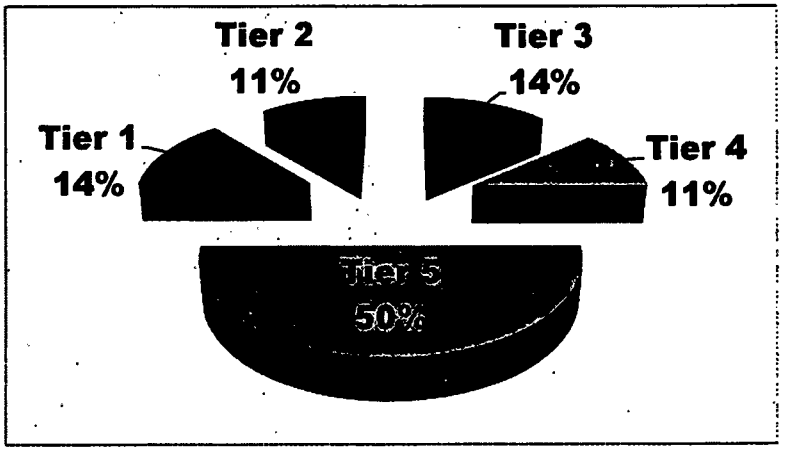
Lee Act "Costs" Have Exceeded $2 Billion



Lee Credits 1996-06 = $2.1 Billion



All Lee Credits - 2002-06
$875 Million



Incentives Have Limited Effect on Corporate Locations

- National surveys indicate incentives are relatively low in importance in location decisions
- **Site Selection** magazine (2008) survey of corporate executives ranked incentives eighth
- UNC survey of NC incented and non-incented ranked incentives 12th and 13th respectively
- Incentives do not compensate for inadequate workforce or infrastructure

Incentives are Most Persuasive When ...

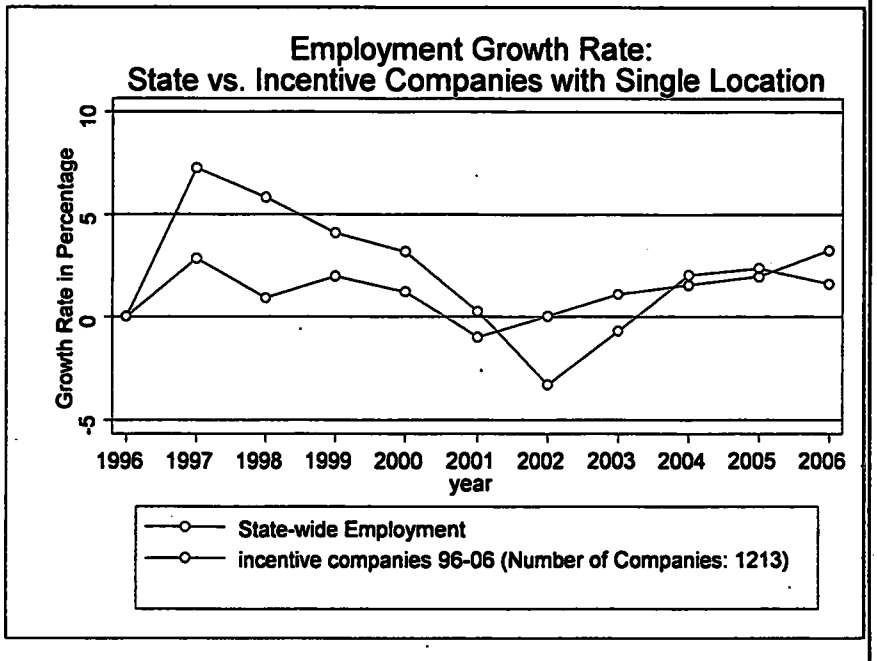
- Other location factors are relatively equal
- Prospects are highly mobile (and more are)
- Tailored to companies' specific priorities
- Benefits are front-loaded
- Combined with other assistance
- Before the auction starts

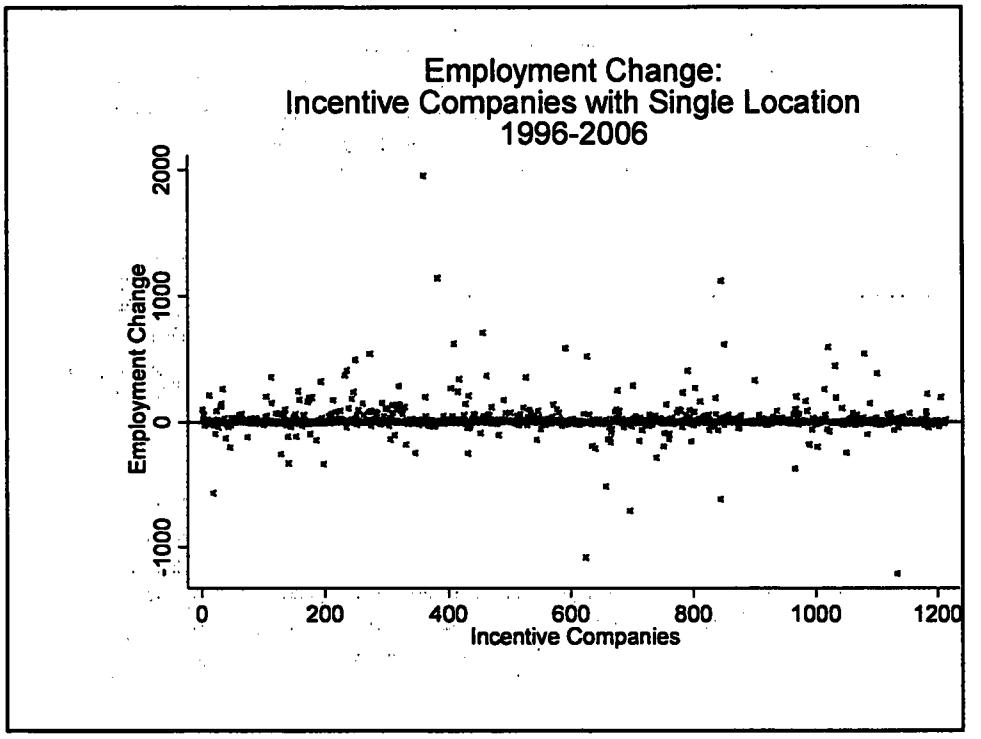
Incentives Have The Greatest Economic Benefit When...

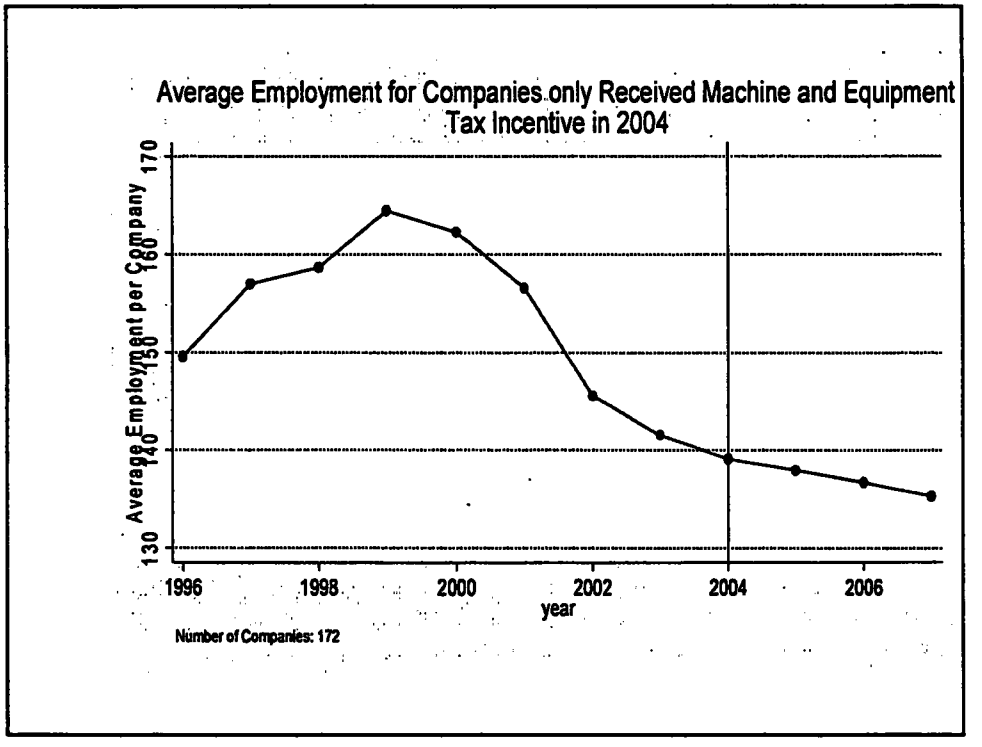
- Company employs local residents, minimizing public service outlays
- Company has catalytic effect on local suppliers
- Company is in growth mode with job creation upside
- Company is a headquarters in an export industry, creating local wealth

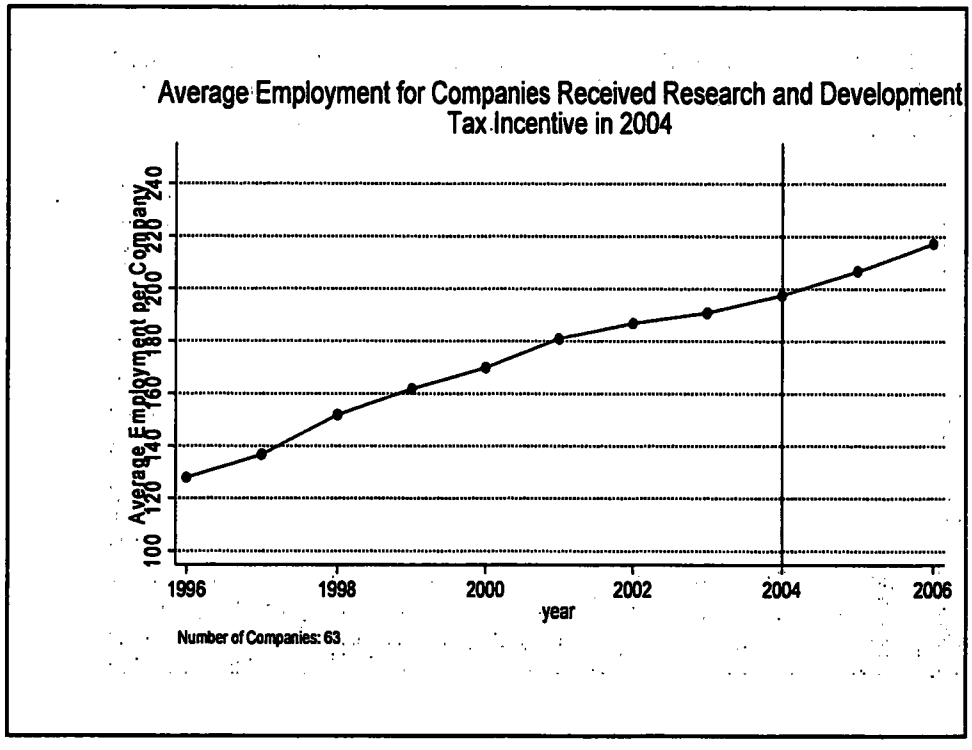
Updating NC's Incentive Portfolio

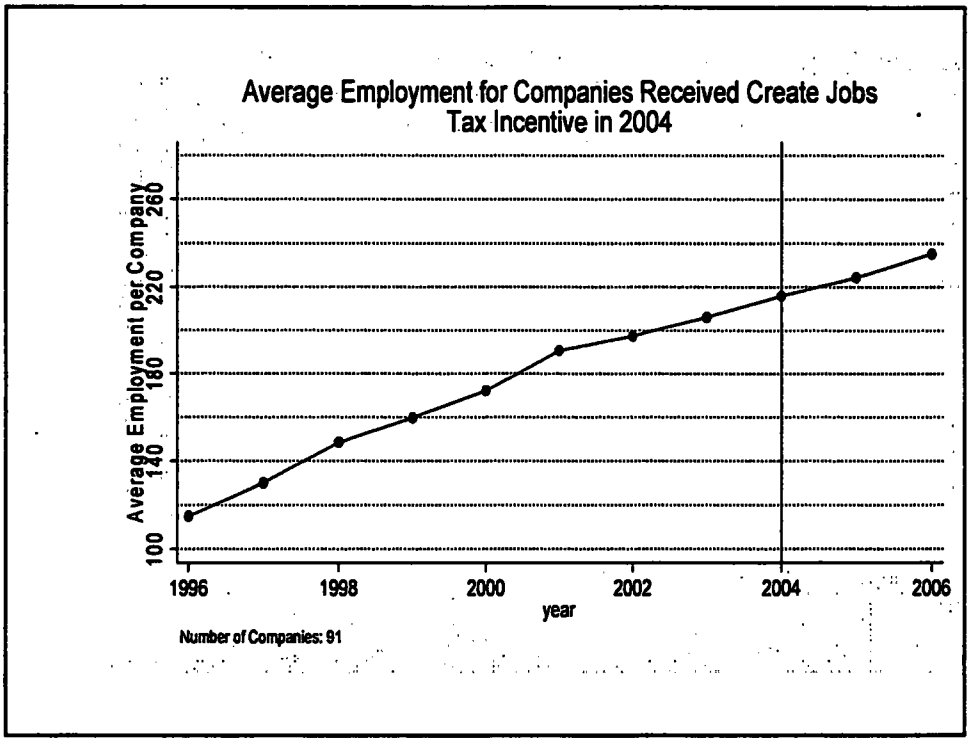
- Current portfolio relies too much on statutory tax credits that are less effective than in 1990s
- Majority of tax credit incented firms showing little job growth
- Investment tax credits strongly associated with job loss
- R&D credits show best correlation with job growth
- Job creation tax credits show weak effect




Employment Change:
Incentive Companies with Single Location
1996-2006
Employment Change
2000
1000
0
-1000
0
200
400
600
800
1000
1200
Incentive Companies


Average Employment for Companies only Received Machine and Equipment
Tax Incentive in 2004
Average Employment per Company
170
160
150
140
130
1996
1998
2000
2002
2004
2006
year
Number of Companies: 172


Average Employment for Companies Received Research and Development Tax Incentive in 2004
Average Employment per Company
100
120
140
160
180
200
220
240
1996
1998
2000
2002
2004
2006
year
Number of Companies: 63


Average Employment for Companies Received Create Jobs Tax Incentive in 2004
Average Employment per Company
100
140
180
220
260
1996
1998
2000
2002
2004
2006
year
Number of Companies: 91

Current Economy Favors Discretionary Incentives

- Discretionary incentive programs have flexibility to address more current market priorities
- Tax credits require profits to use
- Discretionary incentives reduce capital/credit requirements
- Performance based incentives offer better accountability and enforcement
- Greater utility for strategic, proactive targeting

Incentive Portfolio Adjustment Recommendations

- Retain Research and Development Tax Credit
- Eliminate Article 3J statutory credits (scheduled to "sunset" in 2011) effective 2010
- Expand JDIG and One NC programs with increased amounts targeted to distressed counties
- Increase economic development research and marketing budgets for proactive targeting
- Institute legislative oversight function for economic development programs

Targeting Opportunities

Growth stage HQs fitting regional industry clusters

- Est'd firms with upside employment potential
- Proven rural location and workforce affinities
- Identify and exploit owners' "idiosyncratic externalities"
- Capture synergies in tourism/development marketing

NC Corporate Tax Rate

- UNC survey found executives preferred lower tax rate to selective tax incentives
- Rate reduction positive effect on more firms
- Reallocating incentives portfolio can support corporate tax rate reduction
- Reducing current 6.9% rate to competitive neutral rate of 6.5% cost $56 million (2005)

NC Corporate Tax Rate

North Carolina	6.90%
Alabama	6.50%
Tennessee	6.50%
Georgia	6.00%
Virginia	6.00%
Florida	5.50%
South Carolina	5.00%

Questions?

SENATE FINANCE COMMITTEE
Wednesday, March 11, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on March 11, 2009, in Room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator David Hoyle presided. Ryan Gerney of Raleigh, Erin Webbens of Durham, and Jarvis Moss of Gastonia served as pages.

S.B. 91 – Pine Knoll Shores Corporate Limits.

Senator Preston was recognized to explain the bill which extends the corporate limits of the Town of Pine Knoll Shores. Senator Hoyle also noted the attendance of Pine Knoll Shores' Mayor, Joan Lamson, and Town Manager, Brian Kramer. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 52 – Pender/Energy-Related Development Incentives.

Senator Soles was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. The proposed committee substitute authorizes Pender and Brunswick Counties and the City of Raleigh to provide development incentives in exchange for reductions in energy consumption. Senator Stevens moved for a favorable report and the motion carried. A copy of the proposed committee substitute, the bill and the summary is attached.

S.B. 53 – Extend Burgaw ETJ.

Senator Soles explained the bill which allows the Town of Burgaw to exercise extraterritorial jurisdiction over an area extending two miles from its limits. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 60 - White Lake Charter Consolidation.

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill. The bill revises and consolidates the Charter of the Town of White Lake. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 79 – Chowan/Delinquent Tax – Deny Building Permit.

Ms. Avrette was recognized to explain the bill which provides that Chowan County may prohibit the issuance of a building permit to a delinquent taxpayer. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

Welcome and Introduction of Secretary Lay, Department of Revenue

Secretary Lay was recognized. He gave a brief resume of his career and then outlined his first six weeks at the Department of Revenue. He has discovered that the Department's software makes it difficult to process returns and flag questionable returns. He is balancing State tax refunds with incoming revenue which has lead to an approximate six week delay in citizens receiving their refunds. He is increasing and improving communication pathways between the Department and people who have questions.

The meeting adjourned at 1:32 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, March 11, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Welcome and Introduction of Secretary Kenneth Lay, Department of Revenue

Bills

S52	Pender/Energy-Related Development Incentives.	Sen. Soles
S53	Extend Burgaw ETJ.	Sen. Soles
S60	White Lake Charter Consolidation.	Sen. Rand
S79	Chowan/Delinquent Tax - Deny Building Permit.	Sen. Jones
S91	Pine Knoll Shores Corporate Limits.	Sen. Preston

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, March 11, 2009

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

FAVORABLE

S.B.	**53**	Extend Burgaw ETJ.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**60**	White Lake Charter Consolidation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**79**	Chowan/Delinquent Tax - Deny Building Permit.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**91**	Pine Knoll Shores Corporate Limits.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, March 12, 2009

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

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

S.B. **52** Pender/Energy-Related Development Incentives.

Draft Number:	35171
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Lancy	Sen. Charlie Dannelly
Michael Houser	NC DOR
Ken Lay	NC DOR
Patrick Buffkin	NMRS
Michelle Frazier	MFS
DAVID BARNES	Power Sports
Kim Hibbard	NCLM
Karl Knapp	NCLM
Jim Blackburn	Friend of Karl
ANTHONY ALLEN	NCACC
Patrick Reese	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Neil Woodcock	CCPS - LESS
Pat Goldman	NCAHD / Johnston County
Chris Stanley	Senator Brock Intern
Gregory McCollum	NC Conservation Network.
Butch Gunnells	NC Bev A
Allison Wall	Charlotte Chamber
Joanne Stevens	Stevens Inc
Jim Johnson	NCDC
Amy Allen	NCRM
Ken Melton	KMA
Scott Granum	Duke Energy

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JASMINE GARY	1550 RUA MAE DR 27610 RALEIGH NC.
Cady Thomas	NC Assn of REALTORS
Dill Scoggin	K & L Gates
Johanna Reese	DOT

VISITOR REGISTRATION SHEET

Senate Finance Committee — March 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Brantley	Box 217 Linville, NC 28646
Lisa Marbut	NC Home Builders
Joan Lamson	100 Municipal Circle Pine Knoll Shores
Brian Kramer	1000 Municipal Circle Pine Knoll Shores, NC 28512
Daniel Blum	K&L Gates
David Crawford	AIA NC
Mia D. Bailey	Electricities of NC, Inc.
Kevin Mikus	NCMS
David Bonz	MWC
Edgar Miller	CTNC
Coquoleysha Gary	1550 Eva Mae Drive Raleigh, NC 27610
	RAMC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 91

Short Title:	Pine Knoll Shores Corporate Limits.	(Local)
Sponsors:	Senator Preston.	
Referred to:	Finance.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF PINE KNOLL SHORES.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Pine Knoll Shores are extended to include the following described property:

Tract One:

Beginning at a point in the mean low water mark of the Atlantic Ocean located at the southeast corner of that certain tract of property conveyed by Mrs. Alice Hoffman to the Trustees of the Diocese of East Carolina recorded in Deed Book 123, Page 259, Carteret County Registry (the property described in said deed being referred to herein as the "Episcopal Church Property"), which point is also the southwestern corner of Lot 10, Pine Knoll Shores Commercial Property as shown on that plat recorded in Map Book 9, Page 49, Carteret County Register of Deeds; from said point of beginning run thence in a southerly direction in a line which is a prolongation of the eastern property line of the Episcopal Church Property for a distance of 2500 feet to a point in the Atlantic Ocean; thence in a westwardly direction in the Atlantic Ocean parallel to the mean low water mark of the Atlantic Ocean at a distance of 2500 feet measured perpendicularly from the mean low water mark of the Atlantic Ocean to a point which intersects a southerly extension of the existing western boundary line of the corporate limits of the Town of Pine Knoll Shores; thence with said extension of the western boundary line of the corporate limits in a northerly direction a distance of 2500 feet to a point in the low water mark of the Atlantic Ocean; thence in an easterly direction with the low water mark approximately 1,706.48 feet to the point and place of beginning.

Tract Two:

Beginning at a point in the mean low water mark of Bogue Sound which is located at the northeastern point of that certain tract of property conveyed by Mrs. Alice Hoffman to the Trustees of the Diocese of East Carolina recorded in Deed Book 123, Page 259, Carteret County Registry (the property described in said deed being referred to herein as the "Episcopal Church Property") and the northwestern point of the Roosevelt property as shown on that plat recorded in Map Book 17, Page 3, Carteret County Registry; from said point of beginning run thence in a northerly direction in a line which is a prolongation of the eastern property line of the Episcopal Church Property a distance of 2500 feet to a point in Bogue Sound; run thence in a westwardly direction in Bogue Sound and parallel to the low water mark of Bogue Sound at a distance of 2500 feet measured perpendicularly from the low water mark of Bogue Sound to a point which intersects a northerly extension of the existing western boundary line of the corporate limits of the Town of Pine Knoll Shores; thence in a southerly direction with the prolongation of the western boundary line of the corporate limits a distance of 2500 feet to a

point in the low water mark of Bogue Sound; thence in an easterly direction along the low water mark of Bogue Sound to the point and place of beginning.

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

SENATE BILL 91:
Pine Knoll Shores Corporate Limits

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 9, 2009
Introduced by:	Sen. Preston	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 91 would extend the corporate limits of the Town of Pine Knoll Shores a distance of 2500 feet into the Atlantic Ocean and Bogue Sound at the extreme western end of the Town, as specifically described in the bill as Tract 1 and Tract 2.***

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: The General Assembly included an area which extended 2500 feet into both the Atlantic Ocean and Bogue Sound in the Town's original boundaries when the Town was incorporated in 1973.[1] In 1983, the Board of Commissioners of the Town annexed additional land into the corporate limits; however because the areas adjacent to these properties in the Atlantic Ocean and in Bogue Sound did not meet the urban standards required for annexation under §160A-48, these water areas were not annexed.

The Town is seeking jurisdiction over these areas of Bogue Sound and the Atlantic Ocean in order to have zoning and general ordinance jurisdiction. There are some concerns over unregulated wind turbines being built in Bogue Sound. Additionally, the Town wants to control the discharge of firearms in these areas.

On November 12, 2008, the Town of Pine Knoll Shores Board of Commissioners by unanimous vote enacted a Resolution petitioning the North Carolina General Assembly to include in the corporate boundaries of the Town the areas extending 2500 feet both into the Atlantic Ocean and into Bogue Sound adjacent to the 1983 Annexation Properties.

S91-SMRE-3(e1) v1

[1] House Bill 701, chaptered as S.L. 1973-265, effective April 25, 1973

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 52
PROPOSED COMMITTEE SUBSTITUTE S52-CSTD-4 [v.4]

3/10/2009 6:07:50 PM

Short Title: Pender/Energy-Related Development Incentives. (Local)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING PENDER AND BRUNSWICK COUNTIES AND THE CITY OF RALEIGH TO PROVIDE DEVELOPMENT INCENTIVES IN EXCHANGE FOR REDUCTIONS IN ENERGY CONSUMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2007-241, as amended by S.L. 2008-22, reads as rewritten:

"**SECTION 2.** This act applies only to ~~Cabarrus County,~~ the Counties of Brunswick, Cabarrus, and Pender, to the Cities of Asheville, Charlotte, Concord, Durham, Kannapolis, Locust, Raleigh, and Wilmington, and to the Towns of Carrboro, Cary, Chapel Hill, Harrisburg, Midland, Mount Pleasant, and Stanfield."

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

SENATE BILL 52:
Pender/Energy-Related Development Incentives

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 10, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S52-CSTD-4		

SUMMARY: The PCS to Senate Bill 52 authorizes Pender and Brunswick Counties and the City of Raleigh to provide development incentives in exchange for reductions in energy consumption.

CURRENT LAW: In 2007 the Cities of Asheville, Charlotte, and Wilmington, and the Towns of Carrboro and Chapel Hill were authorized to adopt ordinances to provide incentives to developers within the municipality or its extraterritorial jurisdiction (ETJ) who agree to construct new development or reconstruct existing development in a manner that the municipality determines makes a significant contribution to the reduction of energy consumption. Incentives include density bonuses, adjustments to otherwise applicable development requirements, and other incentives. Density bonus ordinances permit developers to increase the number of units allowed on a piece of property.

In 2008 Cabarrus County, the Cities of Concord, Durham, and Kannapolis, and the Towns of Harrisburg, Midland, Mount Pleasant, and Stanfield were also granted this authority.

BILL ANALYSIS: The PCS to Senate Bill 52 authorizes Pender and Brunswick Counties and the City of Raleigh to provide development incentives in exchange for reductions in energy consumption. The PCS added Brunswick County to the authorization.

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

BACKGROUND: The Pender County Board of Commissioners is currently in the process of updating its development ordinances, land use regulations, and comprehensive plans. The County may incorporate development incentives in exchange for reductions in energy consumption after study and public input.

S52-SMTD-8(e1) v5

S 1

SENATE BILL 52

Short Title:	Pender/Energy-Related Development Incentives.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING PENDER COUNTY TO PROVIDE DEVELOPMENT INCENTIVES IN EXCHANGE FOR REDUCTIONS IN ENERGY CONSUMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2007-241, as amended by S.L. 2008-22, reads as rewritten:

"**SECTION 2.** This act applies only to ~~Cabarrus County,~~ the Counties of Cabarrus and Pender, to the Cities of Asheville, Charlotte, Concord, Durham, Kannapolis, Locust, and Wilmington, and to the Towns of Carrboro, Cary, Chapel Hill, Harrisburg, Midland, Mount Pleasant, and Stanfield."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 53

Short Title:	Extend Burgaw ETJ.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING THE TOWN OF BURGAW TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the population provisions in G.S. 160A-360(a), the Town of Burgaw may exercise the extraterritorial jurisdiction powers granted in Article 19 of Chapter 160A of the General Statutes within a defined area extending not more than two miles beyond its corporate limits. Except as otherwise provided by this act, the extension of extraterritorial jurisdiction by the Town of Burgaw is subject to the provisions of G.S. 160A-360.

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

SENATE BILL 53: Extend Burgaw ETJ

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 9, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 53 would authorize the Town of Burgaw to exercise extraterritorial jurisdiction over an area extending two miles from its limits.***

CURRENT LAW: Municipalities have the statutory authority to regulate land-use within their corporate limits and within an area one-mile beyond their municipal boundaries, commonly referred to as extraterritorial jurisdiction (ETJ). Land use regulation may take the form of zoning, subdivision regulation, minimum housing codes, and regulations governing open spaces and community appearance.

Counties have authority to regulate land-use only over the parts of the county not subject to city planning. However, if a city does not adopt an ordinance specifying the boundaries of its ETJ, then the county may exercise its planning jurisdiction over an area even if the area is within one mile of a municipality's corporate boundaries. If the county is already enforcing planning regulations, zoning regulations, and the State building code in that one-mile area, then a municipality may only exercise its ETJ authority in the one-mile area with the county's permission.

With the approval of the county commissioners, a city with a population between 10,000 and 25,000 may extend its extraterritorial land-use planning jurisdiction to two miles beyond its corporate limits; a city with a population of 25,000 or more may extend its extraterritorial land-use planning jurisdiction to three miles beyond its corporate limits.

BILL ANALYSIS: In 2000, the population of Burgaw was approximately 3,300. Under current law, the size of the town prohibits the county commissioners from extending the town ETJ beyond the one-mile radius. Senate Bill 53 would authorize the Town of Burgaw to exercise extraterritorial jurisdiction over an area extending two miles from its limits.

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

BACKGROUND: The population of the Town of Burgaw has increased by 30% since 2005. In an effort to insure consistency among the development, the Town of Burgaw Board of Commissioners voted in April 2008 to request an expansion of the ETJ. Prior to the vote, the Town informed all effected property owners in the proposed ETJ area, and held a public hearing to discuss the ETJ expansion.

In August of 2008, the Pender County Board of Commissioners approved the Town's request to expand the ETJ up to 2 miles outside the current corporate limits.

The additional ETJ would include strategic growth areas of the Town including Exit 398 of Interstate 40, the NC 53 East corridor, and the US 117 North corridor.

S53-SMTD-6(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 60

Short Title:	White Lake Charter Consolidation.	(Local)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WHITE LAKE.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of White Lake is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF WHITE LAKE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Town of White Lake, North Carolina, in Bladen County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of White Lake,' hereinafter at times referred to as the 'Town.'

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of White Lake specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Limits.** The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Bladen County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Town Governing Body; Composition.** The Board of Commissioners, hereinafter referred to as the 'Board,' and the Mayor shall be the governing body of the Town.

"Section 2.2. **Town Board of Commissioners; Composition; Terms of Office.** The Board shall be composed of six members, to be elected by all the qualified voters of the Town, for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Board, shall have the right to vote only when there is an equal division on any question or matter before the Board, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Section 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in

accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Board.

"Section 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting.** Official actions of the Board and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Compensation; Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Commissioners shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by majority vote of the remaining members of the Board and shall be filled for the remainder of the unexpired term, despite the contrary provisions of G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in the regular municipal election in 2011 and each four years thereafter.

"Section 3.3. **Election of Commissioners.** In the regular municipal election in 2009 and quadrennially thereafter, three Commissioners shall be elected for four-year terms in those positions whose terms are then expiring. In the regular municipal election in 2011 and quadrennially thereafter, three Commissioners shall be elected for four-year terms in those positions whose terms are then expiring.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the mayor-council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct.

"Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Section 4.4. **Tax Collector.** The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Board.

"Section 4.5. **Other Administrative Officers and Employees.** The Board may authorize other positions to be filled by appointment and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. MISCELLANEOUS.

"Section 5.1. **White Lake.** The Town may adopt ordinances with respect to the body of water in Bladen County known as White Lake, which ordinances shall have the same force and effect as if the lake were within the corporate limits of the Town, and Town Police shall have the same powers as peace officers on the lake as within the corporate limits of the Town."

SECTION 2. The purpose of this act is to revise the Charter of the Town of White Lake and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts that are

expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

SECTION 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

SECTION 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 511, Session Laws of 1951, except Sections 8 and 9 which were already repealed.

Chapter 1177, Session Laws of 1953

Chapter 424, Session Laws of 1961

Chapter 339, Session Laws of 1963

Chapter 200, Session Laws of 1967, except Section 5

Chapter 602, Session Laws of 1971

Chapter 1160, Session Laws of 1981, except Section 4.1.

SECTION 5. The Mayor and Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

SECTION 6. This act does not affect any rights or interests that arose under any provisions repealed by this act.

SECTION 7. All existing ordinances, resolutions, and other provisions of the Town of White Lake not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

SECTION 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

SECTION 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute that most clearly corresponds to the statutory provision which is superseded or recodified.

SECTION 11. This act is effective when it becomes law.

SENATE BILL 60:
White Lake Charter Consolidation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 9, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 60 revises and consolidates the Charter of the Town of White Lake in Bladen County.***

CURRENT LAW: The Charter of the Town of White Lake was originally enacted in 1951.[1]

BILL ANALYSIS: Senate Bill 60 revises and consolidates the White Lake Charter and expressly repeals the following acts because they have served their purpose or they have been consolidated into this act:

- SL 1951-511, except Sections 8 and 9 which were already repealed.
- SL 1953-1177
- SL1961-424
- SL 1963-339
- SL 1967-200, except Section 5
- SL1971-602
- SL1981-1160, except Section 4.1

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: The Charter of the Town of White Lake was originally adopted in 1951. It has not been revised since its adoption, is outdated and in need of revision. On January 19, 2009, the Town of White Lake Board of Commissioners adopted a Resolution formally requesting the support of the legislative delegation in sponsorship of the local act to revise and consolidate the Town of White Lake Charter during the 2009 Legislative Session.

S60-SMRE-2(e1) v2

[1] House Bill 541, chaptered as S.L. 1951-511, effective April 3, 1951

S 1

SENATE BILL 79

Short Title:	Chowan/Delinquent Tax - Deny Building Permit.	(Local)
Sponsors:	Senator Jones.	
Referred to:	Finance.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT CHOWAN COUNTY MAY PROHIBIT THE ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3(b) of S.L. 2005-433, as amended by Section 2 of S.L. 2006-150 and Section 1 of S.L. 2007-58, reads as rewritten:

"**SECTION 3.(b)** This section applies to Chowan, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin Counties only."

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

SENATE BILL 79:
Chowan/Delinquent Tax - Deny Building Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 9, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 79 would authorize Chowan County to prohibit issuance of a building permit to a person who owes delinquent property taxes.***

[As introduced, this bill was identical to H103, as introduced by Rep. Spear, which is currently in House Finance.]

CURRENT LAW: Section 3(a) of S.L. 2005-433 (G. S. 153A-357(c)) authorizes certain counties to prohibit the issuance of a building permit to a person who owes delinquent property taxes on property owned by the person.

As originally enacted in 2005, this authorization applied only to Greene, Lenoir, Iredell, Wayne, and Yadkin Counties. Davie and Lincoln Counties were added in 2006 and Gates County was added in 2007.

[*Note: The complete text of Section 3(a) of S.L. 2005-433 is set out in the BACKGROUND portion of this summary.]*]

BILL ANALYSIS: As introduced, Senate Bill 79 (First Edition) added Chowan County to the list of counties that may prohibit the issuance of a building permit to a delinquent taxpayer.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: The complete text of Section 3(a) of S.L. 2005-433 (G.S. 153A-357(c)) reads as follows:

"(c) A county may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105 360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes."

S79-SMRE-1(e1) v1

George Givens, counsel to House Local Government II substantially contributed to this summary.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	March 25, 2009	1:00 PM	544 LOB

Meeting cancelled

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 40	Murfreesboro Occupancy Tax.	Senator Jones
SB 269	Delegate Authority Re: Stamp Tax Overpayment.	Senator Clodfelter
SB 339	Stallings Occupancy Tax.	Senator Goodall
SB 346	Kannapolis Deannexation.	Senator Hartsell
SB 393	Kannapolis Annexation.	Senator Brock
SB 432	Midway Community (Aberdeen) Annexation.	Senator Blake
SB 437	Increase Mecklenburg Force Account Limit.	Senator Goodall
SB 543	Durham Motor Vehicle Tax.	Senator McKissick
SB 570	Indian Trail Charter revised.	Senator Goodall

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

SENATE FINANCE COMMITTEE
Wednesday, April 1, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 1, 2009, in Room 544 of the Legislative Office Building. Twenty-eight members of the committee were present. Senator Dan Clodfelter and Senator Clark Jenkins presided.

S.B. 543 – Durham Motor Vehicle Tax.

Senator McKissick was recognized to explain the bill. He moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS authorizes the City of Durham to collect a municipal tax for public transportation of ten dollars on vehicles resident in the city. Senator Weinstein moved for a favorable report and the motion carried. A copy of the PCS, the bill, and the summary is attached.

S.B. 40 – Murfreesboro Occupancy Tax.

Senator Jones was recognized to explain the bill. Senator Clodfelter moved to adopt the PCS for discussion. The motion carried. The PCS authorizes the Town of Murfreesboro to levy a room occupancy tax and to maintain the current distribution and use of the room and occupancy tax levied by the Town of Banner Elk. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Senator Goss moved for a favorable report and the motion carried. A copy of the PCS, the bill, the summary, and the fiscal note is attached.

S.B. 339 – Stallings Occupancy Tax.

Senator Goodall was recognized to explain the bill which creates a special taxing district made up of the portion of the Town of Stallings located in Union County and authorizes the district to levy up to a fiver percent room occupancy tax within the district to be used for tourism development within the district. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the summary, and the fiscal note is attached.

S.B. 570 – Indian Trail Charter Revised.

Senator Goodall explained the bill which revises and consolidates the Charter of the Town of Indian Trail. Senator Goodall offered an amendment which makes a technical correction. Senator Weinstein moved to adopt the amendment and the motion carried. Senator Apodaca moved to report the bill favorably as amended and the motion carried. A copy of the bill, the amendment, and the summary is attached.

S.B. 437 – Increase Mecklenburg Force Account Limit.

Senator Goodall moved to adopt the PCS for discussion and the motion carried. The PCS increases the force account limit for Mecklenburg County. Senator Goss moved for a favorable report and the motion carried. A copy of the PCS, the bill and the summary is attached.

S.B. 214 – Eastover Annexation.

Senator Rand was recognized to explain the bill, which annexes certain described property to the corporate limits of the Town of Eastover. Senator Foriest moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 539 – Greensboro Motor Vehicle Levy.

Senator Dorsett was recognized to explain the bill. Senator Weinstein moved to adopt the PCS for discussion and the motion carried. The PCS authorizes the City of Greensboro to increase its motor vehicle tax by up to an additional six dollars per year. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the bill, the summary, and the fiscal note is attached.

S.B. 346 – Kannapolis Deannexation.

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS removes a described area from the corporate limits of the City of Kannapolis and assists Cabarrus County with the expediting of public school construction. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 393 – Kannapolis Annexation.

Senator Brock was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS annexes certain described property to the corporate limits of the City of Kannapolis. The Kannapolis mayor, Robert Misenheimer, and the City Manager, Mike Legg, were recognized. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the bill and the summary is attached.

S.B. 432 – Midway Community (Aberdeen) Annexation.

Senator Blake was recognized to explain the bill. He moved to adopt the PCS and the motion carried. The PCS annexes the Midway community to the Town of Aberdeen. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the bill and the summary is attached.

S.B. 453 – Use of Funds Received from Parking Meters.

Senator Stein was recognized to explain the bill, which allows the City of Raleigh to allow activation of parking meters by credit card or other electronic means and uses proceeds collected from parking meters for parking programs and providing parking facilities. Tom McCormick, Raleigh City Attorney, was recognized to answer questions.

Senator Weinstein moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 631 – Conform Deadline to Registration/Inspection.

Senator Stevens was recognized to explain the bill which conforms deadlines for levying, repealing, increasing, or decreasing the regional transit authority registration tax to the DMV registration renewal schedule adopted under the electronic motor vehicle inspection system. Senator Foriest moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 269 – Delegate Authority Re: Stamp Tax Overpayment.

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill. The bill would authorize the board of county commissioners to delegate to the county manager the authority to conduct an initial review of a taxpayer's request for a refund on the overpayment of an excise stamp tax. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:35 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, April 01, 2009

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

FAVORABLE

S.B. **214** Eastover Annexation.
Sequential Referral: None
Recommended Referral: None

S.B. **269** Delegate Authority Re: Stamp Tax Overpayment.
Sequential Referral: None
Recommended Referral: None

S.B. **339** Stallings Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

S.B. **453** Use of Funds Received From Parking Meters.
Sequential Referral: None
Recommended Referral: None

S.B. **631** Conform Deadline to Registration/Inspection.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **570** Indian Trail Charter revised.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, April 02, 2009

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

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

S.B. **40** Murfreesboro Occupancy Tax.

Draft Number:	55327
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **346** Kannapolis Deannexation.

Draft Number:	15236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **393** Kannapolis Annexation.

Draft Number:	35282
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **432** Midway Community (Aberdeen) Annexation.

Draft Number:	35283
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **437** Increase Mecklenburg Force Account Limit.

Draft Number:	35284
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **539** Greensboro Motor Vehicle Levy.

Draft Number:	55329
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **543** Durham Motor Vehicle Tax.

Draft Number:	55328
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comments:

Senate Finance Committee
Wednesday, April 1, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 40	Murfreesboro Occupancy Tax.	Sen. Jones
SB 214	Eastover Annexation.	Sen. Rand
SB 269	Delegate Authority Re: Stamp Tax Overpayment.	Sen. Clodfelter
SB 339	Stallings Occupancy Tax.	Sen. Goodall
SB 346	Kannapolis Deannexation.	Sen. Hartsell
SB 393	Kannapolis Annexation.	Sen. Brock
SB 432	Midway Community (Aberdeen) Annexation.	Sen. Blake
SB 437	Increase Mecklenburg Force Account Limit.	Sen. Goodall
SB 453	Use of Funds Received From Parking Meters.	Sen. Stein
SB 539	Greensboro Motor Vehicle Levy.	Sen. Dorsett
SB 543	Durham Motor Vehicle Tax.	Sen. McKissick
SB 570	Indian Trail Charter revised.	Sen. Goodall
SB 631	Conform Deadline to Registration/Inspection.	Sen. Stevens

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Scott Gardner	Duke Energy
Karnisha R. Wallace	City of Durham
Patrick Baker	City of Durham
Mark Ahrendsen	City of Durham
Tonya Brown	City of Greensboro
Cam Cruz	BPMHC
Allison Roach	DMV
Patrice Roesler	NCACC
MARK DOROSIN	UNC center for Civil Rights

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	K+L Gates
Thomas McCormick	City of Raleigh
Paul Meyer	NCLM
Kelli Kulma	NCLM
Neal Woodcock	CCPS. LESS
Anthony Wilson	NCACC
David Baker	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Hudson Dalton	NCRMA
Bill Scoggin	K & L Gates
PBP	NCAB
[illegible]	[illegible]
Dan Simpkins	Carolinas AGC
Mia Bailey	Electricities of NC, Inc.
Jeff Hedrick	PNG
Phil Morgan	Piedmont Natural Gas

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 543
PROPOSED COMMITTEE SUBSTITUTE S543-CSTDx-6 [v.6]

3/31/2009 10:22:41 AM

Short Title: Durham Motor Vehicle Levy. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF DURHAM TO COLLECT A MUNICIPAL TAX FOR PUBLIC TRANSPORTATION OF TEN DOLLARS ON VEHICLES RESIDENT IN THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2003-329, Section 1 of S.L. 2004-103, and S.L. 2008-31 are repealed. That act authorized the City of Durham to levy up to ten dollars ($10.00) per year for general purposes. The repeal of this act shall not affect the authority of the City of Durham to levy the General Municipal Vehicle Tax in G.S. 20-97(b) of five dollars ($5.00).

SECTION 2.(a) Article 3 of the Charter of the City of Durham, being Chapter 671 of the Session Laws of 1975 is repealed, and a new Article is added to read:

"Article 3A. Other Taxes.

"Sec. 46.1. Municipal Vehicle Tax for Public Transportation. The City of Durham may levy a tax of not more than five dollars ($5.00) upon any vehicle resident in the city. The tax authorized in this section is in addition to the general municipal vehicle tax authorized by G.S. 20-97. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. The City of Durham shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

SECTION 2.(b) G.S. 20-97(c) reads as rewritten:

"(c) Municipal Vehicle Tax for Public Transportation. – A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply ~~to the City of Durham or~~ to the cities and towns in Gaston County."

SECTION 3. This act only applies to the City of Durham.

SECTION 4. Section 1 of this act is effective when the City of Durham levies a tax under Section 2 of this act. The remainder of this act is effective when it becomes law. This act

does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

SENATE BILL 543:
Durham Motor Vehicle Levy

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S543-CSTDx-6		

SUMMARY: The PCS to Senate Bill 543 would authorize the City of Durham to levy a $10 motor vehicle tax for public transportation purposes in addition to the authorization to levy a $5 motor vehicle tax for any lawful purpose currently allowed under the statutes.

[As introduced, this bill was identical to H790, as introduced by Reps. Hall, Wilkins, Michaux, Luebke, which is currently in House Local Government II, if favorable, Finance.]

CURRENT LAW: Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax, G.S. 20-97(b)** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Henderson, and Oxford and the towns of Ahoskie, Cary, Chapel Hill, Creedmoor, and Hillsborough may levy a tax of up to $10. The cities of Gastonia, Kinston, and Raleigh may levy a tax up to $15. The cities of Greenville and Winston-Salem; the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville; and the municipalities located wholly or partially in Cabarrus County may levy a tax up to $20. The town of Carrboro may levy a tax of up to $25. The City of Charlotte and the Town of Matthews may levy a tax up to $30[2]. The vehicle tax is shown on the bill for vehicle taxes sent by the county.[3]
- **Local Public Transportation, G.S. 20-97(c).** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems. This tax may not be imposed by the City of Durham.[4]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

The City of Durham currently has a local modification to G.S. 20-97(b) that authroizes the City to levy a tax of $10 which may be used for any lawful purpose. This authority will expire June 30, 2009.

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[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] S.L. 2007-109 authorizes the Town of Matthews to use proceeds from the tax for road construction, maintenance, and repair, including sidewalks, or for public mass transit systems and mass transit-related activities.

[3] S.L. 2007-73 authorizes the Towns of Garner, Holly Springs, Rolesville, and Knightdale to increase the maximum tax from $5 to $15 and provides that the proceeds of the taxes above $5 and up are to $15 are to be used exclusively for transportation-related purposes, including sidewalks. S.L. 2007-108 gives the same authority to the Towns of Morrisville and Apex.

[4] This tax may not be imposed by any cities and towns in Gaston County.

BILL ANALYSIS: The PCS to Senate Bill 543 authorizes the City of Durham to raise its motor vehicle tax from $10 to $15. This bill repeals the current local modification allowing a levy of $10 upon the enactment of the new tax. Of the new $15 motor vehicle tax, $5 may be used for any lawful purpose and $10 must be used for public transportation.

The new tax is authorized in the following way:

- **Town Charter:** The Town Charter is amended to allow the City to levy of tax of $5 for any vehicle resident in the City. The proceeds must be used for public transportation.
- **G.S. 20-97(b):** The Town is authorized by this subsection to levy a tax of $5 for any vehicle resident in the City. The proceeds may be used for any lawful purpose.
- **Local modification of G.S. 20-97(c):** This subsection is amended to allow the City of Durham to levy a tax of $5 for any vehicle resident in the City. The proceeds must be used for public transportation.

EFFECTIVE DATE: This act is effective when it becomes law. The repeal of the current tax is effective when the new tax is imposed by the City. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

S543-SMTD-17(CSTDx-6) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 31, 2009

TO: Senator McKissick

FROM: Marjorie Rutherford
Fiscal Research Division

RE: Senate Bill 534 (Unknown Edition)

FISCAL IMPACT ($ Millions)

Yes (X) **No ()** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Local Government	**$1.5**	**$1.5**	**$1.5**	**$1.5**	**$1.5**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Durham

EFFECTIVE DATE: Municipal Vehicle Tax for Public Transportation effective when the City of Durham chooses to levy it. The rest is effective when bill becomes law.

BILL SUMMARY:

The PCS to Senate Bill 543 repeals Section 1 of S.L. 2003-229, Section 1 of S.L. 2004-103, and S.L. 2008-31, which allows the City of Durham to levy a vehicle tax of up to ten dollars ($10.00) per year for general purpose. This act was set to expire June 30, 2009. It repeals Article 3 of the Charter of the City of Durham and adds a new article allowing a tax of up to five dollars ($5.00) per year upon any vehicle resident in the city. The proceeds of this tax may only be used to maintain public transportation. This is in addition to the general municipal vehicle tax authorized

by GS 20-97. Finally, it amends G.S. 20-97(c) to allow the City of Durham to levy an additional five dollars ($5.00) per year upon any vehicle resident in the city. The proceeds of this tax may only be used to maintain public transportation.

ASSUMPTIONS AND METHODOLOGY:
The PCS to Senate Bill 543 repeals Section 1 of S.L. 2003-229, Section 1 of S.L. 2004-103, and S.L. 2008-31, which authorized the City of Durham to levy a vehicle tax of up to ten dollars ($10.00) per year for any general purpose. This act was set to expire June 30, 2009. Under its expiration, City of Durham would have the authority under the unmodified G.S. 20-97(b) to levy a tax of $5 on vehicles in the City. The proceeds of this tax can also be used for any lawful purpose. Its repeal will have the same effect as its expiration. Durham will have the authority to levy the $5 tax in G.S. 20-97(b) and, therefore, this has no impact on future revenues.

The PCS adds an article to the Charter of the City of Durham allowing Durham to levy a tax of up to $5 on any vehicle resident in the city. This is a new revenue source the proceeds of which must be used to maintain local public transportation systems. According to the Department of Transportation Driver and Vehicle Services there are currently 155,879 resident vehicles in the City of Durham. Multiplying this number by the $5 levy results in a $779,395 increase in revenues for FY 2009-10.

The PCS also amends GS 20-97(c) to include Durham in the cities allowed to levy an additional $5 per year upon any vehicle resident. The proceeds of this tax must be used to maintain local public transportation systems. This will generate an additional $779,395 in revenues for FY 2009-10.

Overall, the PCS to Senate Bill 543 will increase revenues by a total of $1,558,790 for FY 2009-10. Assuming that the number of vehicles stays roughly the same over time, the increase in revenues for FY 2010-11, FY 2011-12, FY 2012-13, and FY 2013-14 will also be $1,558,790. Whereas, under current law, the City of Durham is authorized to spend the proceeds of its $10 motor vehicle tax on any general purpose, Senate Bill 543 would structure the tax so that proceeds up to $5 would be authorized for any general purpose and the remaining proceeds would be authorized only for maintaining local public transportation.

SOURCES OF DATA: NC Department of Transportation: Driver and Vehicle Services.

TECHNICAL CONSIDERATIONS: None

SENATE BILL 543

Short Title:	Durham Motor Vehicle Tax.	(Local)
Sponsors:	Senators McKissick; and Atwater.	
Referred to:	Finance.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF DURHAM TO COLLECT A MUNICIPAL TAX FOR PUBLIC TRANSPORTATION OF TEN DOLLARS ON VEHICLES RESIDENT IN THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2003-329, Section 1 of S.L. 2004-103, and S.L. 2008-31 are repealed.

SECTION 2.(a) Article 3 of the Charter of the City of Durham, being Chapter 671 of the Session Laws of 1975 is repealed, and a new Article is added to read:

"Article 3A. Other Taxes.

"Sec. 46.1. Municipal Vehicle Tax for Public Transportation. The City of Durham may levy a tax of not more than five dollars ($5.00) upon any vehicle resident in the city. The tax authorized in this section is in addition to the general municipal vehicle tax authorized by G.S. 20-97. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. The City of Durham shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

SECTION 2.(b) G.S. 20-97(c) reads as rewritten:

"(c) Municipal Vehicle Tax for Public Transportation. – A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply ~~to the City of Durham or~~ to the cities and towns in Gaston County."

SECTION 3. Section 1 of this act is effective when the City of Durham levies a tax under Section 2 of this act. Sections 2 and 3 of this act are effective when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 40
PROPOSED COMMITTEE SUBSTITUTE S40-CSTDx-7 [v.2]

3/31/2009 3:06:27 PM

Short Title: Murfreesboro Occupancy Tax. (Local)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF MURFREESBORO TO LEVY A ROOM OCCUPANCY TAX AND TO MAINTAIN THE CURRENT DISTRIBUTION AND USE OF THE ROOM AND OCCUPANCY TAX LEVIED BY THE TOWN OF BANNER ELK.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Town Council of the Town of Murfreesboro may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Murfreesboro shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Murfreesboro Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Murfreesboro and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Murfreesboro Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Murfreesboro Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Murfreesboro shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Murfreesboro Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

SECTION 3. Section 8 of S.L.2000-103 is repealed.

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

SENATE BILL 40:
Murfreesboro Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S40-CSTDx-7		

SUMMARY: ***Senate Bill 40 authorizes the Town of Murfreesboro to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. The PCS to Senate Bill 4 adds a provision that allows the Town of Banner Elk to maintain the current distribution model for the room occupancy tax imposed by the Town of Banner Elk.***

CURRENT LAW: Currently, Murfreesboro does not have authority to levy a room occupancy tax. Murfreesboro is located in Hertford County, which does have authority to levy a 3% occupancy tax. The proceeds of the current tax may be used by the County for any lawful purpose.

The Town of Banner Elk is authorized to impose a room occupancy tax of 6%. The proceeds are remitted to the town Tourism and Development Authority, which must use at least one-third to promote travel and tourism and two-thirds for tourism-related expenditures, which includes capital expenditures and expenditures required to make the downtown tourist area and nearby green areas more accessible, attractive, and usable to pedestrian tourists. Effective October 1, 2010, the distribution will to change to two-thirds to promote travel and tourism, and one-third for tourism related expenditures

BILL ANALYSIS:

Sections 1 and 2 of Senate Bill 40 authorizes the Town of Murfreesboro to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

Section 3 of Senate Bill 40 repeals the change in distribution for the room occupancy tax levied by the Town of Banner Elk. This will allow the Town to maintain the current distribution of at least one-third to promote travel and tourism and two-thirds for tourism-related expenditures, which includes capital expenditures and expenditures required to make the downtown tourist area and nearby green areas more accessible, attractive, and usable to pedestrian tourists.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

EFFECTIVE DATE: Senate Bill 40 would become effective when it becomes law.

S40-SMTD-13(CSTDx-7) v3

SENATE BILL 40

Short Title:	Murfreesboro Occupancy Tax.	(Local)
Sponsors:	Senator Jones.	
Referred to:	Finance.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF MURFREESBORO TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Town Council of the Town of Murfreesboro may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Murfreesboro shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Murfreesboro Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Murfreesboro and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Murfreesboro Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Murfreesboro Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Murfreesboro shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Murfreesboro Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 40 (First Edition)

SHORT TITLE: Murfreesboro Occupancy Tax.

SPONSOR(S): Senator Jones

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Town of Murfreesboro	**$11,148**	**$52,954**	**$56,987**	**$60,644**	**$63,019**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Murfreesboro

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

BILL SUMMARY:

Senate Bill 40 authorizes the Town of Murfreesboro to levy a room occupancy tax up to 3%. It provides that the tax must be levied, administered, collected, and repealed as provided in GS 160A-215 (Uniform provisions for room occupancy taxes for cities and towns). The bill requires the Murfreesboro Tourism Development Authority (TDA) to expend the occupancy tax proceeds to promote travel, tourism, and conventions in town; sponsor tourist-related events and activities; and finance tourist-related capital projects, with two-thirds of the funds being used to promote travel and tourism in Murfreesboro and the remainder for tourism-related expenditures. It also mandates that at least one-third of the members of the TDA must be affiliated with businesses that collect taxes in the town and at least one-half must be currently active in the town's travel and tourism promotion.

ASSUMPTIONS AND METHODOLOGY:

The Town of Murfreesboro currently has 16 rooms that would be subject to the proposed 3% local room occupancy tax. There is also a 60 room hotel slated to open in the middle of 2010. According to the North Carolina Division of Tourism, Film and Sports Development, the region Murfreesboro is located in has a 60.2% hotel occupancy rate and an average daily room rate of $105.70.

Using these assumptions, the 3% room occupancy tax would generate $11,148 (16 rooms * .602 occupancy rate * 365 days/year * $105.70 average daily rate * .03 occupancy tax) in FY2009-10. With the additional 60 rooms beginning in FY2010-11, the estimated revenue would increase to $52,954. This amount was then grown using the leisure and hospitality portion of North Carolina's gross state product as projected by Moody's Economy.com.

SOURCES OF DATA: Town of Murfreesboro; North Carolina Division of Tourism, Film and Sports Development; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 23, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 339

Short Title:	Stallings Occupancy Tax.	(Local)
Sponsors:	Senator Goodall.	
Referred to:	Finance.	

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL TAXING DISTRICT MADE UP OF THE PORTION OF THE TOWN OF STALLINGS LOCATED IN UNION COUNTY AND TO AUTHORIZE THE DISTRICT TO LEVY UP TO A FIVE PERCENT ROOM OCCUPANCY TAX WITHIN THE DISTRICT TO BE USED FOR TOURISM DEVELOPMENT WITHIN THE DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. Stallings District U Created. – Stallings District U is created as a taxing district. Its jurisdiction consists of that part of the Town of Stallings that is located within Union County. Stallings District U is a body politic and corporate and has the power to carry out the provisions of this act. The Stallings Town Council shall serve ex officio as the governing body of the district, and the officers of the town shall serve as the officers of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Occupancy tax. – (a) Authorization and Scope. – The governing body of Stallings District U may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this act.

SECTION 2.(c) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 2.(d) Distribution and Use of Tax Revenue. – Stallings District U shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Stallings District U Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it to promote travel and tourism in Stallings District U and shall use the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Stallings District U. None of the proceeds may be used to promote travel or tourism in areas within the Town of Stallings that are outside of the district or for tourism-related expenditures in the town that are outside of the district.

SECTION 3. Stallings District U Tourism Development Authority. – (a) Appointment and Membership. – When the governing body of the district adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Stallings District U Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the district. The governing body of the district shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Stallings shall be the ex officio finance officer of the Authority.

SECTION 3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the district, sponsor tourist-related events and activities in the district, and finance tourist-related capital projects in the district.

SECTION 3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body of the district on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body may require.

SECTION 4. G.S. 160A-215(g) reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(g) This section applies only to Beech Mountain District ~~W,~~W and Stallings District U, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

SENATE BILL 339:
Stallings Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. Goodall	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 339 authorizes the portion of the Town of Stallings located in Union County to levy a 5% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

CURRENT LAW: Currently, the Town of Stallings does not have authority to levy a room occupancy tax. Portions of Stallings are located in Union County, which does not have authority to levy an occupancy tax.

BILL ANALYSIS: Senate Bill 339 creates a special taxing district made up of the portions of the Town of Stalling located in Union County. This taxing district is authorized to levy a room occupancy tax of up to 5%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

EFFECTIVE DATE: Senate Bill 339 is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 339 (First Edition)

SHORT TITLE: Stallings Occupancy Tax.

SPONSOR(S): Senator Goodall

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Town of Stallings	**$229,910**	**$240,701**	**$259,034**	**$275,657**	**$286,451**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Stallings

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

BILL SUMMARY:

Senate Bill 339 creates the Stallings District U taxing district, consisting of the part of the Town of Stallings located within Union County, an authorizes the governing body of Stallings District U to levy a room occupancy tax of up to 5%. The bill provides that the tax must be levied, administered, collected, and repealed as provided in GS 160A-215 (uniform provisions for municipality room occupancy taxes). Also, it makes a conforming change to GS 160A-215(g).

The bill requires the Stallings District U Tourism Development Authority (District U Authority) to use at least two-thirds of the occupancy tax proceeds to promote travel and tourism in the district and the remainder for tourism related expenditures. Senate Bill 339 also restricts the use of the proceeds to only for the direct benefit of the jurisdiction of Stallings District U, and prohibits the use of the proceeds to promote travel or tourism in areas within the Town of Stallings that lie outside of District U or for tourism-related expenditures in the town that are outside of District U. It mandates that at least one-third of District U Authority members must be affiliated with businesses that collect the tax in the district and at least one-half must be currently active in the district's travel and tourism promotion.

ASSUMPTIONS AND METHODOLOGY:

The Town of Stallings currently has two hotels with a total of 254 rooms located in the proposed Stalling District U area. These rooms would be subject to a 5% room occupancy tax. According to the North Carolina Division of Tourism, Film and Sports Development, Union County has a 59.2% hotel occupancy rate and an average daily room rate of $83.78.

Using these assumptions, the 5% room occupancy tax would generate $229,910 (254 rooms * 59.2% hotel occupancy rate * 365 days/year * $83.78 average daily room rate * 5% occupancy tax) in FY2009-10 revenue. This amount was then grown using the leisure and hospitality portion of North Carolina's gross state product as projected by Moody's Economy.com.

SOURCES OF DATA: Town of Stallings; North Carolina Division of Tourism, Film and Sports Development; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 31, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 570

Short Title:	Indian Trail Charter Revised.	(Local)
Sponsors:	Senator Goodall.	
Referred to:	Finance.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF INDIAN TRAIL.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Indian Trail is revised and consolidated to read:

"CHARTER OF THE TOWN OF INDIAN TRAIL.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and General Powers.** The Town of Indian Trail shall continue to be a body politic and corporate under the name and style of "Town of Indian Trail" and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Section 1.2. **Exercise of Powers.** All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or, if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Section 1.3. **Enumerated Powers Not Exclusive.** The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Indian Trail shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina.

"Section 1.4. **Form of Government.** The form of government of the Town of Indian Trail shall be known as the "Council-Manager Form of Government," as set forth in Part 2 of Article 7 of Chapter 160A of the General Statutes subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Indian Trail from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Existing Corporate Boundaries.** The corporate boundaries of the Town of Indian Trail shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated "Map of the Town of Indian Trail Limits" showing the

corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated "Description of the Town of Indian Trail Corporate Limits." Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

"Section 2.2. **Extension of Corporate Boundaries.** All extensions of the corporate boundaries shall be governed by general law.

"ARTICLE III. MAYOR AND TOWN COUNCIL.

"Section 3.1. **Government Duties.** The government of the Town and the general management and control of all its affairs shall be vested in a Mayor and Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

"Section 3.2. **Mayor and Mayor Pro Tempore.** The Mayor shall be elected by and from the qualified voters of the Town voting at large in the manner provided in Article IV. The Mayor shall be the official head of the Town government and shall preside at all meetings of the Town Council. When there is an equal division upon any question, or in the appointment of officers, by the Council, the Mayor shall determine the matter by his own vote, and shall vote in no other case. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the ordinance of the Town. The Town Council shall choose one of its number to act as Mayor Pro Tempore, and he shall perform the duties of Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office but shall serve in such capacity at the pleasure of the remaining members of the Council.

"Section 3.3. **Town Council.** The Town Council shall consist of five members elected in the manner provided in Article IV.

"Section 3.4. **Terms; Qualifications; Vacancies.**

(a) Beginning with the regular action in 1971, the Mayor and the members of the Town Council shall serve for terms of four years beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter, provided they shall serve until their successors are elected and qualify.

(b) No person shall be eligible to be a candidate or be elected as Mayor or as members of the Town Council or to serve in such capacity, unless he is a resident and a qualified voter of the Town.

(c) If any elected Mayor or Councilman shall refuse to qualify, or if there shall be a vacancy in the office of Mayor or Councilman, after election and qualification, the vacancy shall be filled pursuant to the General Statutes. Any Mayor or Councilman so appointed shall have the same authority and powers as if regularly elected.

"Section 3.5. **Compensation of Mayor and Councilmen.** The Mayor shall receive for his services such salary as the Town Council shall determine, but no reduction in his salary shall be made to take effect during the term in which it is voted. The Council may establish a salary for its members that may be increased or reduced, but no reduction shall be made to take effect as to any Councilman during the respective term of office that he is serving at the time the reduction is voted.

"Section 3.6. **Organization of Council; Oaths of Office.** The Town Council shall meet and organize for the transaction of business at a time established by ordinance, following each biennial election and prior to December 15. Before entering upon their offices, the Mayor and

each Councilman shall take, subscribe, and have entered upon the minutes of the Council the following oath of office: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully perform the duties of the office of _____, on which I am about to enter, according to my best skill and ability; so help me, God."

"Section 3.7. **Meetings of Council.** The Town Council shall fix suitable times for its regular meetings, which shall be held at least once monthly. Special and emergency meetings may be held as provided by the Rules of Procedure for the Town Council of Indian Trail.

"Section 3.8. **Quorum; Votes.**

(a) A majority of the members elected to the Town Council shall constitute a quorum for the conduct of business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance.

(b) The affirmative vote of a majority of the members of the Town Council shall be necessary to adopt any ordinance or any resolution or motion having the effect of an ordinance. All other matters to be voted upon shall be decided by a majority vote of those present and voting.

"Section 3.9. **Ordinances and Resolutions.** The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter. The ayes and noes shall be taken upon all ordinances and resolutions and entered upon the minutes of the Council. The enacting clauses of all ordinances shall be: "Be it ordained by the Town Council of the Town of Indian Trail." All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein.

"Section 3.10. **Appointments by Council.** The Town Council shall appoint a Town Manager and a Town Attorney, who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

"Section 3.11. **Powers of Town Manager.**

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government and shall be responsible for the administration of all departments. The Manager shall be appointed with regard to executive and administrative abilities only. The Manager shall hold office at the pleasure of the Town Council and shall receive such compensation as determined by the Town Council. Neither the Mayor nor the Town Council nor any of its committees or members shall take part in the appointment or removal of officers, department heads, and employees in the administrative service of the Town, except as provided by this Charter.

(b) The Town Manager shall:

(1) Be the administrative head of the Town government.

(2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed.

(3) Attend all meetings of the Town Council, and recommend items for adoption as he shall deem expedient.

(4) Make reports to the Town Council from time to time upon the affairs of the Town and keep the Town Council fully advised of the Town's financial condition and its future financial needs.

(5) Appoint, suspend, and remove all nonelected officers, department heads, and employees of the Town, except the Town Attorney, who shall be appointed and serve at the pleasure of the Town Council.

"Section 3.12. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town Officials, be present at all meetings of the Town Council, and perform other

duties as required by law or as the Council may prescribe. The Town Attorney shall serve at the pleasure of the Council and shall receive compensation as the Council shall determine.

"Section 3.13. **Town Clerk.** The Town Manager shall appoint a Town Clerk who shall be the Clerk to the Town Council, keep all records concerning Council actions, exercise those powers and duties conferred by law, and perform such duties as may be specified by the Council. The Clerk will be appointed with regard to merit only.

"Section 3.14. **Finance Officer.** The Town Manager shall appoint a Finance Officer to perform the duties as required by the General Statutes.

"Section 3.15. **Tax Collector.** The Town Manager shall appoint a Tax Collector to collect all taxes, licenses, fees, and other monies belonging to the Town, subject to the provisions of this Charter and the ordinances of the Town, and he shall diligently comply with and enforce all the general laws of North Carolina relating to the collection, sale, and foreclosures of taxes by municipalities. Notwithstanding the contrary provisions of G.S. 105-349, the Town Manager may appoint the Tax Collector and one or more deputies.

"Section 3.16. **Consolidation of Functions.** The Town Manager may, in his discretion, consolidate the functions of any two or more of the positions of Town Clerk, Town Tax Collector, and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The Manager may also, in his discretion, designate a single employee to perform all or any part of the functions of any of the named positions, in lieu of appointing several persons to perform the same.

"Section 3.17. **Other Administrative Officers and Employees.** The Town Council may authorize other positions to be filled by appointment by the Town Manager and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE IV. ELECTION PROCEDURE.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the laws of North Carolina. In the regular 1973 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large two Councilmen to serve for terms of four years. In the regular 1975 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large a Mayor and three Councilmen to serve for terms of four years. In case of a tie between opposing candidates, the election shall be determined pursuant to general law.

"Section 4.2. **Voting.** In the regular 1973 election and quadrennially thereafter, each voter shall be entitled to vote for two candidates for Councilman. In the regular 1975 election and quadrennially thereafter, each voter shall be entitled to vote for one candidate for Mayor and for three candidates for Councilman.

"Section 4.3. **Regulation of Elections.** The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S. 163-293.

"ARTICLE V. STREET, SIDEWALK, AND LIGHTING IMPROVEMENTS.

"Section 5.1. **Street Improvements; Assessment of Cost.** In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Section 5.2. **When Petition Unnecessary.** The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

(1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or

(2) That it is in the public interest to connect two streets, or portions of a street already improved, or

(3) That it is in the public interest to widen a street, or part thereof, that is already improved, provided that assessments for widening any street or portions of a street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street, or part thereof, to be widened and improved under the authority granted by this Article.

"Section 5.3. **Street Improvement Defined.** For the purpose of this Article, the term 'Street Improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

"Section 5.4. **Sidewalks; Assessment of Cost.** In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town and assess the total cost thereof against abutting property owners.

If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.

"Section 5.5. **Street Lighting; Assessment of Cost.** In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making street lighting improvements, the Town Council may order to be made or to make street lighting improvements or repairs without petition according to standards and specifications of the Town and assess the total cost thereof against abutting property owners.

If street lighting is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists street lighting on the other side of the street, the total cost of which has been assessed against the abutting property.

"Section 5.6. **Assessment Procedure.** In ordering street, sidewalk, and lighting improvements without a petition and assessing the cost thereof under authority of this Article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 5.7. **Effect of Assessment.** The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if assessed where levied under the authority of general law."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Indian Trail and to consolidate herein certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

SECTION 3. This act shall not be deemed to repeal, modify, nor in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts or amendments are expressly set forth herein:

(1) Any acts concerning the property, affairs, or government of public schools in the Town of Indian Trail.

(2) Any acts of validating, confirming, approving, or legalizing official proceedings, actions, contracts or obligations of any kind.

SECTION 4. The following acts or portions of acts, having served their purposes for which enacted, or having been consolidated into this act, are hereby repealed:

(1) Chapter 829, Session Laws of 1969.

(2) S.L. 2004-9.

SECTION 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests whether public or private:

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

SECTION 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 7. All existing ordinances and resolutions of the Town of Indian Trail, and all existing rules or regulations of departments or agencies of the Town of Indian Trail, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified, or amended.

SECTION 8. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Indian Trail or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 9. The Mayor and Town Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

SECTION 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 11. All laws and clauses of laws in conflict with this act are hereby repealed.

SECTION 12. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

SECTION 13. All personal pronouns used in this document, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural and vice versa.

SECTION 14. This act is effective when it becomes law.

SENATE BILL 570:
Indian Trail Charter Revised

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 31, 2009
Introduced by:	Sen. Goodall	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: Senate Bill 570 would revise and consolidate the Charter of the Town of Indian Trail. The act would become effective when it becomes law.

CURRENT LAW: Cities may be administered in one of two ways: as a Council-Manager form of government or a Mayor-Council form of government. The Town of Indian Trail currently operates under the Mayor-Council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes. Under a mayor-council form of government, the council is responsible for the personnel decisions related to a city's government. The council is the body that appoints, suspends, and removes the heads of all city departments as well as other city employees. The council may delegate this authority to its department heads for employees working in that department.

Under the Council-Manager form of government, the manager is responsible for the personnel decisions. The council appoints a manager to serve at its pleasure. The manager has the authority to appoint, suspend, and remove all city employees not elected by the people, except for the city attorney. A manager must also direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council. A manager must attend all council meetings, prepare and submit annual budgets, annually submit to the council a complete report of the finances and administrative activities of the city, and make any reports the council may require concerning the administration and operation of the city's departments, offices, and agencies.

BILL ANALYSIS: Senate Bill 570 would revise and consolidate the Charter of the Town of Indian Trail.

BACKGROUND: The present Charter authorized by the Legislature in 1969 [S.L. 1969-825], was amended in 2004 [S.L. 2004-9]. This proposed Charter revision incorporates language the Legislature has approved since a rewrite of municipal laws in 1971 in various Statutes, including 160A.

This submission to the Legislature for consideration is the end-result of the following efforts:

- Detailed discussion at two Council Meetings in February, 2009;
- Participation by the Town attorney in all phases of this effort.

The proposed Charter revision represents the broad consensus of the Town and received the unanimous approval of the Town Council. The Town does not believe the proposed Charter revision has any controversial provisions.

EFFECTIVE DATE: Senate Bill 570 would become effective when it becomes law.

S570-SMRE-11(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 570

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

S570-AREx-1 [v.2]

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

Date _____,2009

Senator Goodall

moves to amend the bill on page 5, line 51 by deleting the phrase "Chapter 829," and substituting the phrase "Chapter 825,"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 437*
PROPOSED COMMITTEE SUBSTITUTE S437-CSTD-9 [v.2]

3/24/2009 10:58:27 AM

Short Title: Increase Mecklenburg Force Account Limit. (Local)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FORCE ACCOUNT LIMIT FOR MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135 reads as rewritten:

"**§ 143-135. Limitation of application of Article.**

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000);~~ three hundred thousand dollars ($300,000); provided that, for The University of North Carolina and its constituent institutions, force account qualified labor may be used (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars ($200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars ($100,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 2. This act only applies to non-utility construction or repair work for park and greenway projects in Mecklenburg County.

SECTION 3. This act is effective when it becomes law, and expires June 30, 2012.

SENATE BILL 437:
Increase Mecklenburg Force Account Limit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. Goodall	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S437-CSTD-9		

SUMMARY: ***The PCS Senate Bill 437 would increase the force account limit for Mecklenburg County to $300,000 and eliminate the alternative qualifying limit of $50,000 in total labor cost for non-utility construction or repair work for park and greenway projects in the County.***

[As introduced, this bill was identical to H507, as introduced by Rep. Samuelson, which is currently in House Local Government II, if favorable, Judiciary II.]

CURRENT LAW: The main competitive bidding requirements for local governments are found in Article 8 of Chapter 143. These statutes apply to the expenditure of public money within established dollar limits and for two categories of contracts: (1) contracts for the purchase of apparatus, supplies, materials, or equipment, and (2) contracts for construction or repair work. The second category (contracts for construction or repair work) includes construction of roads, utilities, buildings, and other infrastructure.

"Force account labor" is the direct use of agency employees, materials, and equipment to do construction or repair work (i.e. using your own forces). There are generally three types of force account expenses: employee labor, including fringe benefits; equipment use or time; and the use of materials from the agency's inventory. Formal bidding for construction or repair work does not apply to work undertaken by the local government when (1) the work is performed by force account qualified labor on the permanent payroll, and (2) either the cost of the project does not exceed $125,000 or the total cost of labor does not exceed $50,000.

BILL ANALYSIS: The PCS to Senate Bill 437 would permit Mecklenburg County to enter into a construction or repair contract to be performed by county employees without meeting otherwise applicable statutory requirements for non-utility construction or repair work for park and greenway projects if the total cost of the project will not exceed $300,000.00. The bill would also eliminate the alternative qualifying limit of $50,000.00 in total labor cost for exempt projects. The PCS adds the restriction on the type of project allowed under the increase in the force account limit, and provides that the authority expires on June 30, 2012.

EFFECTIVE DATE: This act is effective when it becomes law and expires June 30, 2012.

BACKGROUND: Since the statute's enactment, there have been several local modifications to it increasing the force account limit. The majority of the modifications has been for certain projects and has expired on a date certain. As originally enacted, the competitive bidding requirements did not apply when force account labor was used and the total cost of the project did not exceed $75,000. In 1995, the limit was increased to$125,000 for the total cost of the project or $50,000 for the total cost of the labor. To date, the highest local modification has been for a total project amount of $2,152,500 for the Town of Wilkesboro on a project to construct a water pump station, to replace five sewer interceptor lines, and to extend a waterline to serve a Department of Transportation rest center to be built outside the corporate limits of the town. The General Assembly made this modification last session, S.L. 2007-44. Wilkesboro's authorization expires December 30, 2009. However, there have been two local acts with no limit: one for Alleghany County and the Town of Sparta (for the construction of an electrical power

substation and water and sewer line extensions related to the construction and operation of a manufacturing plant) and one for Fayetteville (for the construction of water and sewer utility projects). Both authorizations have since expired.

Cities/Towns

Asheboro	SL 2008-55
Asheville	SL 2001-274
Beech Mountain	SL 1993-586
Boone	SL 1993-138; 2005-197
Boonville	SL 1993-667
Chapel Hill	SL 2000-97
Charlotte	SL 2001-248
Concord	SL 1999-34
Fayetteville	SL 2006-48
Goldsboro	SL 1991-555
Laurinburg	SL 1997-247
Lumberton	SL 1983-950
Monroe[1]	SL 1985-128, as amended
Mooresville	SL 1993-3
Newton	SL 2004-35
Sparta	SL 1998-18
Surf City	SL 1993-310
Wilkesboro	SL 2007-44
Wilmington	SL 2007-135
Winston-Salem	SL 02008-55

Counties

Alleghany	SL 1998-18
Avery	SL 1995-175
Cabarrus	SL 1999-34
Catawba	SL 2004-35; SL 2007-1
Davie	SL 2005-32
Duplin	SL 1983-959
Macon	SL 1983-355
Mecklenburg	SL 1995-219
New Hanover	SL 2007-135
Union	SL 1985-914
Watauga	SL 1993-667; SL 2005-197

[1] The local modification for the City of Monroe does not increase the force account limits. Rather it would exempt the City from the formal bidding requirements under Article 8 of Chapter 143 when the work is performed by force account labor or when the work is performed by appointed agents of the agency using labor crews and equipment leased on a per diem basis pursuant to informal bids under G.S. 143-131.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 437*

Short Title:	Increase Mecklenburg Force Account Limit.	(Local)
Sponsors:	Senator Goodall.	
Referred to:	Finance.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FORCE ACCOUNT LIMIT FOR MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135 reads as rewritten:

"**§ 143-135. Limitation of application of Article.**

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000);~~ three hundred thousand dollars ($300,000); provided that, for The University of North Carolina and its constituent institutions, force account qualified labor may be used (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars ($200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars ($100,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 2. This act applies only to Mecklenburg County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 214*

Short Title:	Eastover Annexation.	(Local)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF EASTOVER.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Eastover are extended to include the following described area:

BEGINNING at an existing concrete monument at the northernmost corner of a tract recorded in Deed Book 7052, page 396, Cumberland County, North Carolina Registry, said concrete monument being in the southern line of a tract recorded in Deed Book 7113, Page 723 of which the following is a part and running with the dividing line between the two aforementioned deeds and the current Town of Eastover limits South 46 degrees 22 minutes 19 seconds West, 864.50 feet to an existing iron stake at the northeastern-most corner of Lot 5 of Furlong Subdivision as recorded in Plat Book 49, 76; thence with the northern line of said Lot 5 and continues with current Town of Eastover limits South 50 degrees 43 minutes 50 seconds West, 32.77 feet to an existing iron stake; thence leaving Furlong and running with a boundary line of the tract of which this is a part and the current Town of Eastover limits North 11 degrees 43 minutes 19 seconds West, 377.00 feet to a point in the center of Gum Log Canal; thence on a new line with the centerline of the canal the following courses and distances:

North 59 degrees 34 minutes 53 seconds East, 293.72 feet to a point;
North 59 degrees 46 minutes 45 seconds East, 50.00 feet to a point;
North 58 degrees 07 00 seconds East, 260.57 feet to a point;
North 53 degrees 42 minutes 27 seconds East, 479.85 feet

to a point in the eastern line of the tract of which this is a part; thence with the eastern line of the tract of which this is a part South 19 degrees 03 minutes 02 seconds East, 168.65 feet to an existing concrete monument at the southeastern-most corner of the tract of which this is a part; thence with the southern line of the tract of which this is a part and the current Town of Eastover limits South 50 degrees 57 minutes 27 seconds West, 298.53 feet to the POINT OF BEGINNING. Containing 5.94 acres, more or less, and being a portion of tract recorded in Deed Book 7113, Page 723, Cumberland County, North Carolina Registry.

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

SENATE BILL 214:
Eastover Annexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 214 is a local bill that annexes certain described property to the corporate limits of the Town of Eastover, thereby redefining a portion of the Town Boundary.***

[As introduced, this bill was identical to H222, as introduced by Reps. Glazier, Dickson, which is currently in House Judiciary II, if favorable, Finance.]

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.[1]
2. **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation.** This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits.[2]
4. **Nonvoluntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed.[3]

BILL ANALYSIS: Senate Bill 214 would annex 5.94 acres north of the current Town of Eastover boundary as specifically described in the bill.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: This proposed legislation is before the General Assembly due to the annexation restrictions in the Charter of the Town of Eastover [S.L. 2007-267, s. 2.2 (a) and (b)].

The 5.94 acres under consideration for annexation is known locally as Lexington Subdivision (Formerly St. James Park), Phase I. The Town of Eastover desires to assist developer John Koenig to correct in his proposed subdivision the Eastover Town Boundary from dissecting several lots affected by his site plan.

The Fayetteville City Council entertained the request for a minor adjustment in the Eastover boundary at its meeting on June 2, 2008. The City Council is supportive of the request to incorporate the small portion of the proposed Koenig subdivision north of the current Eastover boundary into the Town of Eastover. This minor change will prevent lots from being split and as the property develops, it will also allow more rational municipal delivery service.

S214-SMRE-12(e1) v1

[1] Part 1 of Article 4 of Chapter 160A.
[2] Part 4 of Article 4 of Chapter 160A.
[3] Parts 2 and 3 of Article 4 of Chapter 160A.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 539
PROPOSED COMMITTEE SUBSTITUTE S539-CSTDx-12 [v.1]

3/31/2009 12:59:51 PM

Short Title: Greensboro Motor Vehicle Levy. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF GREENSBORO TO INCREASE ITS MOTOR VEHICLE TAX BY UP TO AN ADDITIONAL SIX DOLLARS PER YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the 1991 Session Laws is repealed. That act authorized the City of Greensboro to levy, in addition to up to five dollars ($5.00) per year for general purposes, an additional motor vehicle tax of up to five dollars ($5.00) per year for local public transportation purposes.

SECTION 2.(a) G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ sixteen dollars ($16.00) per year upon any vehicle resident in the city or town. The proceeds of the tax up to five dollars ($5.00) may be used for any lawful purpose. The proceeds of these taxes derived from any levy above five dollars ($5.00) and up to sixteen dollars ($16.00) shall be used exclusively for local public transportation purposes."

SECTION 2.(b) This section applies to the City of Greensboro only.

SECTION 3. Section 1 of this act is effective upon the date the City of Greensboro acts to levy a tax under Section 2 of the act.

SECTION 4. This act is effective when it becomes law. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

SENATE BILL 539:
Greensboro Motor Vehicle Levy

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 31, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S539-CSTDx-12		

SUMMARY: ***The PCS to Senate Bill 539 is a local bill authorizing the City of Greensboro to increase the amount of the general municipal vehicle tax the City may impose from a maximum of $10 to a maximum of $16. The proceeds of the additional tax must be used exclusively for local public transportation purposes.***

[As introduced, this bill was identical to H541, as introduced by Rep. Harrison, which is currently in House Finance.]

CURRENT LAW: The City of Greensboro is authorized to levy a general motor vehicle tax of not more than $10. Five dollars of the tax may be used for any lawful purpose, and $5 must be used for local transportation purposes.

Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, and Oxford and the towns of Ahoskie, Cary, Creedmoor, and Hillsborough may levy a tax of up to $10. The cities of Gastonia and Kinston and the towns of Apex, Garner, Holly Springs, Knightdale, Morrisville, and Rolesville may levy a tax up to $15. The cities of Charlotte, Greenville, Raleigh, and Winston-Salem; the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville; and the municipalities located wholly or partially in Cabarrus County may levy a tax up to $20. The towns of Carrboro and Chapel Hill may levy a tax of up to $25. The town of Matthews may levy a tax up to $30. This vehicle tax is shown on the bill for vehicle taxes sent by the county.
- **Local Public Transportation.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems.[2]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

BILL ANALYSIS: Senate Bill 539 would authorize the City of Greensboro to increase its motor vehicle tax from $10 to $16. The proceeds of the additional tax must be used exclusively for local public transportation purposes. This means that not more than $5 may be used for any lawful purpose

[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] This tax may not be imposed by the city of Durham or by any cities and towns in Gaston County.

and that for any levy above $5 and up to $16 shall be used exclusively for local public transportation purposes. The PCS adds a savings clause to the bill

EFFECTIVE DATE: This act is effective when it becomes law. The repeal of the current tax is effective when the new tax is imposed by the City. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

S539-SMTD-18(CSTDx-12) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 31, 2009

TO: Senator Dorsett

FROM: Marjorie Rutherford
Fiscal Research Division

RE: Senate Bill 539 (First Edition)

FISCAL IMPACT ($ Millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Local Government	**$1.2**	**$1.2**	**$1.2**	**$1.2**	**$1.2**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Greensboro

EFFECTIVE DATE: Effective when bill becomes law

BILL SUMMARY:
Senate Bill 539 amends GS 20-97(b) to allow Greensboro to levy a tax of up to $16 per year on any vehicle resident in the city. Provides that the proceeds of the tax up to $5 may be used for any lawful purpose and the proceeds of the tax derived from any levy above $5 and up to $16 must be used for local public transportation purposes. Effective on the date that Greensboro levies a tax under the statute, repeals SL 1991-31 authorizing Greensboro to levy an annual $5 additional

motor vehicle tax for local public transportation purposes, in addition to up to $5 per year for general purposes.

ASSUMPTIONS AND METHODOLOGY:
Senate Bill 539 increases the tax the City of Greensboro may levy on any vehicle resident from $10 to $16 per year. It provides that the proceeds of the tax up to $5 may be used for any lawful purpose and that any proceeds of the tax above $5 must be used for local transportation purposes.

In order to estimate the impact of Senate Bill 539, it is necessary to know the number of resident vehicles in the City of Greensboro. This is the number of vehicles on which a tax may be levied. According to the Department of Transportation Driver and Vehicle Services, there are currently 195,794 resident vehicles in Greensboro. Assuming that Greensboro chooses to levy the maximum vehicle tax, multiplying the number of vehicles by the $6 increase in the tax results in a $1.17 million increase in revenues for FY 2009-10. Assuming that the number of resident vehicles stays roughly the same over time, $1.17 million will also be the increase in revenues for the following four fiscal years.

SOURCES OF DATA: NC Department of Transportation Driver and Vehicle Services

TECHNICAL CONSIDERATIONS: None

SENATE BILL 539

Short Title:	Greensboro Motor Vehicle Levy.	(Local)
Sponsors:	Senators Dorsett; and Vaughan.	
Referred to:	Finance.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF GREENSBORO TO INCREASE ITS MOTOR VEHICLE TAX BY UP TO AN ADDITIONAL SIX DOLLARS PER YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the 1991 Session Laws is repealed. That act authorized the City of Greensboro to levy, in addition to up to five dollars ($5.00) per year for general purposes, an additional motor vehicle tax of up to five dollars ($5.00) per year for local public transportation purposes.

SECTION 2.(a) G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ sixteen dollars ($16.00) per year upon any vehicle resident in the city or town. The proceeds of the tax up to five dollars ($5.00) may be used for any lawful purpose. The proceeds of these taxes derived from any levy above five dollars ($5.00) and up to sixteen dollars ($16.00) shall be used exclusively for local public transportation purposes."

SECTION 2.(b) This section applies to the City of Greensboro only.

SECTION 3. Section 1 of this act is effective upon the date the City of Greensboro acts to levy a tax under Section 2 of the act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 346*
PROPOSED COMMITTEE SUBSTITUTE S346-PCS15236-RB-3

Short Title: Kannapolis Deannexation/Expedite Schools. (Local)

Sponsors:

Referred to:

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS AND TO ASSIST CABARRUS COUNTY WITH THE EXPEDITING OF PUBLIC SCHOOL CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are reduced by removing the following described area:

BEGINNING at a point in the Rocky River on the municipal boundary for the City of Kannapolis as described in N.C. House Bill 224, said point being a corner of Christopher Davis, now or formerly (Book 8035, page 100 Mecklenburg County Registry); thence leaving Rocky River and entering Mecklenburg County with the line of Davis, S. 78-01-45 W. 1,288.86 feet to an existing iron pin on the east side of Shearer Road; thence within the right-of-way of Shearer Road the following two lines: 1) N. 04-55-47 E. 15.68 feet to an existing iron pin; and 2) N. 04-56-41 E. 31.39 feet to a set iron pin a corner of Hubert M. Howard, now or formerly (Book 4567, page 166 Mecklenburg County Registry); thence with the line of Howard, N. 78-02-01 E. 1,287.33 feet to a point in Rocky River on the County line, (passing an existing 1" iron pin at 1,235.17 feet); thence continuing with the Cabarrus County line South 03-10-25 West 46.55 feet to the point of BEGINNING.

The tract described above encompasses 1.330 acres more or less and is intended to describe that entire portion of the City of Kannapolis within Mecklenburg County as described in N.C. House Bill 224, S.L. 2004-39.

SECTION 2.(a) The Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education may jointly select and negotiate with a contractor to build school facilities using the repetitive design approach without being subject to the requirements of G.S. 143-128, 143-129, 143-131, 143-132, 143-64.31, and 143-64.32. The Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education must jointly determine that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

SECTION 2.(b) This section expires on June 30, 2014.

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

SENATE BILL 346:
Kannapolis Deannexation/Expedite Schools

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 1, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Judy Collier
Analysis of:	PCS to First Edition S346-CSRB-3		Cindy Avrette

SUMMARY: ***Senate Bill 346 is a local bill that would remove a described area from the corporate limits of the City of Kannapolis. The proposed committee substitute adds a provision to the bill to enable Cabarrus County to expedite the construction of public school facilities.***

[As introduced, this bill was identical to H450, as introduced by Reps. Johnson, Barnhart, which is currently in House Local Government I, if favorable, Finance.]

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Section 1 of Senate Bill 346 would remove a described tract that encompasses 1.330 acres more or less and is intended to describe that entire portion of the City of Kannapolis within Mecklenburg County as described in [Section 1] of House Bill 224, chaptered as S.L. 2004-39.

Section 2 of the bill, added by the proposed committee substitute, would allow the Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education to jointly select and negotiate with a contractor to build school facilities using the repetitive design approach without being subject to the competitive bidding processes of Article 8 of Chapter 143. The Boards must jointly determine that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule. The exemption from the competitive bid requirements provided by this act for the construction of public school facilities would expire on June 30, 2014.

The Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education would like the opportunity to negotiate with the low bidder of a public school facility currently under construction to build additional schools using the same design of the school for which they have the low bid. The Boards believe they can negotiate a cost for the construction of the additional school facilities that will not exceed the low bid on the current project. The General Assembly granted Cabarrus County similar authorization in 2000 to construct up to five schools.[1] That authority expired June 30, 2005. The General Assembly has also granted similar authority to Forsyth, Stanly, and Johnston Counties.[2]

EFFECTIVE DATE: Senate Bill 346 would become effective when it becomes law. Section 2 would expire on June 30, 2014.

S346-SMRB-2(CSRB-3) v1

[1] S.L. 2000-85.
[2] S.L. 1997-37, S.L. 1999-102, S.L. 2001-99.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 393*
PROPOSED COMMITTEE SUBSTITUTE S393-CSREx-2 [v.1]

3/30/2009 2:45:59 PM

Short Title: Kannapolis Annexation. (Local)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are extended to include the following described territory:

Being tracts of GDRM Gateway, LLC in China Grove Township, Rowan County, North Carolina, and more particularly described as follows:

FIRST TRACT East side Interstate 85

Beginning at a railroad spike in the center line of Brunner Sloop Rd. SR 1418. Said railroad spike being N 03-00-00 E 30.84 ft. to an iron pipe at the corner of second tract and seventh tract of GDRM Gateway, LLC.

Thence with Tony L. Beaver line S 03-00-00 W 513.80 ft. to an iron pin corner of Tony I. Beaver and Ernest L. Cole. Thence 2 lines with Earnest L. Cole (1) N 86-56-54 W 1346.04 ft. to an iron pin, (2) Thence S 01-32-52 W 324.73 ft. to an iron pin on Earlene Wallace line. Thence with Earlene H. Wallace n 86-42-14 W 1,359.04 ft. to an iron pin Earlene Wallace and Thomas N. Corl corner. Thence six lines with Thomas N. Corl (1) N 85-42-27 W 285.77 ft. to a White Oak tree (2) N 02-49-55 E 10.39 ft. to an iron pin (3) N 86-34-54 W 505.02 ft. to a point (4) N 12-58-11 E 89.91 ft. to an iron pin (5) N 86-35-54 W 80.14 ft. to an iron pin (6) S 12-57-43 W 99.98 ft. to an iron pin on Jeffrey P. Fritts line. Thence with Jefferey P. Fritts line N 86-31-16 W 122.11 ft. to a stone on Floyd W. Propst line. Thence three lines with Floyd W. Propst (1) N 04-19-13 E 546.62 ft. to an iron pipe (2) N 87-30-00 E 1058.00 ft. to an iron pipe (3) S 00-30-00 E 271.66 ft. to an iron stake corner of R.E. Archie and on the line of Floyd W. Propst. Thence with the lines of R.E. Archie and D.W. Leonard N 88-00-00 W 849.00 ft. to a point on the right-of-way of Interstate 85 North. Thence six lines with the right-of-way of Interstate 85 North (1) N 00-07-34 E 1,005.58 ft. to a pipe (2) N 07-56-44 E 14.57 ft. to a concrete monument (3) N 07-14-04 E 467.78 ft. to a concrete monument (4) N 23-35-33 W 198.93 ft. to a concrete monument (5) N 08-09-48 E 5.78 ft. to an iron pipe (6) along a curve having a radius of 11,313.16 ft., arc of 640.98 ft. and a chord bearing of N 03-58-43 E 640.90 ft. to an iron pipe, J.L. Morris corner of the right-of-way of Interstate 85 North. Thence with J.L. Morris, A.R. Beaver, R.S. Morris, and J.L. Vanover lines S 87-42-45 E, 1,055.53 ft. to a stone and iron pipe on J.L. Vanover line. Thence with J.L. Vanover, C.G. Keller, and S.M. Garmon lines S 87-30-00 E 1,468.00 ft. to a stone S.M. Garmon corner. Thence with S.M. Garmon line N 03-30-00 E 313.00 ft. to a stone on S.M. Garmon line and Barbara R. Lentz

corner. Thence with Barbara R. Lentz and C.H. Daugherty lines S 88-00-00 E 1,419.00 ft. to a pine knot on the line of Virgina Efird line. Thence with Virgina Efird line S 03-00-00 W 198.00 ft. to a stone. Thence with Virgina Efird and the right-of-way of Backwood Lane SR 1343 S 80-00-00 E 1,435.48 ft. to an iron pin on the right-of-way of Backwood Lane. Thence with Tracy P. Eddy line S 10-14-51 W 569.78 ft. to an iron pin corner of Tracy P. Eddy on R.J. Roberts line. Thence with R.J. Roberts line N 88-00-00 W 395.06 ft. to an iron stake R.J. Roberts corner. Thence with R.J. Roberts, R.M. Bassinger, L.W. Bassinger, and N.R. Bassinger line S 05-00-00 W 613.80 ft. to an iron stake, N.R. Bassinger corner. Thence with N.R. Bassinger line S 88-00-00 E crossing and axle at 33.74 ft. and continuing 696.26 ft. for a total distance of 729.50 ft. to a stone and iron pipe J.D. Rivers corner on N.R. Bassinger line. Thence with J.R. Rivers line S 04-46-00 W 387.57 ft. to an iron at J.R. Rivers corner. Thence with J.R. Rivers line S 03-43-00 W crossing an iron at 210.89 ft. and continuing 30.84 ft. for a total distance of 241.73 ft. to a railroad spike in the center line of Brunner Sloop Road SR 1418 to the place of Beginning, containing 296.86 acres more or less.

For back title see the following Deeds:

Deed Book 1132 Page 724

Deed Book 1111 Page 588

Deed Book 1115 Page 835

Deed Book 1115 Page 734

Deed Book 1110 Page 969

SECOND TRACT West side Interstate 85

Lying in China Grove Township, Rowan County, North Carolina, and being more particularly described as follows:

Beginning at an iron stake in the southern line of E.O. Moose said beginning being N 88-00-00 W approximately 708.00 ft. to the center line of China Grove Road S.R. 1238. Thence with the southern line of E.O. Moose S 88-00-00 E 1,150.00 ft. to a point in the right-of-way of Interstate 85 South. Thence in a southerly direction with the right-of-way of Interstate 85 South approximately 990.00 ft. as it curves to a point Charles R. Raymer corner. Thence with Charles R. Raymer and V.H. Wilhelm line N 88-00-00 W 1,380.00 ft. to an iron stake V.H. Wilhelm and D.B. Brown corner. Thence in a northeasterly direction along D.B. Brown line approximately 511 ft. to an iron stake. Thence 2 lines with R.N. White (1) N 75-45-00 E 121.00 ft. to an iron stake (2) N 03-00-00 W 396.00 ft. to an iron stake place of Beginning, containing 30.10 acres more or less and is subject to the right-of-way and easement contained in Deed Book 558, Page 838.

For back title see the following deeds:

Deed Book 1034 Page 0172

Deed Book 1115 Page 801

ALSO INCLUDED

That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

SECTION 2. This act becomes effective September 30, 2011.

SENATE BILL 393:
Kannapolis Annexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 30, 2009
Introduced by:	Sen. Brock	**Prepared by:**	Judy Collier
Analysis of:	PCS to First Edition S393-CSREx-2		Research Assistant

SUMMARY: ***Senate Bill 393[1] is a local bill that would annex approximately 327 acres adjacent to I-85 in southern Rowan County into the corporate limits of the City of Kannapolis. The Proposed Committee Substitute corrects a drafting error in the effective date of the bill.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. **No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.**
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: Senate Bill 393 would annex approximately 327 acres adjacent to I-85 in southern Rowan County into the City of Kannapolis as described in the bill:

1. First Tract East side Interstate 85, containing 296.86 acres more or less.
2. Second Tract West side Interstate 85, containing 30.10 acres more or less.
3. That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

EFFECTIVE DATE: Senate Bill 393 would become effective September 30, 2011.

BACKGROUND: The City of Kannapolis and GDRM, LLC, the owners of approximately 327 acres in southern Rowan County have explored the possibility of a partnership among local governments in southern Rowan County to facilitate the development of this property for a corporate business park, Southland Development. The property owners have determined that Kannapolis is the logical long-term provider of services to the Southland Development property and the property owners have formally requested that the approximately 327 acres comprising the Southland Development property be voluntarily annexed into the City of Kannapolis. The City and the Property Owners have agreed that the

[1] As introduced, this bill was identical to HB 422, introduced by Representatives Steen and Coates, which is currently in House Local Government I Committee.

action requested should not become effective until a formal Development Agreement is adopted by both parties to define responsibilities for the successful development of the Southland Development properties.

The majority of the Southland development property is closer to either China Grove or Landis than to Kannapolis and, as a result, Kannapolis is limited in its ability to unilaterally act on this annexation request by NCGS 160A-58.1(b)(2) which provides that a municipality's satellite corporate limits may not be closer to the primary corporate limits of another municipality.

On February 23, 2009, the City Council of the City of Kannapolis adopted a Resolution requesting special local legislation to annex into the City of Kannapolis approximately 327 acres adjacent to I-85 known as the Southland Development properties in southern Rowan County, with an effective date of September 30, 2011.

S393-SMRE-8(e1) v3

SENATE BILL 393*

Short Title:	Kannapolis Annexation.	(Local)
Sponsors:	Senators Brock and Hartsell.	
Referred to:	Finance.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are extended to include the following described territory:

Being tracts of GDRM Gateway, LLC in China Grove Township, Rowan County, North Carolina, and more particularly described as follows:

FIRST TRACT East side Interstate 85

Beginning at a railroad spike in the center line of Brunner Sloop Rd. SR 1418. Said railroad spike being N 03-00-00 E 30.84 ft. to an iron pipe at the corner of second tract and seventh tract of GDRM Gateway, LLC.

Thence with Tony L. Beaver line S 03-00-00 W 513.80 ft. to an iron pin corner of Tony I. Beaver and Ernest L. Cole. Thence 2 lines with Earnest L. Cole (1) N 86-56-54 W 1346.04 ft. to an iron pin, (2) Thence S 01-32-52 W 324.73 ft. to an iron pin on Earlene Wallace line. Thence with Earlene H. Wallace n 86-42-14 W 1,359.04 ft. to an iron pin Earlene Wallace and Thomas N. Corl corner. Thence six lines with Thomas N. Corl (1) N 85-42-27 W 285.77 ft. to a White Oak tree (2) N 02-49-55 E 10.39 ft. to an iron pin (3) N 86-34-54 W 505.02 ft. to a point (4) N 12-58-11 E 89.91 ft. to an iron pin (5) N 86-35-54 W 80.14 ft. to an iron pin (6) S 12-57-43 W 99.98 ft. to an iron pin on Jeffrey P. Fritts line. Thence with Jefferey P. Fritts line N 86-31-16 W 122.11 ft. to a stone on Floyd W. Propst line. Thence three lines with Floyd W. Propst (1) N 04-19-13 E 546.62 ft. to an iron pipe (2) N 87-30-00 E 1058.00 ft. to an iron pipe (3) S 00-30-00 E 271.66 ft. to an iron stake corner of R.E. Archie and on the line of Floyd W. Propst. Thence with the lines of R.E. Archie and D.W. Leonard N 88-00-00 W 849.00 ft. to a point on the right-of-way of Interstate 85 North. Thence six lines with the right-of-way of Interstate 85 North (1) N 00-07-34 E 1,005.58 ft. to a pipe (2) N 07-56-44 E 14.57 ft. to a concrete monument (3) N 07-14-04 E 467.78 ft. to a concrete monument (4) N 23-35-33 W 198.93 ft. to a concrete monument (5) N 08-09-48 E 5.78 ft. to an iron pipe (6) along a curve having a radius of 11,313.16 ft., arc of 640.98 ft. and a chord bearing of N 03-58-43 E 640.90 ft. to an iron pipe, J.L. Morris corner of the right-of-way of Interstate 85 North. Thence with J.L. Morris, A.R. Beaver, R.S. Morris, and J.L. Vanover lines S 87-42-45 E, 1,055.53 ft. to a stone and iron pipe on J.L. Vanover line. Thence with J.L. Vanover, C.G. Keller, and S.M. Garmon lines S 87-30-00 E 1,468.00 ft. to a stone S.M. Garmon corner. Thence with S.M. Garmon line N 03-30-00 E 313.00 ft. to a stone on S.M. Garmon line and Barbara R. Lentz corner. Thence with Barbara R. Lentz and C.H. Daugherty lines S 88-00-00 E 1,419.00 ft. to a pine knot on the line of Virgina Efird line. Thence with Virgina Efird line S 03-00-00 W 198.00 ft. to a stone. Thence with Virgina Efird and the right-of-way of Backwood Lane SR

1343 S 80-00-00 E 1,435.48 ft. to an iron pin on the right-of-way of Backwood Lane. Thence with Tracy P. Eddy line S 10-14-51 W 569.78 ft. to an iron pin corner of Tracy P. Eddy on R.J. Roberts line. Thence with R.J. Roberts line N 88-00-00 W 395.06 ft. to an iron stake R.J. Roberts corner. Thence with R.J. Roberts, R.M. Bassinger, L.W. Bassinger, and N.R. Bassinger line S 05-00-00 W 613.80 ft. to an iron stake, N.R. Bassinger corner. Thence with N.R. Bassinger line S 88-00-00 E crossing and axle at 33.74 ft. and continuing 696.26 ft. for a total distance of 729.50 ft. to a stone and iron pipe J.D. Rivers corner on N.R. Bassinger line. Thence with J.R. Rivers line S 04-46-00 W 387.57 ft. to an iron at J.R. Rivers corner. Thence with J.R. Rivers line S 03-43-00 W crossing an iron at 210.89 ft. and continuing 30.84 ft. for a total distance of 241.73 ft. to a railroad spike in the center line of Brunner Sloop Road SR 1418 to the place of Beginning, containing 296.86 acres more or less.

For back title see the following Deeds:

Deed Book 1132 Page 724

Deed Book 1111 Page 588

Deed Book 1115 Page 835

Deed Book 1115 Page 734

Deed Book 1110 Page 969

SECOND TRACT West side Interstate 85

Lying in China Grove Township, Rowan County, North Carolina, and being more particularly described as follows:

Beginning at an iron stake in the southern line of E.O. Moose said beginning being N 88-00-00 W approximately 708.00 ft. to the center line of China Grove Road S.R. 1238. Thence with the southern line of E.O. Moose S 88-00-00 E 1,150.00 ft. to a point in the right-of-way of Interstate 85 South. Thence in a southerly direction with the right-of-way of Interstate 85 South approximately 990.00 ft. as it curves to a point Charles R. Raymer corner. Thence with Charles R. Raymer and V.H. Wilhelm line N 88-00-00 W 1,380.00 ft. to an iron stake V.H. Wilhelm and D.B. Brown corner. Thence in a northeasterly direction along D.B. Brown line approximately 511 ft. to an iron stake. Thence 2 lines with R.N. White (1) N 75-45-00 E 121.00 ft. to an iron stake (2) N 03-00-00 W 396.00 ft. to an iron stake place of Beginning, containing 30.10 acres more or less and is subject to the right-of-way and easement contained in Deed Book 558, Page 838.

For back title see the following deeds:

Deed Book 1034 Page 0172

Deed Book 1115 Page 801

ALSO INCLUDED

That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 432
PROPOSED COMMITTEE SUBSTITUTE S432-CSREx-1 [v.3]

3/26/2009 2:06:06 PM

Short Title: Midway Community (Aberdeen) Annexation. (Local)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX THE MIDWAY COMMUNITY TO THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Aberdeen are extended to include the following described territory:

BEING that land that comprises all or some of the area known as the Midway community, which is located within Moore County and within the extraterritorial jurisdiction of the Town of Aberdeen; more particularly described as an area bounded as follows: Beginning at a point that is the southerly intersection of the western right-of-way line of Bethesda Road and the current primary corporate limits of the Town of Aberdeen, thence following the existing primary corporate limits of the Town of Aberdeen generally west, then north, then east to the western right-of-way line of the northerly intersection of Bethesda Road with the primary corporate limits of the Town of Aberdeen, thence along the western right-of-way line of Bethesda Road to the point and place of beginning, save and except the following described property:

TWO PARCELS OF LAND IDENTIFIED BY PIN
NUMBERS 858000072615 AND 857008887174 INCLUSIVELY

BEGINNING at an iron stake in the east edge of the hard surface road leading from Aberdeen to Fort Bragg, about 450 feet east of the intersection of this road with the Aberdeen-Southern Pines Road, known as Bethesda Road, this beginning point being about 450 feet from the point where the Fort Bragg fork joins the Southern Pines fork to form the Bethesda Road leading to Aberdeen, said point being near Powell's Pond and B. S. Futrell's northwest corner and running thence as follows: South 5°23' West 410 feet to an iron stake, another Futrell corner; thence South 20°23' West 442 feet to an iron stake, another Futrell corner, thence with his south line, South 65°42' East 138.7 feet to a concrete monument; thence South 18°44' West 490.7 feet to an iron stake; thence North 60°00' West 659.5 feet to an iron stake; thence South 20°52' West 341.2 feet to an iron stake; thence North 60°41' West 2363 feet, crossing Bethesda Road, to an iron stake; thence North 15°04' East 412 feet to an iron pipe; thence North 76°38' West 82.8 feet to an iron pipe; thence North 28°24' East 271.8 feet to an iron stake; thence North 60°02' East 203.3 feet to an iron stake; thence North 78°46' East 744.8 feet to an iron bar; thence North 02°07' West 209.57 feet to an iron stake in the Southern Pines Country Club line; thence with that line South 70°47' East 277.05 feet to an iron stake near the north edge of Pee Dee Road; thence South 9°39' East 442.6 feet to a stake in the south edge of said Road; thence crossing said Road, South 86°53' East 704.2 feet to an iron stake across the road leading to Fort Bragg;

thence running with the southern edge of said road, South 78°23' West 253.1 feet to the point of BEGINNING, containing 69 acres, more or less.

A PARCEL OF LAND IDENTIFIED BY PIN NUMBER 857000870648

BEGINNING at a stake in the edge of Pee Dee Road, Phillips' corner of a 60 acre tract, running South 30° West 14 chains to a stake, post oak pointers; thence North 76° West 29 chains 50 links to a stake, three black gum pointers; thence North 74° West 4 chains 50 links to a stake at the western edge of Ray's Mill Creek Swamp; thence with the edge of said swamp to a stake, black gum pointer, another of Phillips' corners; and thence South 60° East 26 chains 95 links to the place of BEGINNING, containing 50 ½ acres more or less.

A PARCEL OF LAND IDENTIFIED BY PIN NUMBER 857011764677

BEGINNING at a stake alongside the Pee Dee Road, D. M. Hedrick's corner, running thence as said road North 30° East 20 chains to a stake along side the Pee Dee Road; thence North 59° West 28 chains 35 links to a black gum at the western corner of Ray's Mill Creek Swamp, Vample's and Buchanan's corner; thence down the western edge of said swamp to a stake, black gum pointer and black jack pointers, D. M. Hedrick's corner; thence South 60° East 26 chains 95 links to the BEGINNING, containing 60 acres, more or less.

SECTION 2. This act becomes effective June 30, 2009.

SENATE BILL 432:
Midway Community (Aberdeen) Annexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 31, 2009
Introduced by:	Sen. Blake	**Prepared by:**	Judy Collier Committee Counsel
Analysis of:	PCS to First Edition S432-CSREx-1		

SUMMARY: ***Senate Bill 432 is a local bill that would annex certain described property known as the Midway Community into the Town of Aberdeen.*** ***The Proposed Committee Substitute (PCS) for Senate Bill 432 does two things:***

- ***It corrects an erroneous reference in Section 1 of the bill to the corporate limits of the Town of Midway to correctly read as the corporate limits of the Town of Aberdeen.***
- ***It excludes four (4) parcels from the annexation as specifically described in the bill.***

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.[1]
2. **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise annex.
3. **Satellite Annexation.** This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits.[2]
4. **Nonvoluntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed.[3]

BILL ANALYSIS: The PCS for Senate Bill 432 would annex into the corporate limits of the Town of Aberdeen land specifically described in the bill that comprises all or some of the area known as the Midway Community, which is located within Moore County and within the extraterritorial jurisdiction of the Town of Aberdeen, with the exception of four (4) parcels specifically described in the bill.

EFFECTIVE DATE: This act would become effective June 30, 2009.

BACKGROUND: The Town of Aberdeen has been working for some time to involuntarily annex three areas on the edge of town, including Midway. While the Town is proceeding with involuntary annexation for two of the areas, consultants for the Town have advised that the Midway Community does not meet the statutory requirements for involuntary annexation because there were too many large parcels of undeveloped land.

The Town of Aberdeen has provided water to the Midway Community for 20 years, and through a Community Development Block Grant has recently completed a sewer system servicing Midway.

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[1] Part 1 of Article 4 of Chapter 160A.
[2] Part 4 of Article 4 of Chapter 160A.
[3] Parts 2 and 3 of Article 4 of Chapter 160A.

The Aberdeen Board of Commissioners and the Town staff have indicated that the Town will only support a legislative annexation if there is continued support for the process in the community. Although absentee ownership of property has been a significant factor in surveying the Midway Community, the Town has heard from many Midway residents, who for the most part, want to be annexed into the Town of Aberdeen so they can have a greater voice in Town affairs.

S432-SMRE-10(CSREx-1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 432

Short Title:	Midway Community (Aberdeen) Annexation.	(Local)
Sponsors:	Senators Blake; Brown, Hunt, Malone, McKissick, and Tillman.	
Referred to:	Finance.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX THE MIDWAY COMMUNITY TO THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Midway are extended to include the following described territory:

BEING that land that comprises all or some of the area known as the Midway community, which is located within Moore County and within the extraterritorial jurisdiction of the Town of Aberdeen; more particularly described as an area bounded as follows: Beginning at a point that is the southerly intersection of the western right-of-way line of Bethesda Road and the current primary corporate limits of the Town of Aberdeen, thence following the existing primary corporate limits of the Town of Aberdeen generally west, then north, then east to the western right-of-way line of the northerly intersection of Bethesda Road with the primary corporate limits of the Town of Aberdeen, thence along the western right-of-way line of Bethesda Road to the point and place of beginning.

SECTION 2. This act becomes effective June 30, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 453*

Short Title:	Use of Funds Received From Parking Meters.	(Local)
Sponsors:	Senators Stein; and Hunt.	
Referred to:	Finance.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF RALEIGH TO ALLOW ACTIVATION OF PARKING METERS BY CREDIT CARD OR OTHER ELECTRONIC MEANS AND TO USE PROCEEDS COLLECTED FROM PARKING METERS FOR PARKING PROGRAMS AND PROVIDING PARKING FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-301(a) reads as rewritten:

"(a) On-Street Parking. – A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by ~~coins or tokens.~~coins, tokens, credit cards, or electronic means. A city may establish parking zones within the city and may require a different monetary amount to activate the meter for different time periods based upon the zone in which the meter is located. Proceeds from the use of parking meters on public streets must be used to defray the cost of ~~enforcing and administering traffic and parking ordinances and regulations.~~operating the parking program or providing parking facilities."

SECTION 2. This act applies to the City of Raleigh only.

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

SENATE BILL 453:
Use of Funds Received From Parking Meters

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 30, 2009
Introduced by:	Sen. Stein	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 453[1] is a local bill that would authorize the City of Raleigh to utilize parking meters capable of being activated by credit cards or electronic means, and to use meter proceeds to defray the cost of operating the parking program or providing parking facilities. The bill would also authorize the City of Raleigh to designate parking zones within the city and to require different monetary amounts for parking meter activation at different time periods based upon the zone in which the meter is located.***

CURRENT LAW: G.S. 160A-301(a) authorizes a city to regulate parking on public streets, alleys and bridges by the use of parking meters, permits activation of parking meters by coins or tokens only, and permits the use of parking meter proceeds to defray the cost of "enforcing and administering traffic and parking ordinances and regulations." There is no express authorization in the current statute for charging different monetary amounts at different times of day to activate a parking meter, based upon the location of the meter.

BILL ANALYSIS: Senate Bill 453 would authorize the City of Raleigh to operate parking meters that can be activated by credit cards and electronic means. The bill would also authorize Raleigh to establish parking zones in the city and to vary the payment required to activate a parking meter for different time periods based upon the zone in which the meter is located. The bill would eliminate the authority under current law to use parking meter proceeds to defray the cost of enforcing and administering traffic ordinances and regulations, and would limit the use of such funds to defraying the cost of operating the parking program or providing parking facilities.

EFFECTIVE DATE: The act would be effective when it becomes law.

S453-SMRE-9(e1) v1

Bill Patterson, counsel to House Local Government II Committee, substantially contributed to this summary.

[1] As introduced, this bill was identical to H465, as introduced by Representatives Martin, Ross, Harrell, and Blue. A committee substitute in House Local Government II Committee included the Town of Chapel Hill and was reported out on March 26, 2009. The 2nd Edition of House Bill 465 is currently in House Finance Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 631*

Short Title:	Conform Deadline to Registration/Inspection.	(Public)
Sponsors:	Senators Stevens; Bingham and Goss.	
Referred to:	Finance.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO CONFORM DEADLINES FOR LEVYING, REPEALING, INCREASING, OR DECREASING THE REGIONAL TRANSIT AUTHORITY REGISTRATION TAX TO THE DMV REGISTRATION RENEWAL SCHEDULE ADOPTED UNDER THE NEW ELECTRONIC MOTOR VEHICLE INSPECTION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-562(a) reads as rewritten:

"(a) Collection. – A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the ~~third~~ sixth calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article."

SECTION 2. G.S. 105-563 reads as rewritten:

"**§ 105-563. Modification or repeal of tax.**

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the ~~third~~ sixth calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

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

SENATE BILL 631:
Conform Deadline to Registration/Inspection

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 31, 2009
Introduced by:	Sen. Stevens	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 631 conforms the deadlines for changes to regional transit authority registration taxes with the Division of Motor Vehicles registration renewal system by increasing the amount of notice the DMV receives before a change would go into effect.***

CURRENT LAW: Article 51 of Chapter 105 authorizes regional public transportation authorities to levy a $5 vehicle registration tax. The authority must pass a resolution, hold a public hearing, and obtain the approval of each county within its jurisdiction before levying the tax. After adopting the resolution, the authority must immediately deliver a copy of the resolution to the Division of Motor Vehicles. The tax cannot go into effect until **3 months** after the date of the resolution. The Division of Motor Vehicles will collect the tax for counties that are located entirely within the jurisdiction of an authority. If the authority's jurisdiction includes part of a county, the authority must collect the tax and may contract with local governments to collect the tax.

S.L. 2007-503 conformed the date of vehicle inspections to the date of registration. S.L. 2005-294 created a combined system of vehicle registration and property tax collection. Under the combined system, which goes into effect July 1, 2010, or when the integrated computer system is in place, property taxes on a motor vehicle are due at the time of registration or renewal of registration.

BILL ANALYSIS: Senate Bill 631 would change the effective date for changes regional transit authority registration taxes. Any levy, repeal, increase or decrease of the tax cannot go into effect until **6 months** after the date of the resolution.

EFFECTIVE DATE: Senate Bill 631 is effective when it becomes law.

BACKGROUND: There are currently three regional transit authorities:

- The Triangle Transit Authority operating in Raleigh, Durham, and Chapel Hill.
- The Piedmont Authority for Regional Transportation operating in Greensboro, Winston-Salem, Highpoint, and providing medical transportation to UNC Hospitals and Duke University Medical Center.
- Western Piedmont Regional Transit Authority operating in Alexander, Burke, Caldwell, and Catawba counties.

The DMV is currently only collecting a vehicle registration tax for the Triangle Transit Authority.

S631-SMTD-19(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 269

Short Title:	Delegate Authority Re: Stamp Tax Overpayment.	(Local)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

February 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INITIAL REVIEW OF APPEALS FOR REFUNDS OF OVERPAYMENT OF EXCISE STAMP TAXES FOR PURPOSES OF STREAMLINING RESOLUTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Mecklenburg County only.

SECTION 2. G.S. 105-228.37(b) reads as rewritten:

"(b) Hearing by County. – A board of county commissioners may delegate to a county manager the authority to consider written requests for a refund filed in accordance with subsection (a) of this section and the authority to either grant or deny such requests. If the county manager decides that the refund requested is due, the county must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the county manager finds that the refund requested is not due, the board of county commissioners must conduct a de novo hearing on a request for refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, ~~it~~ the county must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission."

SECTION 3. This act is effective when it becomes law. The procedures for review of disputed tax matters enacted by this act apply to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a taxpayer may appeal or has appealed to the Property Tax Commission.

SENATE BILL 269:
Delegate Authority Re: Stamp Tax Overpayment

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	March 10, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 269 would authorize the board of county commissioners to delegate to the county manager the authority to conduct an initial review of a taxpayer's request for a refund on the overpayment of an excise stamp tax. This act applies to Mecklenburg County only.***[1]

CURRENT LAW: North Carolina imposes an excise tax on conveyances in real estate located in North Carolina. The tax rate is $1.00 on each $500 value of the interest conveyed. One-half of the proceeds remain with the county; the county finance officer transfers the other half, less a 2% administrative allowance for the county, to the State. Of the amount transferred to the State, the Secretary of Revenue credits 75% to the Parks and Recreation Trust Fund and 25% to the Natural Heritage Trust Fund.

A taxpayer who pays more tax than is due may request a refund of the overpayment by filing a written request with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due. A board of county commissioners must conduct a hearing on a request for refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission. A decision of the Property Tax Commission is binding on a board of county commissioners; it is also subject to judicial review.

Before a refund may be given, the taxpayer must record a corrected instrument reflecting the correct amount of tax due. If no tax is due because the taxpayer recorded the instrument in the wrong county, then the taxpayer must record a document in that county stating the reason that no tax is due.

BILL ANALYSIS: Senate Bill 269 would permit the board of county commissioners of Mecklenburg County to delegate to a county manager the authority to consider written requests for refunds of the overpayment of an excise stamp tax. If the county manager decides that the refund requested is due, the county must refund to the taxpayer the county's portion of the overpayment with any applicable interest. If the county manager finds that the refund requested is not due, the board of county commissioners must conduct a de novo hearing on a request for refund. As provided under current law, a decision of the board of county commissioners may be appealed to the Property Tax Commission and a decision of the Property Tax Commission is subject to judicial review.

EFFECTIVE DATE: This act is effective when it becomes law. The procedures for review of disputed tax matters enacted by this act apply to claims for refund pending on or filed on or after the effective date of this act.

Brad Krehely, counsel to the House Local Government II Committee, substantially contributed to this summary.

S269-SMRB-1(e1) v1

[1] Rep. Alexander introduced a companion bill, HB 225, which is currently in House Local Government II.

SENATE FINANCE COMMITTEE
Tuesday, April 7, 2009, 2009 at 5:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 5:00 PM on April 7, 2009, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator Dan Clodfelter presided.

S.B. 202 – Appropriations Act of 2009.

The Committee met to discuss the fee provisions contained in Senate Bill 202. Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to explain an amendment. The amendment clarifies a series of commission and department fee provisions. Susan Morgan and Kristine Leggett, fiscal analyst from the Fiscal Research Division, were recognized to answer questions. Senator Garrou moved for adoption of the amendment and the motion carried. A copy of the amendment is attached.

Senator Clodfelter offered an amendment with technical changes. Senator Stevens moved for adoption of the amendment and the motion carried. A copy of the amendment is attached.

Senator Garrou moved to incorporate the two amendments adopted in Senate Finance as well as the unengrossed amendments adopted in the Senate Appropriations Committee into the Appropriation Committee's proposed committee substitute creating a new proposed committee substitute. Senate Finance will report the proposed committee substitute with staff given the authority to make any necessary technical changes. The motion carried. A copy of the bill, the Senate Appropriation Committee's adopted amendments, the summary, and a handout of proposed 2/3's bonds' estimated debt service is attached.

The meeting adjourned at 5:23 PM.

Senator Dan Clodfelter, Presiding

DeAnne Mangum, Committee Clerk

@ Dan Ettefagh rec to explain the amendment and answer questions.

SENATE BILL 202: Appropriations Act of 2009

Sen. Garrou moved for fav report – motion carried

Susan Morgan, Fiscal, was rec. to answer ?'s

Kristin Uebelhoer answer ?'s

2009-2010 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	April 7, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S202-CSLExf-15, as amended by Appropriations		Committee Counsel

Sen. Clodfelter offered amendment w/ tech changes. Sen. Stevens moved. Sen. Garrou adjourned 5:23p

SPECIAL INDEBTEDNESS: Senate Bill 202 does not authorize any new special indebtedness. It does modify some projects authorized in past sessions, financed through special indebtedness, to reflect reductions in the projected costs. (SEE Section 27.9, page 191)

Senate Bill 202 authorizes two-thirds bonds over the course of four years. Two hundred forty million dollars of the bond proceeds would be allocated to finance the capital facility costs of the Biomedical Research Imaging Center at UNC-CH. The remaining $66,610,000 would be used for the repair and renovation of State facilities and infrastructure. (SEE Section 27.10, page 200)

For the fiscal year 2009-2010, 54% the moneys in the Reserve for Repairs and Renovations would be allocated to the Board of Governors of The University of North Carolina and the remaining 46% would be allocated to OSBM. (SEE Section 27.5, page 188)

FEE PROVISIONS: As the General Assembly begins to rely more heavily on fees as a means to support the cost of a program, the difference between a tax and a fee becomes increasingly difficult to determine. A tax is a pecuniary charge imposed equally on everyone in the same class to provide revenue for the support of government in general. It is imposed at regularly recurring periods or upon the occurrence of an event and must be paid regardless of whether the taxpayer receives a benefit in return for payment. A fee is a charge imposed for the use of property, the provision of a service, or the regulation or protection of an item or an activity. Though more difficult to distinguish from a tax, a charge imposed on an item or activity as a means of, or to cover the cost of, regulating or protecting the use of the item is also a fee. This principle applies even if some of the revenue raised by the fee is used for purposes other than the regulation or protection of the item or activity on which the fee is imposed as long as the expenditure of the revenue bears a direct and reasonable relationship to the primary purpose of enforcing the laws governing the item and is not imposed for the support of government in general.

Fee Provisions

Section Page, Line	Name	Explanation
9.5 46, 35	UNC Center for Alcohol Studies	• Removes decrease of fee to restore drivers license from $75 to $50 triggered by the cumulative total of fees paid into the General Fund exceeding $10 million. Prior to 2007 the fee was $50 and reduced to $25 when the cumulative total of fees paid into the General Fund exceeding $10 million.
10.11 57, 12	Increase Child Care Licensing Fees for Child Care Facilities	• Increases fee for a child care facility of 12 or fewer children from $35 to $52. Fee established at $35 in 2003. • Creates new fee of $52 for licensure of child care

Section Page, Line	Name	Explanation
		homes. • Increases fee for a child care facility of 13-50 children from $125 to $187. Fee established at $125 in 2003. • Increases fee for a child care facility of 51-100 children from $250 to $375. Fee established at $250 in 2003. • Increases fee for a child care facility of more than 100 children from $400 to $600. Fee established at $400 in 2003. • Fiscal impact = $602, 385.
10.22 62, 11	Vital Records Fees	• Increases fee for first copy of vital record or search of files from $15 to $20. Fee was raised to $15 from $10 in 2002. • Each additional certificate copy requested from same search retains a fee of $15. • Amount retained from fees for searching by local agencies using State Registrar-maintained databases is increased from $5 to $10 with remainder remitted to Registrar. • Fee for out of state requests increased from $15 to $20. Fee was raised from $10 to $15 in 2002. • Fiscal impact = $750,000.
10.76 102, 4	DHSR License Fees	• Adult care home (6 or fewer beds) annual license fee increased from $250 to $315. • Adult care home (more than 6 beds) annual license fee increased from $350 to $360 plus a per-bed fee increase from $12.50 to $17.50. • Ambulatory surgery facility license base fee increased from $700 to $850 with per-operating room fee increase: $50 to $75. • Department annual certification fee for cardiac rehab facility increased from $250 to $385. • Home Care Agency annual licensure fee increased from $400 to $510 • General Acute Hospital bed per-bed fee increased across the board from $12.50 to $17.50 • Non-ICF/MR facilities base fee increase for no beds: $175 to $215; for 1-6 beds: $250 to $305; for more than 6 beds: $350 to $475 with a per-bed fees increase of $12.50 to $17.50. • ICF/MR facility base fee increase for 1-6 beds: $650 to $845; for more than 6 beds: $650 to $800 with a per-bed fee increase of $12.50 to $17.50.

Section Page, Line	Name	Explanation
		• Nursing home facility license fee decreased from $450 to $420 with a per-bed fee increase of $12.50 to $17.50. • Fiscal impact = $1,093,788.
10.77 104, 5	Initial Licensure Fees for New Facilities	• New Adult Care Licensure Facility fee with more than 6 beds: $400 with initial per-bed fee of $19. • New Adult Care Licensure Facility fee with 6 or fewer beds: $350. • New General Acute Hospitals all have an initial per-bed fee of $19 and an initial license fee as follows: 1-49 beds: $550; 50-99 beds: $750; 100-199 beds: $950; 200-399 beds: $1150; 400-699 beds: $1550; 700 or more beds: $1950. • New "other" hospitals: initial license fee of $1050 and initial per-bed fee of $19. • New home care facility initial license fee: $560. • New ambulatory surgical center facility initial license fee of $900 and initial per-bed fee of $85. • New free standing hospice facility initial license fee: $450. • New abortion clinic facility initial license fee: $750. • New cardiac rehab center facility initial license fee: $425. • New nursing home facility initial license fee of $470 with an intial per-bed fee of $19. • New L&C facility initial per-bed fee: $19. • New nonresidential mental health facility initial license fee: $265. • New Non-ICF/MR facility with 6 or fewer beds initial license fee: $350. • New ICF/MR facility with 6 or fewer beds initial license fee: $900. • New Non-ICF/MR facility with 7 or more beds initial license fee of $525 and an initial per-bed fee of $19. • New ICF/MR facility with 7 or more beds initial license fee of $850 and an initial per-bed fee of $19. • Fiscal Impact = 29,202.
11.1 120, 25	Increase Fertilizer Assessment Fee	• Increases inspection fee for commercial fertilizers and requires fee to be used for agronomic services. Raises fee from 25¢ to 50¢ per ton. The 25¢ fee was set in 1977.

Section Page, Line	Name	Explanation
		• Fiscal Impact = $375,000.
11.2 120, 41	Increase Pesticide Registration Fee	• Increases annual fee for pesticide registration from $100 to $150. This fee was raised from $30 to $100 in 2003.
12.1 121, 24	Apprenticeship Program at Labor	• Allows department to charge fees to cover the costs of program administration. • Labor has broad authority to raise fees for its operating costs. This provision adds authority to make rules regarding fees to administer the Apprenticeship Program. This program currently imposes no fees and has a budget of $1.8M in General Fund appropriations. For FY09-10 and beyond that appropriation is cut $450,000 to be made up for by fee collection. This would require an annual fee for each apprentice of $25.
13.2 121, 39	Raise Food & Lodging Fees	• Raises the fee the Commission for Public Health may charge for inspecting food and lodging establishments. • Inspecting establishments selling meat food products: fee raised: $50 to $60. Fee last raised from $25 to $50 in 2002. • Plan review of franchised, chain, and other food establishments: fee raised from $200 to $325. The $200 fee was established in 2002. • Fiscal Impact = 263,040.
13.3 122, 12	Radiation Inspection Fee	• Allows radiation protection section of DNER to raise fees to meet its administrative costs. • The radiation protection section has an annual operating budget of $4 million, $.8M of which comes from General Fund appropriations and $3.2M of which comes from fees. General Fund appropriation is reduced to $416,282 for FY 09-10 and to $0 for FY10-11.
13.4 122, 22	Scrap Tire Disposal Account Funds	• The State levies a scrap tire disposal tax on each new tire sold. The tax is 1% of the sales price on tires with a bead diameter of at least 20 inches, and 2% on tires with a bead diameter of less than 20 inches. • Credits $3 million of the net proceeds of the Scrap Tire Disposal Account Fund to the General Fund.
13.8 124, 50	Increase Timber Assessment	• Repeals language that requires a General Fund appropriation in order to charge the timber assessment.

Section Page, Line	Name	Explanation
13.9 125, 2	Forest Dev. Fund/Forest Products Assessment Rates	• Increases assessment rates levied on primary forest products by 50%. The assessments are credited to the Forest Development Fund and used to finance the forestry operations provided for in the Forest Development Act of 1977. These assessments have not been increased since the General Assembly established them in 1977. • Raises assessment per 1000 board feet of softwood sawtimber, veneer logs and bolts and all other softwood products measured in board feet from $.50 to no more than $1. • Raises assessment per 1000 board feet of hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products measured in board feet from $.40 to no more than $.80. • Raises assessment per cord for softwood pulpwood and other softwood products normally measured in cords from $.20 to no more than $.40. • Raises assessment per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords from $.12 to no more than $.24.
14.7 134, 11	Increase Industrial Commission Fee for Compromised Settlements	• Allows Industrial Commission to use the amount of the fee collected for approval of compromised settlement agreements in excess of $200 for its computer system replacement project. The funds may also be used for assessments of hardware and software needs. • The fee was increased from $200 to $250 in 2003.
14.8 134, 23	Safety Education Section of Industrial Commission to be Fee Supported	• Directs the Safety Education Section of the Industrial Commission to become fee supported by July 1, 2010. • The Industrial Commission must establish fee schedule. • At least 50% of fees used to support Safety Educational Section must come from fees charged for services provided by that Section. • FY 09-10 figures for the Commission are $4.6M in fees and $6.3M in General Fund appropriations. The Safety Education Section has an operating budget of $467,104. This amount is appropriated to the IC/Section in

Section Page, Line	Name	Explanation
		FY09-10, but is non-recurring. Thereafter, the program is to be fee supported
14.14 137, 10	Utilities Commission Regulatory Fee	• Sets Utilities Commission regulatory rate at 0.12 percent (0.12%). • No change from previous year.
15.18 144, 20	Sheriff's and Criminal Justice Education & Training Standards Commission	• New fee of $2 to court fees to go to Justice to offset the cost of criminal justice training and standards costs (split $1.65 to Criminal Justice and $.35 to Sheriffs). • Fiscal impact = $1,000,000.
15.19 144, 31	Convicted Criminal Lab Analysis Fee	• Increase fee charged for crime lab analysis from $300 to $600. The fee for use of the SBI lab was set at $300 in 2002. The fee for the use of local government labs was set at $300 in 2005. • Fiscal impact = $1,000,000.
15.20 145, 11	Increase Certain Court Fees	• Seat Belt (front seat)/Helmet Violations Penalty (20-135.2A and -140.4) raised from $75.00 to $103.50 plus the telephone facilities and law enforcement training certification fees in FY09-10 and from $103.50 to $111.50 plus the telephone facilities and law enforcement training certification fees in FY10-11 (sub j and k). • Failure to appear cost (7A-304(a)(6)) increased from $100 to $200 (sub (a)). • Amount credited to the Court Information Technology Fund for phone systems increased from $1 to $3 for FY09-10 and from $3 to $4 for FY10-11 (subs (a)/(b) (**2a**), subs (d)/(e) (**1a**), subs (f), (g), (h), (i) • New processing fee/newly created installment plan for payment of court costs of $20 (sub (c)). • General Court of Justice Fee: Superior criminal: raised from $102.50 to $115.50 for FY 09-10 and from $115.50 to $135.50 for FY 10-11 (subs (a)/(b) (**4**). • General Court of Justice Fee: Superior civil: raised from $93 to $130 for FY 09-10 and from $130 to $140 for FY 10-11 (subs (d)/(e) (**2**). • General Court of Justice Fee: District criminal: raised from $95.50 to $103.00 for FY 09-10 and from $103.50 to $105.50 (subs (a)(b) (**4**). • General Court of Justice Fee: District MV Road Safety: new fee created at $5 for FY 09-10 and raised to $10 for FY 10-11 (subs (a)/(b) (**4a**). • General Court of Justice Fee: District Civil

Section Page, Line	Name	Explanation
		Regular: raised from $73 to $78 for FY 09-10 and from $78 to $80 for FY 10-11 (sub (d)(e)(2). • General Court of Justice Fee: District Civil Magistrate: lowered from $63 to $55 (sub d). • Fiscal impact = $3,954,612.
17.2 154, 33	Abolish Butner Public Safety Division	• Repeals G.S. 122C-408, which required Butner to annually pay into the General Fund an amount for property taxes due assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) • Fiscal impact = ($1,200,000).
17.5 158, 4	Law Enforcement Support Services Fees	• Creates LESS as a division at Crime Control to be receipt-supported (via authorizing the division to charge and collect such fees it establishes for the cost of administering the program). • LESS currently exists as office in CCPS with the duties listed in the SP. Currently, LESS has a continuation budget of $430,336 a year and charges no fees. The budget gives them a non-recurring appropriation of $430,336 and rule-making authority to enable them to adopt and get in place a fee schedule necessary to meet annual needs.
17.6 158, 34	Charitable Bingo Licensing Fee	• Increases license application fee for operation of a bingo game from $100 to $200. This fee was set in 1987 at $100. • Fiscal impact = $26,600.
17.7 158, 47	Boxing Licensing Fees	• Increases license fee for boxing contestant from $37.50 to $50. This fee was raised from $25.00 to $37.50 in 2007. • Increases license fee for boxing second from $37.50 to $50. This fee was raised from $25.00 to $37.50 in 2007. • Increases admission fee per ticket sold for boxing events from $1.50 to $2. This fee was set at $1.50 in 2007. • Fiscal impact = $88,142
21.1 169, 43	Set Insurance Regulatory Charge	• Sets percentage rate for insurance regulatory charge at 5.5%
24.1 170, 48	Increase registration renewal fee for Securities Salesmen	• Increases the renewal & initial registration fee for securities salesmen from $75 to $100. This fee was raised from $55 to $75 in 2002. • Fiscal impact = $3,632,700.

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
James Ramsey	W-S Journal
Lisa Martin	NC Home Builders
Jessi Hayes	
Bobbi Gray	John Locke Foundation
Rebecca Troxler	NCACC
Casandra White	AOC
Lee-Ann Chapman	NCIC
[illegible]	NC FB
Clyde Boyd	NCMS
Amy McConkey	Smith Anderson
[illegible]	Capstrat

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Fred Boness	Rogne & Assoc.
Debra DeCamillis	IOG
Bruce Thompson	Premier POS
Johnny Walker	MWC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, April 07, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1 WITH AMENDMENTS, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **202** Appropriations Act of 2009.

Draft Number:	35287
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 202
PROPOSED COMMITTEE SUBSTITUTE S202-PCS35286-LExf-15

Short Title: Appropriations Act of 2009. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

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

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2009."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2011, according to the following schedule:

Current Operations – General Fund	**2009-2010**	**2010-2011**
EDUCATION		
Community Colleges System Office	$ 1,059,888,269	$ 1,104,442,194
Department of Public Instruction	7,629,717,045	7,773,516,383

University of North Carolina – Board of Governors		
Appalachian State University	149,364,470	150,008,736
East Carolina University		
Academic Affairs	241,853,905	244,133,225
Health Affairs	55,190,729	55,027,390
Elizabeth City State University	37,906,689	38,291,383
Fayetteville State University	60,424,635	60,745,385
North Caroline Agricultural and Technical University	103,280,528	103,283,850
North Carolina Central University	94,300,645	94,193,246
North Carolina School of the Arts	28,632,307	28,786,620
North Carolina State University		
Academic Affairs	421,258,378	428,566,200
Agricultural Extension	61,941,281	60,787,417
Agricultural Research	46,237,503	45,963,661
University of North Carolina at Asheville	40,024,437	40,158,837
University of North Carolina at Chapel Hill		
Academic Affairs	315,711,172	318,502,587
Health Affairs	224,910,569	228,028,319
Area Health Education Centers	52,346,018	52,363,857
University of North Carolina at Charlotte	200,230,007	200,765,231
University of North Carolina at Greensboro	172,612,251	173,265,711
University of North Carolina at Pembroke	61,015,439	61,316,418
University of North Carolina at Wilmington	104,921,437	106,343,768
Western Carolina University	96,273,475	96,370,613
Winston-Salem State University	73,730,343	73,401,502
General Administration	43,643,644	43,627,674
University Institutional Programs	14,772,089	72,744,268
Related Educational Programs	120,250,131	119,595,220
UNC Financial Aid Private Colleges	104,888,915	104,922,915
North Carolina School of Science and Mathematics	19,304,837	19,362,188
UNC Hospitals at Chapel Hill	46,011,882	46,011,882
Total University of North Carolina – Board of Governors	$ 2,991,037,716	$ 3,066,568,103

HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Division of Central Management and Support	$ 57,334,182	$ 59,306,912
Division of Aging	35,927,363	38,697,945
Division of Blind Services/Deaf/HH	11,354,295	11,279,296
Division of Child Development	282,156,867	346,847,558
Division of Education Services	38,827,103	33,879,011
Division of Health Service Regulation	18,196,075	18,201,413
Division of Medical Assistance	2,528,381,854	3,171,953,118
Division of Mental Health	784,669,194	787,653,305
NC Health Choice	82,928,252	82,828,189
Division of Public Health	182,067,661	183,194,026
Division of Social Services	212,492,287	223,486,076
Division of Vocation Rehabilitation	41,765,979	41,779,037
Total Health and Human Services	$ 4,276,101,112	$ 4,999,105,886

NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$ 61,599,458	$ 61,185,805
Department of Commerce		
Commerce	44,395,214	37,178,108
Commerce State-Aid	18,804,673	15,304,673
NC Biotechnology Center	15,119,010	15,119,010
Rural Economic Development Center	24,019,453	24,019,453
Department of Environment and Natural Resources	207,284,998	200,464,914
Clean Water Management Trust Fund	95,000,000	100,000,000
Department of Labor	17,700,104	17,728,165
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,292,633,348	$ 1,334,385,357
Department of Crime Control and Public Safety	31,338,905	30,900,591
Judicial Department	470,465,546	471,837,687
Judicial Department – Indigent Defense	134,934,064	121,403,270
Department of Justice	92,102,712	91,344,576
Department of Juvenile Justice and Delinquency Prevention	147,114,599	143,487,981
GENERAL GOVERNMENT		
Department of Administration	$ 69,163,419	$ 69,106,137
Office of Administrative Hearings	3,967,455	3,980,290
Department of State Auditor	13,224,512	13,240,784
Office of State Controller	23,361,150	23,993,456
Department of Cultural Resources		
Cultural Resources	70,522,789	71,919,361
Roanoke Island Commission	1,961,296	1,961,296
State Board of Elections	4,683,822	6,187,615
General Assembly	57,661,786	59,371,264
Office of the Governor		
Office of the Governor	6,113,531	6,119,712

Office of State Budget and Management	6,561,015	6,564,463
OSBM – Reserve for Special Appropriations	5,023,000	4,273,000
Housing Finance Agency	14,608,417	14,608,417
Department of Insurance		
Insurance	31,644,853	31,707,037
Insurance – Volunteer Safety Workers' Compensation	2,000,000	2,000,000
Office of Lieutenant Governor	932,179	932,179
Department of Revenue	84,920,596	85,013,566
Department of Secretary of State	11,364,455	11,438,329
Department of State Treasurer		
State Treasurer	17,272,124	17,285,912
State Treasurer –		
Retirement for Fire and Rescue Squad Workers	10,804,671	10,804,671
TRANSPORTATION		
Department of Transportation	$ 0	$ 0
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Reserve for Compensation Increases	$ 65,440,496	$ 56,765,776
Salary Adjustment Fund: 2009-2011 Biennium	0	0
Contingency and Emergency Fund	5,000,000	5,000,000
Reserve for Teachers' and		
State Employees' Retirement Contribution	21,000,000	21,000,000
Judicial Retirement System Contributions	1,300,000	1,300,000
Reserve for State Health Plan	128,410,208	267,904,114
Information Technology Fund	9,361,985	9,361,985
Reserve for Job Development Investment Grants (JDIG)	19,000,000	27,400,000
Adjust Debt Service	(7,500,000)	7,307,323
Statewide Administrative Support	(3,000,000)	(4,000,000)
Federal Economic Recovery Management	1,000,000	1,000,000
E-Procurement Receipts		(10,000,000)
Biomedical Research Imaging Center (BRIC)	0	0

Biomedical Research Imaging Center (BRIC) Contingency Reserve	74,000,000	100,000,000
Debt Service		
General Debt Service	670,494,697	739,878,445
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 20,031,171,062**	**$ 21,273,226,011**

Capital Improvements -General Fund	**2009-2010**	**2010-2011**
Water Resources Development Projects	$ 17,600,000	$ 0
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 17,600,000**	**$ 0**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2009-2011 biennial budget is shown below:

	FY 2009-2010	**FY 2010-2011**
Unappropriated Balance Remaining from Previous Year	0	190,568,288
Projected Reversions FY 2006-2007	0	0
Projected Overcollections FY 2006-2007	0	0
Less Earmarkings of Year End Fund Balance		
Savings Reserve Account	0	0
Repairs and Renovations Reserve Account	0	0
Beginning Unreserved Fund Balance	**0**	**190,568,288**
Revenues Based on Existing Tax Structure	**18,030,500,000**	**19,072,800,000**
Nontax Revenues		
Investment Income	136,400,000	153,800,000
Judicial Fees	200,300,000	208,400,000
Disproportionate Share	100,000,000	100,000,000
Insurance	72,500,000	76,500,000
Other Nontax Revenues	195,700,000	201,500,000
Tobacco Trust Fund Transfer	0	0
Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
Highway Fund Transfer	17,600,000	17,600,000
Subtotal Nontax Revenues	**831,000,000**	**831,300,000**
Total General Fund Availability	**18,861,500,000**	**20,008,383,971**
Adjustments to Availability: 2009 Session		
Reserve for Tax Adjustments	500,400,000	667,100,000
Federal Fiscal Stabilization Funds – Education	580,966,000	580,966,000
Federal Fiscal Stabilization Funds – General Purpose	129,261,500	129,261,500
IRA Distribution Suspended	(44,000,000)	0
Department of Revenue Improved Enforcement	50,000,000	75,000,000

Transfer from Disproportionate Share Reserve	24,994,954	0
Adjust Transfer from Insurance Regulatory Fund	(2,179,969)	(2,179,969)
Adjust Transfer from Treasurer's Office	(885,321)	(885,321)
Scrap Tire Disposal Account Funds	3,000,000	0
Increase DHHS/HSR Fees	1,122,990	1,122,990
Increase SOS Fees	3,632,700	3,632,700
Administrative Office of the Courts	32,942,179	38,899,425
Reduce Fund Balance – Nurse Educators for Tomorrow	1,000,000	0
Inmate Work Release Fund Increase	500,000	500,000
Reduce Fund Balance – Telecommunications Relay Trust Fund	5,000,000	0
Reduce Fund Balance – Teaching Fellows Trust Fund	4,500,000	0
Reduce Fund Balance – DPI Legacy Funds	2,000,000	0
Subtotal Adjustments to Availability: 2009 Session	**1,292,255,033**	**1,493,417,325**
Revised General Fund Availability	**20,153,755,033**	**21,501,801,296**
Less: General Fund Appropriations	**(20,048,771,062)**	**(21,273,033,668)**
Unappropriated Balance Remaining	**$104,983,971**	**$228,767,628**

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall not transfer funds to the Repairs and Renovations Reserve Account on June 30, 2009. This subsection becomes effective June 30, 2009.

SECTION 2.2.(c) Notwithstanding 143C-4-2, the State Controller shall not transfer funds to the Savings Reserve Account on June 30, 2009. This subsection becomes effective June 30, 2009.

SECTION 2.2.(d) Notwithstanding the provisions of G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is one hundred six million ($106,000,000) and for the 2010-2011 fiscal year is seventy-one million ($71,000,000).

SECTION 2.2.(e) Pursuant to G.S. 105-187.9(b)(2), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is two million five hundred thousand dollars ($2,500,000) and for the 2010-2011 fiscal year is one million eight hundred thousand dollars ($1,800,000).

SECTION 2.2.(f) The appropriation made in this act to the Clean Water Management Trust Fund for the 2009-2010 fiscal year is ninety-five million dollars ($95,000,000). The provisions of G.S. 113A-253.1 do not apply for the 2009-2010 fiscal year.

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2011, according to the following schedule:

Current Operations – Highway Fund	**2009-2010**	**2010-2011**
Department of Transportation		
Administration	$ 80,810,522	$ 81,897,273
Division of Highways		
Administration	32,938,983	32,993,177

Construction	38,910,000	125,110,551
Maintenance	909,957,588	791,660,215
Planning and Research	4,055,402	4,055,402
OSHA Program	355,389	355,389
Ferry Operations	30,126,209	29,726,209
State Aid		
Municipalities	87,071,264	86,200,551
Public Transportation	71,595,962	71,631,962
Airports	17,349,592	17,291,543
Railroads	17,101,153	17,101,153
Governor's Highway Safety	351,779	352,325
Division of Motor Vehicles	101,732,813	101,747,629
Other State Agencies, Reserves, and Transfers	291,143,334	298,336,621
TOTAL	**$ 1,683,500,000**	**$1,658,460,000**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2009-2011 biennial budget is shown below:

Highway Fund Availability Statement	**2009-2010**	**2010-2011**
Unappropriated Balance From Previous Year	$ 0	$ 0
Beginning Credit Balance	0	0
Estimated Revenue	1,683,500,000	1,658,460,000
Total Highway Fund Availability	**$ 1,683,500,000**	**$ 1,658,460,000**
Unappropriated Balance	$ 0	$ 0

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2011, according to the following schedule:

Current Operations – Highway Trust Fund	**2009-2010**	**2010-2011**
Intrastate System	$ 352,674,316	$ 369,455,555
Urban Loops	110,759,502	118,440,179
Aid to Municipalities	39,893,942	41,549,515
Secondary Roads	57,777,091	60,531,355
Program Administration	41,092,320	42,373,920
Turnpike Authority	64,000,000	99,000,000
Transfer to General Fund	108,561,829	72,846,726

GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	**$ 857,490,000**	**$ 884,190,000**

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. The Highway Trust Fund availability used in developing the 2009-2011 biennial budget is shown below:

Total Highway Trust Fund Availability	**$ 857,490,000**	**$ 884,190,000**

PART V. OTHER APPROPRIATIONS

CIVIL FORFEITURE FUNDS

SECTION 5.1.(a) Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2011, as follows:

	FY 2009-2010	**FY 2010-2011**
School Technology Fund	$ 18,000,000	$ 18,000,000
State Public School Fund	138,546,041	120,362,790
Total Appropriation	$156,546,041	$138,362,790

SECTION 5.1.(b) All University of North Carolina campuses shall remit all parking fines held in escrow in the amount of eighteen million one hundred eighty-three thousand two hundred fifty-one dollars ($18,183,251) to the Civil Penalties and Forfeitures Fund for appropriation.

EDUCATION LOTTERY

SECTION 5.2.(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three hundred sixty-eight million seventy thousand two hundred eight dollars ($368,070,208) for the 2009-2010 fiscal year.

SECTION 5.2.(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2009-2010 fiscal year are as follows:

Teachers in Early Grades	99,399,395
Prekindergarten Program	84,635,709
Public School Building Capital Fund	147,228,083
Scholarships for Needy Students	36,807,021
Total Appropriation	$368,070,208

SECTION 5.2.(c) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2009-2010 fiscal year or the 2010-2011 fiscal year.

INFORMATION TECHNOLOGY FUND AVAILABILITY AND APPROPRIATION

SECTION 5.3.(a) The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2009-2010	**FY 2010-2011**
Interest Income	$100,000	$100,000
IT Fund Balance June 30	$3,359,419	$100,000

Appropriation from General Fund	$9,361,985	$9,361,985
Total Funds Available	**$12,821,404**	**$9,561,985**

SECTION 5.3.(b) Appropriations are made from the Information Technology Fund for the 2009-2011 fiscal biennium as follows:

Office of Information Technology Services	**FY 2009-2010**	**FY 2010-2011**
Information Technology Operations	$7,891,607	$7,891,607
Information Technology Projects	$4,829,797	$4,829,797
Total	$12,721,404	$12,721,404

APPROPRIATION OF CASH BALANCES

SECTION 5.4.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated and authorized as provided in G.S. 143C-1-2 for the 2009-2011 fiscal biennium as follows:

(1) For all budget codes listed in the Base Budget and Performance Management Information sections of "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2009-2010 fiscal year and the 2010-2011 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.

(2) For all budget codes that are not listed in "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," cash balances and receipts are appropriated for each year of the 2009-2011 fiscal biennium up to the level of actual expenditures for the 2008-2009 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the 2008-2009 fiscal year.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2009-2010 fiscal year and the 2010-2011 fiscal year and shall be used only to pay debt service requirements.

(4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2009-2010 fiscal year and the 2010-2011 fiscal year.

SECTION 5.4.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized

receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 5.4.(c) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SECTION 5.5.(a) Appropriations of funds received under the American Recovery and Reinvestment Act of 2009 are made for the 2009-2011 fiscal biennium, according to the following schedule:

	2009-2010	2010-2011
Fiscal Stabilization: Education	$ 580,965,782	$ 580,965,782
Fiscal Stabilization: General	129,261,335	129,261,335
Medicaid Disproportionate Share	7,314,833	7,314,833
Title I Grants	128,728,180	128,728,180
Title I School Improvement	38,336,500	38,336,500
IDEA: Part B	157,205,000	157,205,000
IDEA: Part B (Preschool)	6,035,500	6,035,500
Homeless Assistance	645,000	645,000
Education Technology	8,179,529	8,179,529
School Lunch Equipment	3,313,727	-
State Energy Programs	37,994,500	37,994,500
HOME Investment Partnership Program	26,076,344	26,076,344
Homelessness Prevention Fund	14,539,194	14,539,194
IDEA: Part C	6,365,500	6,365,500
TANF Supplemental Grants	27,075,000	9,025,000
Community Services Block Grant	8,748,333	11,664,444
Child Care and Development Block Grants	67,543,000	-
Vocational Rehabilitation Agency Funding	9,014,504	9,014,504
Older Blind Individuals/VR	521,182	521,182
Child Support Enforcement (Incentive Payments)	2,214,542	330,000
Weatherization Assistance Grants	131,954,536	-
Medicaid FMAP Increase	920,377,105	514,514,239
Medicaid FMAP Increase-local administration	-	-
Foster Care and Adoption FMAP Increase	2,840,410	726,309
Prevention and Wellness Fund Grants (Immunization)	5,689,500	5,689,500

Senior Meals Programs	1,384,392	1,384,392
Byrne/Justice Assistance Grants	17,245,779	17,245,779
Violence Against Women: Services-Training-Officers-Prosecutors (STOP) Grants	3,784,000	-
Victims of Crime Act (VOCA) Grants: Victim Compensation	647,906	-
Victims of Crime Act (VOCA) Grants: Victim Assistance	1,110,000	-
Internet Crimes Against Children Task Force Program	879,040	-
Unemployment Insurance: Administration	7,323,699	7,323,699
Employment Services Grants (Wagner-Peyser)	11,091,396	-
Community Service Employment for Older Americans	1,583,153	1,583,153
Energy Efficiency and Conservation Block Grants	29,025,150	29,025,150
Clean Water State Revolving Funds	71,443,500	-
Drinking Water Revolving Funds	65,625,000	-
State Clean Diesel Program	1,730,000	-
Community Development Block Grant: Non-Entitlement Funds	6,040,307	6,040,307
Workforce Investment Act: Youth Activities	12,535,349	12,535,349
Workforce Investment Act: Adult Activities	5,168,583	5,168,583
Workforce Investment Act: Dislocated Worker Activities	22,209,637	22,209,637
Transit Capital Assistance	103,304,242	-
Highway Infrastructure Investment	$ 735,527,000	$ -
TOTAL	**$ 3,418,597,166**	**$1,795,648,421**

SECTION 5.5.(b) If funds received from the American Recovery and Reinvestment Act of 2009 exceed the amount set out in subsection (a) of this section, such additional funds are hereby appropriated for the appropriate fiscal year.

OTHER RECEIPTS FROM PENDING GRANT AWARDS

SECTION 5.6. Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Committee on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act. The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a permanent or time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency.

PART VI. GENERAL PROVISIONS

EXPENDITURES OF FUNDS IN RESERVES LIMITED

SECTION 6.1. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

BUDGET CODE CONSOLIDATIONS

SECTION 6.2. Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments.

BUDGET REALIGNMENT

SECTION 6.3. Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

ESTABLISHING OR INCREASING FEES PURSUANT TO THIS ACT

SECTION 6.4.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in this act.

SECTION 6.4.(b) In establishing or increasing a fee as authorized or anticipated in this act, if adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes, an agency may adopt a temporary rule as this constitutes a "recent act of the General Assembly" under G.S. 150B-21.1(a)(2). Pending adoption and review of the temporary rule, the agency may adopt an emergency rule under G.S. 150B-21.1A based solely on the need to raise revenue to fund services.

AUTHORIZATION TO ESTABLISH RECEIPT SUPPORTED POSITIONS

SECTION 6.5. Notwithstanding any other provision of law, a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations.

FISCAL CRISIS/FURLOUGH FLEXIBILITY

SECTION 6.6.(a) Findings. – The General Assembly finds that:

(1) The extreme fiscal crisis affecting North Carolina's economy, the national economy, and global economic markets has substantially reduced the State's revenue projections for the 2009-2011 biennium.

(2) Economies in State expenditures and maximized efficiencies in State operations must be effected immediately and systematically in order to meet the compelling State interest of enacting a balanced budget in accordance

with the State Constitution and to protect the interests of the people of North Carolina.

(3) Given the broad scope and depth of other budget reduction and efficiency measures required by this act, allowing voluntary furloughs and requiring mandatory furloughs of public employees, when necessary, is a reasonable measure to avoid disruptive mass layoffs and the elimination of positions in public employment, to preserve the public health, safety, and welfare and to continue the effective administration of important governmental functions in the interest of the people of North Carolina.

SECTION 6.6.(b) To achieve savings identified in the management flexibility reserves established in this act, State agencies may:

(1) Reduce salary-related expenditures by (i) reductions in purchased services and contractual services, (ii) reductions in force, and (iii) with the approval of the Director of the Budget, implementation of furloughs in accordance with subsections (c) through (g) of this section; and

(2) Reduce non-salary expenditures such as purchases of supplies and equipment, maintenance expenses, rental and lease expenses, and any other allowable reductions in non-salary expenditures.

SECTION 6.6.(c) Definitions. – The following definitions apply in this section:

(1) Compensation. – Base rate of compensation, not including pay for shift premiums, overtime, or other types of extraordinary pay.

(2) Essential positions. – Any position deemed by the head of an agency to be necessary to perform the critical functions of that agency to protect the health or safety of the agency's employees, students, clients, or patients of the public agency or to protect the general public.

(3) Furlough. – A temporary period of leave from employment without pay.

(4) Nonessential positions. – Any position in a public agency that is not designated as essential positions by the head of that agency.

(5) Public employee. – Any person employed (i) in the executive, legislative, or judicial branch of State government, (ii) by The University of North Carolina, (iii) by the North Carolina Community College System, or (iv) by a local school administrative unit. The term includes public officers.

(6) Public agency. – Any State agency, department, or institution; and the executive, legislative, and judicial branches of State government; The University of North Carolina; the North Carolina Community College System; and local school administrative units.

SECTION 6.6.(d) Furlough Flexibility. – For the 2009-2010 and 2010-2011 fiscal years, public agencies have management flexibility to allow voluntary furloughs and to require mandatory furloughs of public employees to generate necessary economies and efficiencies in budgeting.

SECTION 6.6.(e) Compensation and Benefits. – A period of furlough shall only affect or reduce a public employee's base salary or compensation. A period of furlough shall not affect or diminish a public employee's continuous service, length of aggregate service, retirement service credits, anniversary date, eligibility for authorized holiday leave, longevity pay, or the accrual of vacation and sick leave. Periods of furlough shall be applied equitably to all essential and nonessential positions regardless of the funding source of the position. A furloughed public employee who is a member of:

(1) Any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of the State Treasurer shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the

workday immediately preceding the furlough. During a furlough period, the public agency shall pay both the employee and employer contributions to the Retirement Systems Division on behalf of the furloughed public employee as though that employee were in active service.

(2) The State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The employing public agency shall pay contributions on behalf of the furloughed employee as though the employee were in active service.

SECTION 6.6.(f) Policies. – The Office of State Budget and Management (OSBM) and the State Board of Education (SBE) shall each adopt policies necessary for the implementation of this section. The policies shall govern (i) the scheduling of furloughs, (ii) the amount of notice that must be given to a public employee prior to the effective date of a period of furlough, (iii) whether furloughs may be taken in increments of full days, (iv) the continued accrual of annual and sick leave, (v) treatment of part-time employees, and (vi) any other matter related to the implementation of this section. The OSBM and SBE shall provide maximum flexibility to public agencies and public employees in the scheduling of furlough days to provide public agencies the ability to effectively manage furloughs of employees employed in essential positions so as not to affect critical functions. The policies shall provide that a public employee whose normal workday exceeds eight hours per day will sustain the same proportionate reduction as a public employee who works eight hours per day. The Office of State Personnel shall provide technical assistance to OSBM, as requested, in developing a plan for the implementation of furloughs.

SECTION 6.6.(g) The OSBM and SBE shall adopt emergency rules for the implementation of this section in accordance with G.S. 150B-21.1A, except that notwithstanding G.S. 150B-21.1A(d) those emergency rules may remain in effect until the expiration of this subsection. This subsection expires June 30, 2011.

SECTION 6.6.(h) Subsection (b) of this section is effective July 1, 2009. The remainder of this sections is effective when it becomes law.

INFORMATION TECHNOLOGY OPERATIONS

SECTION 6.7.(a) Office of Information Technology Services Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Office of Information Technology Services budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services.

SECTION 6.7.(b) Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officers to identify specific State agency requirements prior to the initiation of any enterprise project. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding apportionment of funding. State agencies agreeing to participate in a contract shall:

(1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract.

(2) Transfer the agreed-upon funds to the Office of Information Technology Services in sufficient time for the Office of Information Technology Services to meet contract requirements.

SECTION 6.7.(c) Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract purchase price at the beginning of the agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

(1) Any advance payment complies with the Office of Information Technology Services budget.

(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

(3) The procurement complies in all other aspects with applicable statutes and rules.

(4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Office of Information Technology Services calculation of rates before the Office of State Budget and Management annually approves the proposed rates. The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts.

The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this subsection to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

SECTION 6.7.(d) State agencies developing and implementing information technology projects shall use the State infrastructure to host their projects. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

(1) Using an outside contractor would be more cost-effective for the State.

(2) The Office of Information Technology Services does not have the technical capabilities required to host the application.

(3) Valid security requirements preclude the use of State infrastructure, and a contractor can provide a more secure environment.

GEOGRAPHIC INFORMATION CONSOLIDATION

SECTION 6.8.(a) Findings. – The General Assembly finds that there is a critical need for consolidating the investments made in geographic information systems and developing common infrastructures in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.

SECTION 6.8.(b) Implementation Plan. – The recommendations outlined in the 2008 legislative report prepared by the State Chief Information Officer, the Geographic Information Coordinating Council, and the Office of State Budget and Management, made pursuant to Section 6.13 of S.L. 2008-107, entitled "State Geographic Information Consolidation Implementation Plan," shall be implemented in four distinct work streams, as follows:

(1) Transferring the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and establishing appropriated

funding for staff activities supporting the Geographic Information Coordinating Council, statewide standards, and the coordination of data acquisition.

(2) Reestablishing the professional services component and refocusing that effort toward current needs of the community while reducing those overhead costs.

(3) Revitalizing the NC OneMap project by leveraging new technology in the market to reduce costs while increasing utility of the service.

(4) Establishing a geographic information systems Reserve Fund for the acquisition of data layers which may be useful to multiple organizations and through which data acquisition may be procured to reduce cost.

SECTION 6.8.(c) Transfers of Agencies, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the State Chief Information Officer, Office of Information Technology Services, with all of the elements of a Type II transfer as defined by G.S. 143A-6:

(1) The North Carolina Geographic Information Coordinating Council.

(2) The Center for Geographic Information and Analysis.

The Center for Geographic Information and Analysis shall remain in its current office space unless the State Chief Information Officer determines otherwise.

SECTION 6.8.(d) Center for Geographic Information and Analysis Coordination. – The State Chief Information Officer shall coordinate a professional services component for geographic information systems coordination with the Center for Geographic Information and Analysis that is refocused toward current community needs.

SECTION 6.8.(e) North Carolina Geographic Information Coordinating Council Coordination. – The State Chief Information Officer, in cooperation with the North Carolina Geographic Information Coordinating Council shall coordinate the refocusing of the NC OneMap geographic information systems infrastructure project to leverage new technology, to increase the utility of geographic information systems services, and to reduce geographic information systems data layer costs through singly managed contracts.

SECTION 6.8.(f) Geographic Information Systems Reserve Fund. – There is established in the Office of State Budget and Management the Geographic Information Systems Reserve Fund, which shall be nonreverting, for the purpose of acquiring and managing, at the lowest cost, data layers useful to multiple State and local organizations, according to the priorities set by the North Carolina Geographic Information Coordinating Council. The Geographic Information Systems Reserve Fund may receive private grants and may include State, federal, local, and matching funds.

SECTION 6.8.(g) Information Technology Fund. – Of the funds appropriated in this act to the Information Technology Fund, the sum of six hundred fifty thousand dollars ($650,000) for the 2009-2010 fiscal year and the sum of six hundred fifty thousand dollars ($650,000) for the 2010-2011 fiscal year shall be used to effectuate the transfer of the Center for Geographic Information and Analysis, including the cost of moving personnel positions, as provided by this act.

BEACON DATA INTEGRATION

SECTION 6.9.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall continue the implementation of the BEACON Strategic Plan for Data Integration, issued in April 2008. The plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate

State agencies and with the support and cooperation of the Office of State Budget and Management.

While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons.

SECTION 6.9.(b) The Office of State Controller shall give the Criminal Justice Data Integration Pilot Program first priority for funding and for system development and implementation.

The Office of State Controller shall determine the amount of funding required to (i) fully support the Criminal Justice Data Integration Pilot Program effort and (ii) develop full operational capability in Wake County during the 2009-2010 fiscal year. The Office of State Controller shall not otherwise obligate these funds.

SECTION 6.9.(c) By September 1, 2009, the Office of State Controller shall report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on (i) funding requirements and sources of funds for the Criminal Justice Data Integration Pilot Program for the 2009-2010 fiscal year and (ii) the anticipated uses of any remaining funds for the BEACON Data Integration Program. The Office of State Controller shall spend funds to support the BEACON Data Integration Program only as is specifically authorized in Section 6.16(d) of S.L. 2008-107.

By October 1, 2009, the Office of State Controller, in coordination with the State Chief Information Officer, shall also report on future costs for implementing the BEACON Data Integration Program, including outside vendor costs. This report shall include a detailed explanation of potential costs and the efforts participating agencies are making to reduce these costs. This report shall be presented to the Joint Legislative Oversight Committee on Information Technology and written reports shall be provided to the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division.

CRIMINAL JUSTICE DATA INTEGRATION PILOT PROGRAM

SECTION 6.10.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer and under the governance of the BEACON Project Steering Committee, shall continue the development of the Criminal Justice Data Integration Pilot Program in Wake County as specified in Section 6.15 of S.L. 2008-107. The Office of State Controller shall achieve and demonstrate full operational capability of the pilot program in Wake County before the system is expanded to other areas of the State.

SECTION 6.10.(b) The Criminal Justice Data Integration Pilot Program shall continue to comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to authorized persons.

SECTION 6.10.(c) The Office of State Controller shall develop a detailed plan for the statewide expansion of the Criminal Justice Data Integration Pilot Program. This plan shall include the following:

(1) An implementation schedule;
(2) The requirements individual users must meet to participate in the program;
(3) Detailed cost information for the development and implementation of a statewide system, including any user costs;
(4) A governance structure for management and oversight of the system; and
(5) Any other issues associated with the implementation of the system.

The Office of State Controller shall submit this plan to the House of Representatives and Senate Appropriations Committees, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division by January 31, 2010.

SECTION 6.10.(d) The Office of State Controller shall work with the data integration software vendor to ensure that licenses are obtained at the least possible cost.

SECTION 6.10.(e) A State agency data center shall host the Criminal Justice Data Integration Pilot Program. The Office of State Controller shall identify a State data center to host the program and shall report its recommendation to the Joint Legislative Oversight Committee on Information Technology by August 31, 2009.

SECTION 6.10.(f) Funds appropriated for the Criminal Justice Data Integration Pilot Program shall only be used for that program. The Criminal Justice Data Integration Pilot Program shall have first priority for funds available to the BEACON Data Integration Program.

SECTION 6.10.(g) The Office of State Controller shall continue to provide quarterly written reports on the program's progress to the House of Representatives and Senate Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division beginning October 1, 2009.

OFFICE OF INFORMATION TECHNOLOGY SERVICES/UNC BULK PURCHASING OF INFORMATION TECHNOLOGY

SECTION 6.11. The General Administration of The University of North Carolina, with assistance from the Office of Information Technology Services and the Office of State Budget and Management, shall consolidate information technology infrastructure purchasing which includes, but is not limited to, personal computer and printer purchases for all 16 State universities, the North Carolina School of Science and Mathematics, and General Administration, by creating a bulk purchasing process that will realize savings through efficiencies. General Administration may choose to utilize the Office of Information Technology Services' existing bulk contracts. Information technology infrastructure expenditure shall not be authorized without complying with this section.

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON INFORMATION TECHNOLOGY/ REVIEW AND REPORT ON CURRENT LAW

SECTION 6.12. By April 1, 2010, the Joint Legislative Oversight Committee on Information Technology shall review State information technology-related legislation and develop recommendations for amendment of current laws and shall submit its written report of recommendations for legislative action to the Appropriations Committees of the Senate and the House of Representatives. The Joint Legislative Oversight Committee on Information Technology shall provide interested parties with the opportunity to identify and define pertinent information technology issues by offering testimony on (i) issues associated with current legislation, (ii) the impact of information technology laws on specific entities; and, (iii) recommendations for improving information technology organization and operations within the State.

OFFICE OF INFORMATION TECHNOLOGY SERVICES/NETWORK INTEGRATION/FEASIBILITY STUDY AND COORDINATION PLAN

SECTION 6.13.(a) The State Chief Information Officer shall negotiate and coordinate with MCNC to identify efficiencies that might be achieved through increased cooperation and elimination of duplicative efforts in management of the State's network infrastructure operated by the Office of Information Technology Services and by the North Carolina Research and Education Network operated by MCNC. Potential efficiencies include, but are not limited to, shared infrastructure, personnel, contracted services, and support.

SECTION 6.13.(b) Office of Information Technology Services and the Office of State Budget and Management, in conjunction with MCNC, shall conduct a study to determine the feasibility of coordinating the operation of the North Carolina Research and Education Network and the State network infrastructure. The feasibility study shall define the capabilities

and limitations of the Office of Information Technology Services and MCNC and document services currently provided by Office of Information Technology Services and MCNC. Further, the feasibility study shall identify:

(1) Current and potential State agency network requirements.
(2) The organization currently supporting each network requirement.
(3) Requirements that are currently unsupported by either organization.
(4) Costs associated with each requirement.
(5) Potential cost savings resulting from network integration.
(6) Policy and operational issues associated with the coordination.

The study shall be reviewed by the Office of State Budget and Management, which shall validate and certify the identified efficiencies and cost savings. Office of Information Technology Services and MCNC shall complete the feasibility study and present it to the Joint Legislative Oversight Committee on Information Technology by October 31, 2009.

SECTION 6.13.(c) Following review of the feasibility study by Office of State Budget and Management, and if Office of State Budget and Management certifies that the efficiencies and savings identified in the study are valid, accurate, and substantial enough to justify increased coordination, then Office of Information Technology Services and MCNC shall develop a plan to coordinate their operations. The coordination plan shall include at least the following:

(1) Definition of requirements to achieve Statewide integration.
(2) Detailed information on the allocation of responsibility for each requirement and component.
(3) An estimate of the associated costs with each requirement or component, including what the costs to each agency would be without coordination.
(4) Priorities for integration.
(5) A schedule for implementation.
(6) Detailed cost information for the development and integration of a single network.
(7) A governance structure for management and oversight of the network.
(8) A means for resolution of any issues identified during the feasibility study.

The coordination plan shall be completed by February 28, 2010, and shall be presented to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology.

SECTION 6.13.(d) Prior to implementation of the plan, Office of Information Technology Services and MCNC shall complete a memorandum of agreement that specifies their respective roles and responsibilities and defines payment schedules. By January 1 each year, Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology regarding the status of the coordination plan and the cost savings realized during the previous fiscal year.

UPGRADE STATE PORTAL

SECTION 6.14.(a) The Office of State Budget and Management, in coordination with the Office of the State Chief Information Officer, shall develop a detailed plan to upgrade the State portal. The upgrade plan shall include consideration of the need to (i) improve State services for citizens and businesses; (ii) offer online services; (iii) provide crucial, up-to-the-minute emergency information; and (iv) provide a multipurpose, interactive Web portal.

SECTION 6.14.(b) Prior to developing the plan, the Office of State Budget and Management shall obtain the advice and assistance of State and local government agencies, businesses operating within the State, and private citizens to ensure that all potential users have the opportunity to submit recommendations for inclusion in the final plan.

The Office of State Budget and Management shall also conduct an inventory of capabilities that are available on other states' portals. With the assistance of State agencies, the Office of State Budget and Management shall prioritize potential capabilities. Based on these priorities, the Office of State Budget and Management shall develop a phased plan to allow incremental implementation that includes a detailed time line for each phase and shall include the cost associated with each phase.

SECTION 6.14.(c) The interactive Web portal shall include the capability for citizens, businesses, and State and local government agencies to complete online transactions, obtain live help from State agencies, and access emergency information in real time. The portal shall include appropriate security measures and devices to include encryption, enterprise-class firewalls/gateway security, real-time intrusion prevention and detection, virtual private networks, vulnerability management, and virus protection.

SECTION 6.14.(d) By December 1, 2009, the Office of State Budget and Management shall submit the upgrade plan to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division. The report shall include an explanation of any recommendations that were not included in the final plan with an explanation as to why each was not included and the cost associated with implementation of those items.

IT GSA SCHEDULES/STUDY

SECTION 6.15. The Office of State Budget and Management shall conduct a study to determine the feasibility of using General Services Administration schedules for the acquisition of information technology products and services. The study shall include review of the following:

(1) Any cost savings resulting from the use of General Services Administration schedules for the acquisition of information technology goods and services. This shall include any reductions in overhead that could be realized from the use of General Services Administration schedules.
(2) Any benefits resulting from implementation.
(3) Any negative impacts resulting from implementation.
(4) Any legislative changes required to implement General Services Administration schedules.

By February 1, 2010, the Office of State Budget and Management shall submit the results of the study to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

USE OF ELECTRONIC FORMS AND DIGITAL SIGNATURES

SECTION 6.16.(a) The Office of State Budget and Management shall develop a plan to increase the use of electronic forms and digital signatures throughout State government. In developing the plan, first the Office of State Budget and Management shall conduct an inventory of all paper or electronic forms currently in use by executive branch agencies. The Office of State Budget and Management may hire temporary help for the collection and compiling of the data for the inventory.

SECTION 6.16.(b) After completing the inventory, the Office of State Budget and Management shall develop a plan for converting one or more paper forms to an electronic format. The plan shall include a detailed business case for the conversion, including cost, cost savings, cost avoidance, and any impact on productivity.

SECTION 6.16.(c) The Office of State Budget and Management shall assess the potential cost of converting all identified forms in the inventory to an electronic format and establish a timetable for achieving conversion as soon as practicable.

SECTION 6.16.(d) The Office of Information Technology Services shall provide technical assistance to the Office of State Budget and Management in the development of the plan to increase the use of electronic forms and digital signatures.

SECTION 6.16.(e) Executive branch State agencies shall provide all information requested by Office of State Budget and Management in conducting the inventory and in all other issues related to the development of this plan.

SECTION 6.16.(f) The Office of State Budget and Management shall submit the plan to the Joint Legislative Oversight Committee on Information Technology on or before March 1, 2010.

POSITION TRANSFER REPORTS/OFFICE OF INFORMATION TECHNOLOGY SERVICES/OSC

SECTION 6.17.(a) By November 1, 2009, the Office of Information Technology Services shall submit a written report to the Appropriation Committees of the Senate and the House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division regarding the transfer of information technology (IT) positions associated with IT consolidation. The report shall include the following:

(1) The numbers and types of positions transferred to the Office of Information Technology Services from other State agencies, an explanation as to why each position was moved to Office of Information Technology Services, the cost associated with each position, and how that cost is allocated.

(2) The number and types of information technology positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.

(3) The number and location of positions eliminated as a result of IT consolidation and the associated cost savings.

(4) Any new positions created within Office of Information Technology Services to support IT consolidation, the reason each position was created, and the associated cost.

SECTION 6.17.(b) By November 1, 2009, the Office of the State Controller shall submit a written report to the Appropriations Committees of the Senate and House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on the transfer of positions associated with the implementation of the BEACON (HR)/Payroll project. The report shall include the following:

(1) The numbers and types of positions transferred to the Office of the State Controller from other State agencies, an explanation as to why each position was moved to the Office of the State Controller, the cost associated with each position, and how that cost is allocated.

(2) The number and types of positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.

(3) The number and location of positions eliminated as a result of the implementation of the BEACON HR/Payroll system and the associated cost savings.

(4) Any new positions created within the Office of the State Controller to support BEACON HR/Payroll, the reason each position was created, and the associated cost.

PART VII. PUBLIC SCHOOLS

CHILDREN WITH DISABILITIES

SECTION 7.1. The State Board of Education shall allocate funds for children with disabilities on the basis of three thousand five hundred dollars and seventy-seven cents ($3,500.77) per child for a maximum of 173,249 children for the 2009-2010 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities, or (ii) twelve and five-tenths percent (12.5%) of the 2009-2010 allocated average daily membership in the local school administrative unit.

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

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.2. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of one thousand one hundred sixty-three dollars and seven cents ($1,163.07) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2009-2010 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 58,597 children for the 2009-2010 school year.

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

USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.3.(a) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks; (ii) for salary supplements for instructional personnel and instructional support personnel; and (iii) to pay an amount not to exceed ten thousand dollars ($10,000) of the plant operation contract cost charged by the Department of Public Instruction for services. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

SECTION 7.3.(b) Definitions. – As used in this section:

(1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.

(2) "Anticipated total county revenue availability" means the sum of the:

a. Anticipated county property tax revenue availability,

b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,

c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and

d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

(3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

(4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

(5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.

(6) "County-adjusted property tax base" shall be computed as follows:

a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,

b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,

c. Add to the resulting amount the:

1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,

2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and

3. Personal property value for the county.

(7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.

(8) "County wealth as a percentage of State average wealth" shall be computed as follows:

a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,

b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,

c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,

d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

(9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

(10) "Effective State average tax rate" means the average of effective county tax rates for all counties.

(11) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(12) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

(13) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(14) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(15) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

(16) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(17) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.3.(c) Eligibility for Funds. – Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.3.(d) Allocation of Funds. – Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.3.(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.3.(f) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that

had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.3.(g) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.3.(h) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

SECTION 7.3.(i) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.4.(a) Funds for Small School Systems. – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

(1) Round all fractions of positions to the next whole position.
(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.
(3) Provide additional program enhancement teachers adequate to offer the standard course of study.
(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.
(5) Provide a base for the consolidated funds allotment of at least seven hundred eighty-eight thousand seven hundred eighty-nine dollars ($788,789), excluding textbooks, for the 2009-2010 fiscal year and a base of seven hundred eighty-eight thousand seven hundred eighty-nine dollars ($788,789) for the 2010-2011 fiscal year.
(6) Allot vocational education funds for grade 6 as well as for grades 7-12. If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

SECTION 7.4.(b) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.4.(c) Phase-Out Provisions. – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for nine years after the unit becomes ineligible.

SECTION 7.4.(d) Definitions. – As used in this section:

(1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.
(2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the

three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

(3) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(4) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(5) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

(6) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(7) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.4.(e) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

SECTION 7.4.(f) Use of Funds. – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7.

REPLACEMENT SCHOOL BUSES/FUNDS

SECTION 7.5.(a) The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

(1) The local board of education shall use the funds only to make the first, second, third, or fourth year's payment on a financing contract entered into pursuant to G.S. 115C-528.

(2) The term of a financing contract entered into under this section shall not exceed four years.

(3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.

(4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.

(5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.

(6) Any other condition the State Board of Education considers appropriate.

SECTION 7.5.(b) Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM

SECTION 7.6.(a) If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

SECTION 7.6.(b) If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

LITIGATION RESERVE FUNDS

SECTION 7.7. The State Board of Education may expend up to five hundred thousand dollars ($500,000) each year for the 2009-2010 and 2010-2011 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to litigation.

LEA FLEXIBILITY

SECTION 7.8.(a) The State Board of Education may implement temporary modifications to the limitations on budget flexibility set out in G.S. 115C-105.25. For the 2009-2010 and 2010-2011 fiscal years, local school administrators shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate as long as the targeted reductions do not directly impact classroom services or any services for students at risk or children with special needs.

SECTION 7.8.(b) Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit shall reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit on the basis of average daily membership.

SECTION 7.8.(c) Each unit shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS

SECTION 7.9.(a) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

SECTION 7.9.(b) In order to ensure funds are available to operate NCVPS for the 2009-2010 fiscal year, the State Board of Education shall use funding sources in the following order:

(1) The General Fund appropriation for NCVPS;
(2) Available funds received under the American Recovery and Reinvestment Act;
(3) Up to six million dollars ($6,000,000) of funds appropriated for school technology;
(4) Funds from the State Public School Fund.

SECTION 7.9.(c) NCVPS courses shall be available only to high school students.

SECTION 7.9.(d) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

LEARN AND EARN ONLINE

SECTION 7.10.(a) Funds are appropriated in this act for the Learn and Earn Online program. This program will allow high school students to enroll in college courses to qualify for college credit. Online courses shall be made available to students through The University of North Carolina and the North Carolina Community College System.

SECTION 7.10.(b) Funds shall be used for:

(1) Course tuition and only those technology and course fees and textbooks required for course participation; and
(2) A liaison position in the Department of Public Instruction to coordinate with The University of North Carolina and the North Carolina Community College System and to communicate course availability and related information to high school administrators, teachers, and counselors.

SECTION 7.10.(c) The State Board of Education shall determine the allocation of Learn and Earn Online course offerings across the State.

SECTION 7.10.(d) The State Board of Education shall allot funds for tuition, fees, and textbooks on the basis of and after verification of the credit hour enrollment of high school students in Learn and Earn Online courses. The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office for courses offered by community colleges.

SECTION 7.10.(e) The University of North Carolina program shall report to The University of North Carolina Board of Governors, and the North Carolina Community College program shall report to the State Board of Community Colleges. The Department of Public Instruction shall report to the State Board of Education.

SECTION 7.10.(f) Both The University of North Carolina and the North Carolina Community College System shall provide oversight and coordination, including coordination with the Department of Public Instruction and with the North Carolina Virtual Public School (NCVPS), to avoid course duplication.

SECTION 7.10.(g) The programs shall establish course quality and rigor standards and shall conduct course evaluations to ensure that the online courses meet the established standards.

SECTION 7.10.(h) Local school administrative units may purchase textbooks for Learn and Earn Online courses through the Department of Public Instruction's textbook warehouse in the same manner as textbooks that have been adopted for public school students by the State Board of Education.

SECTION 7.10.(i) Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert but shall remain available for expenditure.

SECTION 7.10.(j) Subsection (i) of this section becomes effective June 30, 2009.

ABCS OF PUBLIC EDUCATION

SECTION 7.11. Notwithstanding G.S. 115C-105.36, the State Board of Education shall place a one-year moratorium on financial awards paid to school personnel in the 2009-2010 fiscal year based on 2008-2009 student academic performance.

The State Board of Education shall develop a plan to restructure the ABCs Accountability System and report the restructuring plan to the Governor and General Assembly by January 31, 2010.

SCHOOL CONNECTIVITY INITIATIVE

SECTION 7.12.(a) Up to three hundred thousand dollars ($300,000) may be transferred annually to the Office of the Governor for NC Virtual (NCV) within the Education Cabinet. These funds may be used for services to coordinate e-learning activities across all State educational agencies.

SECTION 7.12.(b) Of the funds allocated for the School Connectivity Initiative, the sum of two hundred fifty thousand dollars ($250,000) may be used annually to sustain the Education E-Learning Portal.

SECTION 7.12.(c) Section 7.6(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 7.6.(a)** Up to ~~six~~ three hundred thousand dollars ~~($600,000)~~($300,000) may be transferred annually through June 30, 2013, to the Friday Institute at North Carolina State University to evaluate the effectiveness of using technology and its impact on 21st Century Teaching and Learning outcomes approved by the State Board of Education. The Friday Institute shall report annually to the State Board of Education on the evaluation ~~results, including recommendations for continued implementation of the school connectivity initiative that improves teaching and learning.~~ results."

SECTION 7.12.(d) Funds allocated to the School Connectivity Initiative shall carry forward to the next fiscal year until the project is fully implemented by June 30, 2010.

SECTION 7.12.(e) Subsection (d) of this section becomes effective on June 30, 2009.

DROPOUT PREVENTION GRANTS

SECTION 7.13.(a) Dropout Prevention Grants. – The Committee on Dropout Prevention, as reestablished in Section 7.14 of S.L. 2008-107, may use funds appropriated in this act to provide grants to new recipients or to extend additional funding to organizations that received funding previously.

SECTION 7.13.(b) Criteria for Dropout Prevention Grants. – The following criteria apply to all types of dropout prevention grants approved by the Committee:

(1) Grants shall be issued in varying amounts up to a maximum of one hundred fifty thousand dollars ($150,000).

(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.

(3) Grants shall be distributed geographically throughout the State and throughout the eight educational districts as defined in G.S. 115C-65. No

more than three grants shall be awarded in any one county under this section in a single fiscal year.

(4) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.

(5) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

(6) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

(7) Programs and initiatives that receive grants under this section shall be based on best practices for helping at-risk students achieve successful academic progress, preventing students from dropping out of school, or for increasing the high school completion rate for those students who already have dropped out of school.

(8) Priority for grants shall be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.

(9) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

(10) Priority for grants shall be given to programs that would serve students in local schools that have a four-year cohort graduation rate of less than sixty-five percent (65%). The Committee shall establish a grant rating cutoff score at such a level as to allow for consideration of all viable grants in this priority category. The Committee may require grantees to provide supplemental information in response to any prior reviewer comments.

(11) The demonstrated need for a grant, level of collaboration, ability to increase attendance, persistence, academic success, ability to increase parental involvement, and graduation shall be given more weight than the quality of the written grant.

(12) Grants shall be made no later than November 1, 2009.

The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee on the grants awarded under this section by March 1, 2010.

SECTION 7.13.(c) Evaluation. – The Committee shall evaluate the impact of the dropout prevention grants awarded under this section. In evaluating the impact of the grants, the Committee shall consider:

(1) How grant funds were used, including the services provided for teen pregnancy prevention and for pregnant and parenting teens;

(2) The success of the program or initiative, as indicated by the evaluation process stated in its grant application;

(3) The extent to which the program or initiative has improved students' attendance, test scores, persistence, and graduation rates;

(4) How the program or initiative was coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community;

(5) What, if any, other resources were used in conjunction with the grant funds;

(6) The sustainability of the program;

(7) The number, gender, ethnicity, and grade level of students being served as well as whether the students left school due to pregnancy or parenting responsibilities;

(8) The potential for the program to serve as a model for achieving successful academic progress for at-risk students; and

(9) Other indicators of the impact of the grant on dropout prevention.

The recipients of the dropout prevention grants awarded under this section shall report to the Committee on Dropout Prevention by January 31, 2011, and by September 30, 2011. The reports shall provide information to assist the Committee in conducting its evaluation. The reports shall include a statement that the recipients used grant funds for the purposes appropriated by the General Assembly and complied with applicable laws, regulations, and terms and conditions of the grant documents. The Committee shall make an interim report of the results of its evaluation of the grants awarded under this section by March 31, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee. The Committee shall make a final report of the results of its evaluation of the grants awarded under subsection (c) of this section by November 15, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee.

SECTION 7.13.(d) Of the funds appropriated in this act for the Committee on Dropout Prevention, the sum of one million dollars ($1,000,000) for the 2009-2010 and 2010-2011 fiscal years shall be used to award new grants, as well as additional grants to previous grant recipients, in accordance with subsection (b) of this section.

SECTION 7.13.(e) Funds appropriated for the dropout prevention grants for the 2009-2010 fiscal year and the 2010-2011 fiscal year shall not revert but shall remain available for expenditure until August 31, 2011.

SECTION 7.13.(f) Of the funds appropriated for the dropout prevention grants, the sum of one hundred thousand dollars ($100,000) for the 2009-2010 and 2010-2011 fiscal years may be used to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation. The factors to be considered in awarding the contract shall be identified in the request for proposals.

SECTION 7.13.(g) Of the funds appropriated for the dropout prevention grants, the Department of Public Instruction may use up to fifty thousand dollars ($50,000) in fiscal years 2009-2010 and 2010-2011 for its administrative assistance to the Committee and provide technical assistance under this section.

DEPARTMENT OF PUBLIC INSTRUCTION/BUDGET FLEXIBILITY

SECTION 7.14. Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize, if necessary, to implement the budget reductions set out in this act. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

BUSINESS EDUCATION TECHNOLOGY ALLIANCE

SECTION 7.15. G.S. 115C-102.15 is repealed.

CRITICAL FOREIGN LANGUAGE PILOT FUNDS DO NOT REVERT

SECTION 7.16.(a) Funds appropriated for the Critical Foreign Language Pilot that are unexpended or unencumbered shall not revert but shall remain available for expenditure through June 30, 2010.

SECTION 7.16.(b) This section becomes effective June 30, 2009.

NORTH CAROLINA 1:1 LEARNING PROJECT

SECTION 7.17.(a) Funds appropriated for the North Carolina 1:1 Learning Project that are unexpended or unencumbered at the end of the 2008-2009 fiscal year shall not revert but shall remain available for expenditure through June 30, 2010.

SECTION 7.17.(b) This section becomes effective June 30, 2009.

ASSESSMENT AND ACCOUNTABILITY

SECTION 7.18.(a) Funds appropriated in this act for assessment and accountability shall be used to develop new end-of-course and end-of-grade tests, identify national assessments, or both, as determined by the State Board of Education. The development of any new tests replacing end-of-course and end-of-grade tests shall be aligned with the new essential standards and included in the State Board of Education's new accountability restructuring plan.

SECTION 7.18.(b) Notwithstanding G.S. 115C-174.11, the State Board of Education shall investigate and pilot a developmentally appropriate diagnostic assessment for students in elementary grades during the 2009-2010 school year. This assessment will (i) enable teachers to determine student learning needs and individualize instruction and (ii) ensure that students are adequately prepared for the next level of coursework as set out by the standard course of study.

The State Board of Education shall report the results of the pilot to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management, by December 1, 2010.

SECTION 7.18.(c) Funds appropriated for assessment and accountability that remain unexpended and unencumbered at the end of the 2009-2010 fiscal year shall not revert but shall remain available for expenditure through June 30, 2011.

DEVELOPMENT OF A PREK-20 DATA SYSTEM

SECTION 7.19.(a) The Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina shall collaboratively develop and systematically determine the technical specifications and data standards for a PreK-20 data system to centralize student data collected about students enrolled in prekindergarten programs through doctoral programs. The PreK-20 data system shall build upon the current capacity, programs, and initiatives of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina.

The Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina shall also collaboratively develop a strategy for tracking students for five years after they complete their education at a North Carolina public educational institution.

SECTION 7.19.(b) The PreK-20 data standards and specifications shall include:

(1) The types and forms of data to be included in a PreK-20 data system, including longitudinal data and the use of a unique student identifier;

(2) The capacity of a shared PreK-20 data system;

(3) The degree and extent of cooperation between a shared PreK-20 data system and the current data collection systems of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina;

(4) The minimum capacity and technical specifications needed for each data system to feed into a shared PreK-20 data system; and

(5) The ability for data in a shared PreK-20 data system to be understood and used by interested stakeholders, including federal and other State agencies.

SECTION 7.19.(c) Standards and specifications shall conform to the guidelines and instructions governing any funds received through the American Recovery and Reinvestment Act of 2009 for this purpose.

SECTION 7.19.(d) Standards and specifications shall be submitted to the Education Cabinet no later than January 1, 2010. The Education Cabinet shall review these

standards and submit its recommendations regarding them to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management by March 1, 2010.

ELIMINATE CERTAIN TESTS

SECTION 7.20.(a) The State Board of Education shall identify and eliminate certain unnecessary or duplicative tests not required by the federal government for No Child Left Behind (NCLB) to determine Adequate Yearly Progress (AYP).

SECTION 7.20.(b) G.S. 115C-174.10 reads as rewritten:

"**§ 115C-174.10. Purposes of the Statewide Testing Program.**

The ~~three~~ testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results."

SECTION 7.20.(c) G.S. 115C-174.11 reads as rewritten:

"**§ 115C-174.11. Components of the testing program.**

(a) Assessment Instruments for First and Second Grades. – The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving a federal grant under the Reading First Program.

~~(b) Competency Testing Program.~~

~~(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.~~

~~(2) The tests shall be administered annually to all ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ninth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.~~

~~(3) The State Board of Education shall:~~

~~a. Adopt one or more nationally standardized tests or other nationally standardized equivalent measures that measure competencies in the verbal and quantitative areas; or~~

~~b. Develop and validate alternate means and standards for demonstrating minimum competence. These standards must be as difficult as the tests adopted pursuant to subdivision (1) of this subsection.~~

~~The State Board of Education shall adopt a policy to identify which students and under what circumstances students may pass one of these tests in lieu of the testing requirement of subdivision (2) of this subsection.~~

~~(3a) Students with disabilities who fail to pass the competency test adopted pursuant to subdivision (2) of this subsection after two attempts shall be given the opportunity to take and pass one of the alternate tests adopted pursuant to subdivision (3) of this subsection.~~

(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt ~~a system of annual testing~~ the tests for grades three through ~~12.~~ 12 that are required by federal law or as a condition of a federal grant. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies ~~designated by the State Board~~ for grades nine through 12. ~~The State Board may develop and implement a plan for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c).~~ Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. ~~This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section.~~

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states.

(d) The State Board of Education shall not require the public schools to administer any standardized tests except for those required by federal law or as a condition of a federal grant.

The State Board of Education shall adopt and provide to local school administrative units all tests required by federal law or as a condition of a federal grant."

SECTION 7.20.(d) G.S. 115C-174.12 reads as rewritten:

"**§ 115C-174.12. Responsibilities of agencies.**

(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or ~~national tests~~ other standardized tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit

the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The ~~Superintendent of Public Instruction~~Chief Executive Officer shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(b1) The ~~Superintendent~~ Chief Executive Officer shall notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual ~~and competency testing programs~~ tests to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student ~~needs further.~~needs."

REMOVE BARRIERS TO LATERAL ENTRY INTO TEACHING

SECTION 7.21.(a) The State Board of Education shall:

(1) Review the lateral entry program and identify and remove from it barriers to the lateral entry of skilled individuals from the private sector into the teaching profession;

(2) Reduce the coursework requirements for lateral entry by consolidating the required competencies into fewer courses and fewer semester hours of coursework; and

(3) Provide additional opportunities for individuals to complete coursework online and at community colleges.

SECTION 7.21.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2010, on its implementation of this section.

NO PAY DECREASE FOR TEACHERS WHO BECOME ASSISTANT PRINCIPALS

SECTION 7.22.(a) G.S. 115C-285(a) is amended by adding a new subdivision to read:

"**§ 115C-285. Salary.**

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

...

(8) A teacher who becomes an assistant principal without a break in service shall be paid, on a monthly basis, at least as much as he or she would earn as a teacher employed by that local school administrative unit."

SECTION 7.22.(b) This section becomes effective July 1, 2009, and applies to all persons initially employed as assistant principals on or after that date.

INCREASE CLASS SIZE

SECTION 7.23. Notwithstanding any other provision of law, the allotment ratios, the maximum class size, and the maximum average class size limits for each grade level in the public schools shall be two students higher beginning with the 2009-2010 school year than they were for the 2008-2009 school year.

It is the intent of the General Assembly that this increase remain in effect for a maximum of two years and that lower class sizes be restored as soon as State revenues make it fiscally responsible to do so.

FUND ONLY ONE SCHOOL SYSTEM PER COUNTY.

SECTION 7.24.(a) Notwithstanding any other provision of law, beginning with the 2010-2011 fiscal year, the State Board of Education shall allot State funds on the basis of only one local school administrative unit per county. To implement this change, the State Board shall change formulas that allot funds on a per local school administrative unit basis to formulas that allot funds on a per county basis. If the amount previously allotted per local school administrative unit was graduated on the basis of average daily membership, the amount allotted per county shall be graduated on the basis of the total average daily membership of all units located in the county.

If a city school administrative unit is located in more than one county, the State Board of Education shall include in each county's average daily membership the average daily membership of the county's students in the city school administrative unit.

If a county contains more than one local school administrative unit, the State Board shall divide the amount allotted on a per county basis between the units on the basis of average daily membership.

SECTION 7.24.(b) This section does not apply to allotments to the Nash-Rocky Mount School Administrative Unit, the Edgecombe County School Administrative Unit, the Cleveland County School Administrative Unit, or the Gaston County School Administrative Unit.

DEPOSIT PUBLIC SCHOOL BUILDING CAPITAL FUNDS INTO STATE PUBLIC SCHOOL FUND

SECTION 7.25. Notwithstanding the provisions of G.S. 115C-546.1(b), the Secretary of Revenue shall not remit any funds for credit to the Public School Building Capital Fund during the 2009-2011 fiscal biennium but shall deposit in the State Public School Fund the funds that would have otherwise been deposited in the Public School Building Capital Fund pursuant to G.S. 115C-546.1(b). The Department of Public Instruction may continue to use these funds to support six positions in the School Planning Division.

TEACHERS FOR GEOGRAPHICALLY ISOLATED K-12 SCHOOLS

SECTION 7.26. The State Board of Education shall modify its policy on the allotment of additional classroom teachers to schools containing grades K-12 when consolidation is not feasible due to the geographic isolation of the school. In administering this policy with regard to a school located in a local school administrative unit in which the average daily membership is less than 1.5 per square mile, the State Board of Education shall, at a minimum:

(1) Allot teachers to the geographically isolated school on the basis of one classroom teacher per grade level; and

(2) Allot teachers to the remainder of the local school administrative unit under the regular teacher allotment formula.

The State Board of Education may allot additional teachers to the local school administrative unit if demographic conditions warrant.

ENSURE ACCESS TO THE EVAAS SYSTEM

SECTION 7.27. The State Board of Education shall use funds appropriated to the State Public School Fund for the 2009-2011 fiscal biennium to ensure that all local school administrative units and charter schools have access to SAS EVAAS (Education Value Added Assessment System).

LOCAL BOARDS MUST INFORM PUBLIC ABOUT SCHOOL REPORT CARDS

SECTION 7.28. G.S. 115C-47 is amended by adding a new subdivision to read:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

(53) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or otherwise."

PLAN FOR STATEWIDE MOTOR COACH PERMIT

SECTION 7.29.(a) The State Board of Education, in conjunction with the Division of Motor Vehicles, shall develop a plan for a Statewide permit for commercial motor coach companies that seek to contract with local school systems to transport students, school personnel, and other persons authorized by the school system on school-sponsored trips. The purpose of the permit shall be (i) to ensure student safety, (ii) to ensure safe operations by motor coach companies, (iii) to minimize paperwork, (iv) to minimize visits to the motor coach companies by local school systems, and (v) to minimize the need for motor coach companies to respond to multiple requests for information from multiple local school systems.

SECTION 7.29.(b) In developing the plan for a permit, the State Board of Education and the Division of Motor Vehicles shall consult with the North Carolina School Boards Association, the State Highway Patrol, the North Carolina Pupil Transportation Association, the North Carolina Motor Coach Association, the Federal Motor Carrier Safety Administration, and other interested parties.

SECTION 7.29.(c) The components of the plan shall include, but not be limited to, all of the following:

(1) Scope of the permit.
(2) Standards for issuing the permit.
(3) Duration of the permit.
(4) Process for required inspections.
(5) Entity to conduct required inspections.
(6) Conditions for revoking the permit.
(7) Renewal process.
(8) Schedule of fees to cover the cost of implementation and administration.
(9) Application form and other required documentation.
(10) Dissemination of current permit holders to school systems.
(11) Estimate of costs to implement and number of new positions required.
(12) Impact on motor coach companies that have interstate operations.
(13) Other related issues.

SECTION 7.29.(d) The State Board of Education and the Division of Motor Vehicles shall consult on the proposed plan to the Joint Legislative Commission on

Governmental Operations and to the Fiscal Research Division by January 1, 2010. Before the plan is implemented, the Commission shall make any recommendations, including proposed legislation, to the 2010 General Assembly.

PART VIII. COMMUNITY COLLEGES

COMMUNITY COLLEGE FACULTY SALARY PLAN

SECTION 8.1.(a)

(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average community collage faculty salary, therefore:

a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

The State Board of Community Colleges shall adopt guidelines to implement the provisions of this subdivision.

(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for Customized Training to increase faculty salaries.

SECTION 8.1.(b) As used in this section:

(1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the

college, as determined by the North Carolina Community College System on October 1 of each year.

(2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

SECTION 8.1.(c) The State Board of Community Colleges shall adopt guidelines to implement the provisions of this section.

USE OF BASIC SKILLS FUNDS

SECTION 8.2. Notwithstanding any other provision of law, a local community college may use up to five percent (5%) of the Literacy Funds allocated to it by the State Board of Community Colleges to procure instructional technology for literacy labs. This technology may include computers, instructional software and software licenses, scanners for testing, and classroom projection equipment.

FUNDS FOR CAMPUS SECURITY

SECTION 8.3. Notwithstanding G.S. 115D-32 or any other provision of law, a community college may use up to two percent (2%) of the noninstructional State funds allocated to it through the institutional support allotment for the 2009-2010 and 2010-2011 fiscal years for campus security. This may include the hiring of personnel, contracted professional services, surveillance cameras, call boxes, alert systems, and other equipment-related expenditures.

These funds shall be used to supplement and shall not be used to supplant existing local funding for campus security.

FINANCIAL AID PROGRAM ADMINISTRATIVE COSTS

SECTION 8.4. G.S. 115D-40.1(c) reads as rewritten:

"(c) Administration of Program. – The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance.

The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students including, but not limited to, Pell Grants and HOPE and Lifetime Learning Tax Credits and to actively encourage students to utilize these federal programs and funds. <u>The interest earned on the funds provided in this section may be used to support the costs of administering the Community College Grant Program.</u>"

CARRYFORWARD OF NORTH CAROLINA RESEARCH CAMPUS BIOTECHNOLOGY TRAINING FUNDS

SECTION 8.5.(a) Funds appropriated in S.L. 2006-66, S.L. 2007-323, and S.L. 2008-103 for the Rowan-Cabarrus Community College Biotechnology Training Center and Greenhouse at the North Carolina Research Campus in Kannapolis shall not revert, but shall remain available until expended.

SECTION 8.5.(b) This section becomes effective June 30, 2009.

LEARN AND EARN ONLINE FUNDS

SECTION 8.6.(a) Funds reimbursed to the Community College System for full-time equivalent students participating in Learn and Earn Online courses during the 2008-2009 and 2009-2010 fiscal years shall not revert at the end of the fiscal year, but shall remain available for expenditure up to 12 months after the close of a fiscal year.

SECTION 8.6.(b) Community college student enrollments in Learn and Earn Online shall be considered regular budget full-time equivalent in the curriculum enrollment formula regardless of the term during which the instruction is provided. The North Carolina Community College System may only seek reimbursement from the Department of Public Instruction for technology, course fees, and textbooks required for course participation.

SECTION 8.6.(c) The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office to implement subsection (b) of this section.

SECTION 8.6.(d) Subsection (a) of this section becomes effective June 30, 2009.

CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS

SECTION 8.7.(a) Funds appropriated in this act to the Community Colleges System Office for the College Information System shall not revert at the end of the 2008-2009 fiscal year but shall remain available until expended. These funds may be used to purchase periodic system upgrades.

SECTION 8.7.(b) Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions if doing so is cost-effective. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System.

SECTION 8.7.(c) Subsection (a) of this section becomes effective July 1, 2009.

MODIFY MULTICAMPUS AND OFF CAMPUS CENTER REPORT DATE

SECTION 8.8. G.S. 115D-5(o) reads as rewritten:

"(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by ~~October 1~~ December 1 of each year."

REPEAL REPORT ON THE USE OF COMM COLL FACILITIES BY PRIVATE BUSINESSES

SECTION 8.9. G.S. 115D-5(q) is repealed.

MAINTENANCE OF PLANT FLEXIBILITY

SECTION 8.10. Notwithstanding any other provision of law, a community college that received State funds for maintenance of plant pursuant to G.S. 115D-31.2 for the 2008-2009 fiscal year may use noninstructional State funds allocated to it through the institutional support allotment for maintenance of plant for the 2009-2010 and 2010-2011 fiscal years.

The amount of these funds used for the 2009-2010 fiscal year for maintenance of plant shall not exceed the total amount of maintenance of plant funds received for the

2008-2009 fiscal year. The amount of these funds used for the 2010-2011 fiscal year for maintenance of plant shall not exceed fifty percent (50%) of the amount of maintenance of plant funds received for the 2008-2009 fiscal year.

Requested by: Senator

ELIMINATE SOME TUITION WAIVERS

SECTION 8.11.(a) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the ~~New and Expanding Industry Program,~~ Customized Training Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction~~, prison inmates~~, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). ~~Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all~~

(b1) The State Board shall waive tuition and fees for courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section.

The State Board also shall waive tuition and fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate.

SECTION 8.11.(b) G.S. 115B-2 reads as rewritten:

"§ 115B-2. Tuition waiver authorized.

(a) The constituent institutions of The University of North Carolina and ~~the community colleges as defined in G.S. 115D-2(2)~~ shall permit the following persons to attend classes for credit or noncredit purposes without the required payment of tuition:

(1) Legal residents of North Carolina who have attained the age of 65.

(2) Any person who is the survivor of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker killed as a direct result of a traumatic injury sustained in the line of duty.

(3) The spouse of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty.

(4) Any child, if the child is at least 17 years old but not yet 23 years old, whose parent is a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty. However, a child's eligibility for a waiver of tuition under this Chapter shall not exceed: (i) 48 months, if the child is seeking a baccalaureate degree, or (ii) if the child is not seeking a baccalaureate degree, the number of months required to complete the educational program to which the child is applying.

(5) Any child, if the child (i) is at least 17 years old but not yet 23 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student.

The community colleges as defined in G.S. 115D-2(2) shall permit the persons listed in subdivisions (2) through (5) of this subsection to attend classes for credit or noncredit purposes without the required payment of tuition.

(b) Persons eligible for the tuition waiver under subsection (a) of this section must meet admission and other standards considered appropriate by the educational institution. In addition, the constituent institutions of The University of North Carolina shall accept these persons only on a space available basis."

SECTION 8.11.(c) G.S. 115B-5(a) is repealed.

CONTINUING EDUCATION FEES

SECTION 8.12. The fees charged for community college continuing education courses shall be based on the number of hours of class time. The fees shall be:

Class Hours	Cost
1-20	$65.00;
21-50	$120.00;
51-100+	$175.00.

CONSOLIDATE NURSING AND ALLIED HEALTH ALLOTMENTS

SECTION 8.13. The State Board of Community Colleges shall consolidate the Nursing categorical allotment into the Allied Health categorical allotment before distributing funds appropriated in this act. These funds shall be awarded to community colleges based on the full-time equivalent (FTE) enrollment in allied health programs.

CUSTOMIZED TRAINING PROGRAM

SECTION 8.14.(a) Funds appropriated in this act for the Customized Training Program that unexpended and unencumbered on June 30, 2010, may, subject to cash availability and the approval of the Office of State Budget and Management, be carried forward into the 2010-2011 fiscal year for equipment purchases. These funds shall be distributed through the Educational Equipment Reserve.

SECTION 8.14.(b) Projects that create or retain jobs in North Carolina shall receive first priority for funds appropriated for the Customized Training Program.

SECTION 8.14.(c) G.S. 115D-5.1(f) is amended by adding a new subsection to read:

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

...

(1a) The types of services sought by the company, whether for new, expanding, or existing industry."

COMMUNITY COLLEGE FINANCIAL ASSISTANCE FUND BALANCE SHALL BE USED TO OFFER NEED-BASED AID

SECTION 8.15. The balance remaining in Budget Code 66801, Fund 6102 (CCS Financial Assistance) shall be used in the 2009-2010 fiscal year to offer need-based assistance to displaced workers and qualified students. This balance has accumulated due to financial aid refunds received from students in fiscal year 2008-2009 and prior fiscal years.

Requested by: Senators Malone, Stevens

NORTH CAROLINA MILITARY BUSINESS CENTER

SECTION 8.16. The funds appropriated in this act to the Community Colleges System Office for the NC Military Business Center shall be used for the continued operations of the NC Military Business Center. The Military Business Center shall provide services to residents and businesses throughout the State. The purpose of the business center is to serve as a coordinator and facilitator for small- and medium-sized businesses throughout the State seeking to win and complete federal contracts, with a focus on military-related contracts. Activities of the business center shall include:

(1) Training and mentoring eligible businesses on effectively marketing their products and services to military and other federal clients and contracting offices.

(2) Assisting eligible businesses with any required accreditations and qualifications for government contracting.

(3) Teaching eligible businesses about federal set-aside programs and how to take advantage of these programs directly or through partnering with other eligible businesses.

(4) Training and assisting clients with the registration, proposal development, and bidding processes related to military and other federal contracts.

(5) Training eligible businesses on legal and regulatory compliance.

(6) Designing and implementing mentoring programs to facilitate the development of interrelationships between eligible businesses.

(7) Forecasting the need for and assisting eligible businesses in obtaining advanced certifications and accreditations and advanced manufacturing skills and technologies.

(8) Working with Small Business Centers throughout the State to carry out these activities on a statewide basis.

(9) The maintenance of an Internet-based system to match the knowledge, skills, and abilities of active-duty military personnel, veterans, and their families throughout the State with the needs of North Carolina businesses.

(10) The study of community resources and existing business capacity to meet the current and future needs of the military and the development of proposals for further developing community resources and developing or recruiting new businesses to meet those needs.

(11) The marketing of the services provided by the Military Business Center.

PART IX. UNIVERSITIES

USE OF ESCHEAT FUNDS FOR NEED-BASED FINANCIAL AID PROGRAMS

SECTION 9.1.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of one hundred twenty-three million six hundred forty-one thousand forty dollars ($123,641,040) for fiscal years 2009-2010 and 2010-2011, to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars ($13,981,202) for 2009-2010 and 2010-2011, and to the Department of Administration, Division of Veterans Affairs, the sum of six million five hundred twenty thousand nine hundred sixty-four dollars ($6,520,964) for years 2009-2010 and 2010-2011. These funds shall be allocated by the State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7. If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f).

SECTION 9.1.(b) The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the Scholarship Programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. SEAA may make recommendations for redistribution of funds to The University of North Carolina, Department of Administration, and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.1.(c) There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of one million one hundred fifty-seven thousand dollars ($1,157,000) for the 2010-2011 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six thousand five hundred dollars ($6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection. The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans, the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

SECTION 9.1.(d) The State Education Assistance Authority shall transfer to the Escheat Fund the balance of any monies appropriated by this section that are not disbursed for need-based student financial aid; however, the State Education Assistance Authority may retain the interest on those monies that is paid to the State Education Assistance Authority at the beginning of the 2009-2010 fiscal year and at the beginning of the 2010-2011 fiscal year.

THE EDUCATION ACCESS REWARDS NORTH CAROLINA SCHOLARS FUND (EARN)

SECTION 9.2.(a) Of the funds appropriated by this act from the General Fund to the State Education Assistance Authority the sum of sixty million dollars ($60,000,000) for the 2009-2010 fiscal year and the sum of sixty million dollars ($60,000,000) for the 2010-2011 fiscal year shall be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

SECTION 9.2.(b) There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of forty million dollars ($40,000,000) for the 2009-2010 fiscal year and the sum of forty million dollars ($40,000,000) for the 2010-2011

fiscal year to be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

SECTION 9.2.(c) The funds appropriated in subsections (a) and (b) of this section shall be used only to fund Education Access Rewards North Carolina Scholars Fund (EARN) grants for academic years beginning on or after July 1, 2009.

TRANSFERS OF CASH BALANCES TO THE GENERAL FUND

SECTION 9.3.(a) Notwithstanding any other provision of law, the unencumbered cash balance remaining in the Future Teachers Financial Aid fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

SECTION 9.3.(b) Notwithstanding any other provision of law, the unencumbered cash balance of the General Fund appropriation remaining in the Education Access Rewards North Carolina (EARN) Scholars fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

TRANSFER FUNDING TO ROANOKE ISLAND COMMISSION FOR PERFORMING ARTS

SECTION 9.4. The General Assembly finds that in order to expand opportunities for students involved in the performing arts, existing funding for the Summer Institute on Roanoke Island should not be allocated to one specific University of North Carolina institution, but instead be allocated directly to the Roanoke Island Commission, so that any interested University of North Carolina institution may have the opportunity to participate in summer arts enrichment and education programs. Therefore, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Summer Institute of the North Carolina School of the Arts on Roanoke Island program for the 2009-2011 fiscal biennium, the sum of four hundred sixty-one thousand six hundred forty-six dollars ($461,646) shall be transferred for the 2009-2010 fiscal year to the Roanoke Island Commission and the sum of four hundred sixty-one thousand six hundred forty-six dollars ($461,646) shall be transferred for the 2010-2011 fiscal year to the Roanoke Island Commission. The Roanoke Island Commission may use these funds to contract with any of the constituent institutions of The University of North Carolina System to provide music and drama students an education in a professional performing environment while providing a public service to the State.

UNC CENTER FOR ALCOHOL STUDIES

SECTION 9.5.(a) G.S. 20-7(i1) reads as rewritten:

"(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than ~~G.S. 20-17(2),~~ G.S. 20-17(a)(2) shall pay a restoration fee of fifty dollars ($50.00). A person whose drivers license has been revoked under ~~G.S. 20-17(2)~~ G.S. 20-17(a)(2) shall pay a restoration fee of ~~seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of fifty dollars ($50.00) thereafter.~~ seventy-five dollars ($75.00). The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office

of State Budget and Management ~~shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and~~ shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate from the funds deposited in the General Fund under this subsection the sum of five hundred thousand dollars ($500,000) to the Board of Governors of The University of North Carolina to be used for the operating expenses of the Bowles Center for Alcohol Studies ~~Endowment~~ at ~~The~~ the University of North Carolina at Chapel ~~Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).~~ Hill."

SECTION 9.5.(b) Of the funds appropriated by this act to the Board of Governors of The University of North Carolina the sum of five hundred thousand dollars ($500,000) for the 2009-2010 fiscal year and the sum of five hundred thousand dollars ($500,000) for the 2010-2011 fiscal year shall be used for the operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill.

REPEAL FULL TUITION GRANT FOR GRADUATES OF NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS WHO ATTEND A STATE UNIVERSITY

SECTION 9.6.(a) G.S. 116-238.1(a) reads as rewritten:

"(a) There is granted to each State resident who graduates from the North Carolina School of Science and Mathematics and who enrolls as a full-time student in a constituent institution of The University of North Carolina a sum to be determined by the General Assembly as a tuition grant. The tuition grant shall be for four consecutive academic years and shall cover the tuition cost at the constituent institution in which the student is enrolled. The tuition grant shall be distributed to the student as provided by this section. The grant provided by this section is only available to a student enrolled at the North Carolina School of Science and Mathematics for the 2007-2008 academic year or earlier."

SECTION 9.6.(b) Effective July 1, 2013, G.S. 116-238.1, as amended by this section, is repealed.

CLOSING THE ACHIEVEMENT GAP/GRANTS

SECTION 9.7.(a) Funds appropriated by this act for the 2009-2010 fiscal year and for the 2010-2011 fiscal year to the Board of Governors of The University of North Carolina and allocated to the North Carolina Historically Minority Colleges and Universities Consortium (HMCUC) for "Closing the Achievement Gap," shall be used for the sole purpose of supporting the operations and program activities of the HMCUC. These funds shall be used by the HMCUC members for the public purposes of developing and implementing after-school programs designed to close the academic achievement gap and improving the academic performance of youth at risk of academic failure and school dropout. The HMCUC may also allocate funds to a community-based and faith-based organization that is located in close proximity to the HMCUC member institution for the public purposes stated in this section.

SECTION 9.7.(b) The North Carolina Historically Minority Colleges and Universities Consortium shall report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by May 1 of each year, regarding the number of programs funded by the Consortium to Close the Achievement Gap, the location and program structure of the programs, the amount allocated to the program, and purposes for which the funds were awarded, the cost of administering and managing the funds, and any other information requested by the Committee or Fiscal Research Division. The grants awarded pursuant to this section shall also include as a term of the grant that the recipient of the grant report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division regarding the

amount of the grant received, the program and purposes for which the grant was requested, the methodology used to implement the grant program and purposes, the results of the program funded by the grant, and any other information requested by the Joint Legislative Education Oversight Committee and the Fiscal Research Division.

AMEND LEGISLATIVE TUITION GRANT FOR PART-TIME STUDENTS

SECTION 9.8.(a) G.S. 116-21.2 reads as rewritten:

"§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) Grants for Students. – In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the undergraduate student as provided by this subsection. A full-time North Carolina undergraduate student shall be awarded the full amount of the tuition grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least ~~six~~ nine hours of academic credit per semester shall be awarded a tuition grant in an amount that is calculated on a pro rata basis.

(a1) Grants for Licensure Students. – The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any part-time licensure student who is enrolled to take at least ~~six~~ nine hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(b) Administration of Grants. – The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Student or Licensure Student Change of Status; Audits. – In the event a full-time student on whose behalf a grant has been paid in accordance with subsection (a) of this section or a full-time licensure student on whose behalf a grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a part-time student on whose behalf a prorated grant has been paid in accordance with subsection (a) of this section or a part-time licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load of ~~six~~ nine credit hours per semester in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If the matriculated status of a full-time student or a full-time licensure student changes to a matriculated status of part-time student or part-time licensure student by

the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund only the difference between the amount of the full-time grant awarded and the amount of the part-time grant that is awarded pursuant to this section. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) Shortfall. – In the event there are not sufficient funds to provide each eligible student or licensure student with a full or prorated grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and

(2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Reversions. – Any remaining funds shall revert to the General Fund."

SECTION 9.8.(b) This section applies to academic semesters beginning on or after July 1, 2009.

GRADUATE NURSE SCHOLARSHIP PROGRAM FOR FACULTY PRODUCTION/REVERT PART OF FUND BALANCE

SECTION 9.9. Effective July 1, 2009, the sum of one million dollars ($1,000,000) shall transfer from the fund balance of the Graduate Nurse Scholarship Program for Faculty Production (also known as Nurse Educators of Tomorrow Scholarship Loan) to the General Fund.

INCREASE UNC UNDERGRADUATE TUITION SURCHARGE

SECTION 9.10.(a) Subsection (b) of Section 89 of Chapter 321 of the 1993 Session Laws as amended by Section 17.10 of Chapter 769 of the 1993 Session Laws reads as rewritten:

"(b) The Board of Governors of The University of North Carolina shall ensure that procedures are established that are necessary to impose a ~~twenty-five percent (25%)~~ fifty percent (50%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. The calculation of these credit hours taken at a constituent institution or accepted for transfer shall exclude hours earned through the College Board's Advanced Placement or CLEP examinations, through institutional advanced placement or course validation, or through summer term or extension programs. No surcharge shall be imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment, or within five academic years of regular term enrollment in a degree program officially designated by the Board of Governors as a five-year program. ~~The Board shall report to the Joint Legislative Education Oversight Committee by April 1, 1994, on its recommendations for implementing this surcharge.~~"

SECTION 9.10.(b) The Board of Governors shall report to the Joint Legislative Education Oversight Committee by September 1, 2009, regarding the implementation of the increased surcharge.

SECTION 9.10.(c) This section applies to all students who will be sophomores or freshman in the 2009-2010 fall academic semester and to all students who are new undergraduates on or after the effective date of this act.

ENROLLMENT GROWTH REPORTING

SECTION 9.11. G.S. 116-30.7 reads as rewritten:

"**§ 116-30.7. Biennial projection of enrollment growth for The University of North Carolina.**

By ~~September 1~~October 15 of each even-numbered year, the General Administration of The University of North Carolina shall provide to the Joint Education Legislative Oversight Committee and to the Office of State Budget and Management a projection of the total student enrollment in The University of North Carolina that is anticipated for the next biennium. The enrollment projection shall be divided into the following categories and shall include the projected growth for each year of the biennium in each category at each of the constituent institutions: undergraduate students, graduate students (students earning master's and doctoral degrees), ~~first-year~~ first professional students, and any other categories deemed appropriate by General Administration. The projection shall also distinguish between on-campus and distance education students. The projections shall be considered by the Director of the Budget when determining the amount the Director proposes to fund as the continuation requirement for the enrollment increase in the university system pursuant to G.S. 143C-3-5(b)."

UNC BOARD OF GOVERNORS STUDY AND DEVELOP PLAN TO TRANSFER UNC CENTER FOR PUBLIC TELEVISION TO UNC SCHOOL OF THE ARTS

SECTION 9.12. The Board of Governors of The University of North Carolina shall study the feasibility of transferring the University of North Carolina Center for Public Television to the University of North Carolina School of the Arts and shall develop a plan to implement such a transfer. The Board of Governors shall report its findings and recommendations along with the plan by March 1, 2010, to the Joint Education Legislative Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Education.

NORTH CAROLINA CENTER FOR ADVANCEMENT OF TEACHING (NCCAT)/PROPERTY SETTLEMENT IF NCCAT TRANSFERRED FROM UNC SYSTEM OR CEASES TO EXIST

SECTION 9.13.(a) If the North Carolina Center for the Advancement of Teaching (NCCAT) is transferred from The University of North Carolina to another State government agency or department, then all of the following shall occur:

(1) The University of North Carolina and Western Carolina University shall both be released and relieved: (i) of any and all responsibilities, duties, and powers related to the administration or management functions of NCCAT, and (ii) of any and all responsibilities and duties arising from any fiduciary relationship existing between Western Carolina University and NCCAT.

(2) Neither The University of North Carolina nor Western Carolina University shall be the fiscal agent for NCCAT.

(3) Western Carolina University shall be granted a permanent easement 40 feet in width over and upon the NCCAT campus for the purpose of providing Western Carolina University and its assignees, agents, joint venturers, lessees, partners, and invitees access to that portion of Western Carolina University's campus currently undeveloped and adjacent to NCCAT. Western Carolina University shall use existing roads across the NCCAT

campus, to the extent possible. If any road is required, it shall be built at Western Carolina University's expense.

SECTION 9.13.(b) If the North Carolina Center for Advancement of Teaching ceases to exist as a State agency or entity, or if NCCAT closes its offices and operation in Jackson County, North Carolina, then the following real property in Jackson County shall be transferred to Western Carolina University and become part of Western Carolina University's campus to be used for any purpose, at Western Carolina University's discretion, appropriate to its mission: all land in Jackson County that (i) was used or under the control of NCCAT at the time it ceased to exist or closed its operations and (ii) was transferred to NCCAT from The University of North Carolina, including all improvements located thereon.

COASTAL DEMONSTRATION WIND TURBINES

SECTION 9.14.(a) The University of North Carolina shall continue the coastal sounds wind energy study set forth in Section 9.12 of S.L. 2008-107 and, pursuant to Section 9.12, shall apply for federal grants to continue the study. Funds appropriated by United States Public Law 111-005, the American Recovery and Reinvestment Act of 2009 (the Federal Act), for renewable energy and allocated to the State of North Carolina shall be used for the development, design, and construction of at least three demonstration wind turbines and necessary support facilities in the sounds or off the coast of North Carolina, and the Director of the Budget shall ensure any available federal funds are secured. The actual placement of the wind turbines and necessary support facilities shall be determined by the coastal sounds wind energy study. The Director of the Budget shall ensure that any available federal funding is secured by the State to construct the wind turbines. The University, in collaboration with the Director of the Budget, shall enter into a contract with a third party by October 1, 2009, to construct, establish, and operate the demonstration turbines and necessary support facilities on or before April 1, 2010.

SECTION 9.14.(b) With respect to the demonstration wind turbines and necessary support facilities authorized by subsection (a) of this section, the facilities authorized under this act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities. The Department of Environment and Natural Resources is directed to expedite permitting of the project to the extent allowed by law.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILD CARE SUBSIDY RATES

SECTION 10.1.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.1.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.1.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

(1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be

paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.

(2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.

(3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.

(4) Maximum payment rates shall also be calculated periodically by the Division of Child Development for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

SECTION 10.1.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

(1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

(2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.1.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.1.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.1.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.1.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

(1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.

(2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.

(3) The child for whom a child care subsidy is sought is a citizen of the United States.

CHILD CARE ALLOCATION FORMULA

SECTION 10.2.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

SECTION 10.2.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

SECTION 10.2.(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars ($20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2009-2010 and 2010-2011 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including market rate adjustments, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section.

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.3. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving its initial allocation of child care funds appropriated by this act unless federal law requires a match. If the Department reallocates additional funds above twenty-five thousand dollars ($25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a twenty percent (20%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1).

FACILITATE AND EXPEDITE USE OF CHILD CARE SUBSIDY FUNDS

SECTION 10.4. The Division of Child Development of the Department of Health and Human Services shall adopt temporary policies that facilitate and expedite the prudent expenditure of child care subsidy funds. These policies will address the following:

(1) Permitting the local purchasing agencies to issue time-limited vouchers to assist counties in managing onetime, nonrecurring subsidy funding.

(2) Extending the current 30/60 day job search policy to six months when a recipient experiences a loss of employment.

(3) Providing an upfront job search period of six months for former recipients who have lost employment since October 1, 2008.

(4) Providing a job search period of six months for recipients that complete school and are entering the job market.

(5) Notwithstanding any other provision of law, extending the 24-month education time limit for an additional 12 months for a child care recipient

who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.

(6) Lowering the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

CHILD CARE REVOLVING LOAN

SECTION 10.5. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

CHILD CARE MARKET RATE ADJUSTMENTS

SECTION 10.6. Not later than October 1, 2009, the Department shall implement an adjustment to child care market rates, by region, based upon the 2009 Child Care Market Rate Study.

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.7.(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

SECTION 10.7.(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.

(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.

(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.

(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.7.(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other

volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.

(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.

(3) Not include expenses funded by State funds.

(4) Be supplemental to and not supplant preexisting resources for related program activities.

(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.

(6) Be otherwise allowable under federal or State law.

(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.

(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.7.(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.7.(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2009-2010 and 2010-2011 shall be administered and distributed in the following manner:

(1) Capital expenditures are prohibited for fiscal years 2009-2010 and 2010-2011. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).

(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2009-2010 and 2010-2011.

SECTION 10.7.(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

SECTION 10.7.(g) For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. The North Carolina Partnership for Children, Inc., shall not spend less on child care subsidies than the spending level for fiscal year 2008-2009.

CONTINUE MORE AT FOUR PROGRAM FOR 2009-2010 FISCAL YEAR

SECTION 10.8.(a) The Department of Public Instruction and Division of Child Development of the Department of Health and Human Services shall continue the implementation of the More at Four prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten through the 2009-2010 fiscal year. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction.

SECTION 10.8.(b) The Office of School Readiness of the Department of Instruction shall reduce the reimbursement rates per slot statewide. The program funding is reduced by forty million dollars ($40,000,000) recurring beginning for the 2009-2010 fiscal year. The Office of School Readiness, in conjunction with Division of Child Development, shall plan to minimize the number of slots eliminated by reducing the amount of funds paid per slot statewide.

SECTION 10.8.(c) A child whose parent is deployed in the military shall be eligible for participation in the More at Four program.

MORE AT FOUR PROGRAM

SECTION 10.9.(a) The More at Four program is transferred to the Department of Health and Human Services, effective July 1, 2009.

SECTION 10.9.(b) The star rating system currently in place for licensure shall have an additional Plus (+) designation identifying those programs offering a high quality four-year-old classroom. The Plus program shall be administered within the Regulatory Services Section of the Division of Child Development as a high quality four-year-old classroom operated within private child care centers and public schools and will be designated as a Plus program.

SECTION 10.9.(c) The Plus program shall be no less stringent than current standards of the More at Four program in place for the 2008-2009 fiscal year and shall ensure lower ratios of teachers to students and require higher teacher qualifications. The Plus program shall offer a curriculum approved by the Division of Child Development.

SECTION 10.9.(d) Eligibility requirements for the Plus program shall be in accordance with current child care subsidy eligibility requirements as established by the General Assembly. The new reimbursement rate plan shall be in accordance with the child care subsidy program implemented for the 2010-2011 fiscal year.

SECTION 10.9.(e) Public school systems shall be allowed reimbursement through the Division of Child Development for students qualifying for subsidy for its Plus programs. Beginning in school year 2010-2011, the screening process for children applying for subsidy for a Plus program shall occur through the regular subsidy application process in collaboration with local partnerships of the North Carolina Partnership for Children, Inc., county departments of social services, and local school administrative units. Counties are encouraged to develop a single application process for child care subsidy accepted in many locations throughout the county.

SECTION 10.9.(f) Parent payments for the Plus program shall be in accordance with child care subsidy rules adopted by the Division of Child Development for the 2010-2011 fiscal year.

SECTION 10.9.(g) On or before December 1, 2009, the Division of Child Development shall report on the star-rated system and the incorporation of the Plus program.

The report will include an analysis of the star-rated system and identify the standards for each and the differences between the various levels.

ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.10. The Division of Child Development of the Department of Health and Human Services shall increase the allowance that county departments of social services may use for administrative costs from four percent (4%) to five percent (5%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan. The increase shall be effective for the 2009-2010 fiscal year.

INCREASE CHILD CARE LICENSING FEES FOR CHILD CARE FACILITIES

SECTION 10.11. G.S. 110-90(1a) reads as rewritten:

"**§ 110-90. Powers and duties of Secretary of Health and Human Services.**

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

...

(1a) To establish a fee for the licensing of child care ~~centers.~~facilities. The fee does not apply to a religious-sponsored child care ~~center~~ facility operated pursuant to a letter of compliance. The amount of the fee may not exceed the amount listed in this subdivision.

Capacity of ~~Center~~Facility	Maximum Fee
12 or fewer children	~~$ 35.00~~$52.00
13-50 children	~~$125.00~~$187.00
51-100 children	~~$250.00~~$375.00
101 or more children	~~$400.00~~$600.00

...."

MENTAL HEALTH CHANGES

SECTION 10.12.(a) For the purpose of mitigating cash flow problems that many non-single-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 10.12.(b) Onetime funds appropriated for the Dorothea Dix Hospital overflow unit shall be used to support the temporary operation of the hospital unit on the Dorothea Dix campus.

SECTION 10.12.(c) The Department shall evaluate the need to continue the temporary operation of the hospital unit for one additional year and provide a recommendation to the Governor no later than February 15, 2010. Notwithstanding any other provision of law to the contrary, the Office of State Budget and Management shall establish the positions for the hospital unit on the Dorothea Dix campus as time-limited positions.

SECTION 10.12.(d) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars ($20,121,644) for the 2009-2010 fiscal year and the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars ($20,121,644) for the

2010-2011 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.12.(e) The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2010, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115. This subsection does not prohibit LME's from voluntarily merging if they are contiguous or consolidating administrative functions.

SECTION 10.12.(f) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred fifty-five thousand dollars ($5,755,000) shall be distributed to LMEs to support 30 mobile crisis teams. The new mobile crisis units shall be distributed over the State according to need as determined by the Department.

REENACT 2007 SPECIAL PROVISION ON COLLABORATION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 10.13. Section 10.9 of S.L. 2007-323 is reenacted for the 2009-2011 fiscal biennium.

CLOSURE OF WRIGHT AND WHITAKER SCHOOLS

SECTION 10.14. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall close the Wright School and the Whitaker School, effective December 31, 2009.

The Division shall prepare a transition plan for each student currently attending these schools, which shall include assisting in the location of community services for the student, working with the public school system in preparing or updating the student's individualized education plan, and working with the local management entity (LME) to ensure that the needs of the student are met. The LME shall conduct a six-month follow-up on each of these students.

The Division shall report on student transitions, student participation in any community or residential programs, and student progress six months after the school closures. The Division shall submit the report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division not later than August 30, 2010.

The Department shall ensure that all possible measures are taken to provide a State job for employees of these schools.

SUBSTANCE ABUSE TASK FORCE RECOMMENDATIONS/AVAILABILITY OF SUBSTANCE ABUSE TREATMENT

SECTION 10.15.(a) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one million dollars ($1,000,000) shall be used to implement one or more priority recommendations of the North Carolina Institute of Medicine (NCIOM) Substance Abuse Task Force, which include:

(1) Development of a comprehensive substance abuse prevention plan for use at the State and local levels.

(2) Providing funding for the establishment of six pilot projects to implement county or multicounty comprehensive prevention plans.

(3) Supporting efforts to reduce high-risk drinking on college campuses.

(4) Development of a pilot program to provide chronic disease management services to substance abuse clients and former clients. The purpose of the pilot is to decrease the number of short-term hospital admissions and to provide discharge planning and follow-up to reduce substance abuse client recidivism.

(5) Educating and encouraging health care professionals to use the screening, brief intervention, and referral to treatment (SBIRT) model promoted by the federal government.

SECTION 10.15.(b) Consistent with G.S. 122C-2, the General Assembly strongly encourages Local Management Entities (LMEs) to use a portion of the funds appropriated for substance abuse treatment services to support prevention and education activities.

SECTION 10.15.(c) An LME may use up to one percent (1%) of funds allocated to it for substance abuse treatment services to provide nominal incentives for consumers who achieve specified treatment benchmarks, in accordance with the federal substance abuse and mental health services administration best practice model entitled Contingency Management.

SECTION 10.15.(d) In providing treatment and services for adult offenders and increasing the number of Treatment Accountability for Safer Communities (TASC) case managers, local management entities shall consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis should be placed on intermediate

punishment offenders, community punishment offenders at risk for revocation, and Department of Correction (DOC) releasees who have completed substance abuse treatment while in custody.

In addition to the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to provide substance abuse services for adult offenders and to increase the number of TASC case managers, the Department shall allocate up to three hundred thousand dollars ($300,000) to TASC. These funds shall be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services.

SECTION 10.15.(e) In providing drug treatment court services, LMEs shall consult with the local drug treatment court team and shall select a treatment provider that meets all provider qualification requirements and the drug treatment court's needs. A single treatment provider may be chosen for non-Medicaid-eligible participants only. A single provider may be chosen who can work with all of the non-Medicaid-eligible drug treatment court participants in a single group. During the 52-week drug treatment court program, participants shall receive an array of treatment and aftercare services that meets the participant's level of need, including step-down services that support continued recovery.

SECTION 10.15.(f) Not later than October 1, 2009, the Department of Health and Human Services shall complete the development of a Uniform Screening Tool (UST) to determine the mental health of any individual admitted to any long-term care facility. The Department shall report on the status of UST development on or before January 1, 2010, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

TOTAL QUALITY MANAGEMENT

SECTION 10.16. The Secretary of the Department of Health and Human Services shall implement a Total Quality Management Program in hospitals and other State facilities for the purpose of providing a high level of customer service by well-trained staff throughout the organization. The focus of this management approach shall be on meeting customer needs by providing high-quality services.

The Department shall involve staff at all levels of the organization by soliciting suggestions and input into decision making by managers. The Department shall create staff committees composed of a representative distribution of rank and file employees, to evaluate policy changes and identify training opportunities and other necessary improvements.

The Department shall submit a report on the status of the Total Quality Management Program, including any activities associated with its implementation within State facilities, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division not later than December 1, 2009.

BUDGET REDUCTIONS FOR DIVISION OF MH/DD/SA

SECTION 10.17. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall reduce its budget in the following areas for the 2009-2010 and 2010-2011 fiscal years:

Facility	Fund Code	FY 2009-2010	FY 2010-2011
Broughton Hospital	4541	$ (34,220)	
Broughton Hospital	4541		$ (136,550)
Broughton Hospital	4549	$ (7,000)	
Longleaf Neuro-Medical	4541	$ (64,000)	
Longleaf Neuro-Medical	4541	$ (24,000)	

Longleaf Neuro-Medical	4541		$ (72,500)
Black Mountain Neuro-Medical	4541		$ (25,796)
Caswell Developmental Center	4541	$ (210,632)	
Caswell Developmental Center	4541		$ (320,500)
Caswell Developmental Center	4549	$ (16,500)	
Murdoch Center	3210	$ (14,447)	$ (14,447)
Murdoch Center	4541	$ (200,750)	
Murdoch Center	4541		$ (93,200)
O-Berry Neuro-Medical	4521	$ (60,702)	$ (21,102)
O-Berry Neuro-Medical	4541	$ (22,103)	
Iverson Riddle Center	3110	$ (12,153)	$ (12,153)
Walter Jones ADATC	3110	$ (5,852)	$ (5,852)
Walter Jones ADATC	4541	$ (24,500)	
Walter Jones ADATC	4549	$ (8,800)	
TOTAL REDUCTIONS		$ (705,659)	$ (709,100)

New purchases of vehicles for the regional maintenance facilities are subject to approval by the Secretary.

STUDY THE AVAILABILITY OF COMMUNITY MH/DD/SA SERVICES FOR MILITARY FAMILIES

SECTION 10.18. Funds appropriated in this act to the Department of Health and Human Services for North Carolina Institute of Medicine (NCIOM) shall be used to study the availability of Medicaid and State-funded mental health, developmental disability, and substance abuse services to active duty, reserve, and veteran members of the military and National Guard. The study should discuss the current availability of services, the extent of use, and any gaps in services. The NCIOM shall submit a report of its findings and any recommended legislation to the Governor's Office, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by February 15, 2010.

FUNDS FOR LOCAL MANAGEMENT ENTITY (LME) SERVICE GAPS

SECTION 10.19. Funds appropriated in this act for mental health services and supported employment shall be allocated to local management entities such that each local management entity receives a percentage of the total allocation that is equal to that local management entity's percentage of the State's total population that is below the federal poverty level. Funds appropriated to the Department of Health and Human Services for the 2009-2010 and 2010-2011 fiscal years for mental health services, substance abuse services, and crisis services and allocated based on the poverty level shall continue to be allocated by the Department to local management entities such that each local management entity receives a percentage of the total allocation that is equal to that local management entity's percentage of the State's total population that is below the federal poverty level.

TRANSITION OF UTILIZATION MANAGEMENT OF COMMUNITY-BASED SERVICES TO LOCAL MANAGEMENT ENTITIES

SECTION 10.20. Consistent with the findings of the Mercer evaluation of Local Management Entities (LMEs), the Department of Health and Human Services shall collaborate with LMEs to enhance their administrative capabilities to assume utilization management responsibilities for the provision of community-based mental health, developmental disabilities,

and substance abuse services. The Department may, with approval of the Office of State Budget and Management, use funds available to implement this section.

MENTAL HEALTH TRUST FUND ALLOCATIONS

SECTION 10.21. Notwithstanding any other provision of law to the contrary, funds allocated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs (Fund) in the 2007 fiscal biennium shall not revert to the Fund nor otherwise be withheld but shall be allocated to those programs for which the funds were originally obligated.

VITAL RECORDS FEES

SECTION 10.22. G.S. 130A-93.1 reads as rewritten:

"**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be charged for issuing ~~any~~ a first copy of a vital record or for conducting a routine search of the files for the record when no copy is made. A fee of fifteen dollars ($15.00) shall be charged for each additional certificate copy requested from the same search. When certificates are issued or searches conducted for statewide issuance by local agencies using databases maintained by the State Registrar, the local agency shall charge ~~this fee~~ these fees and shall ~~forward five dollars ($5.00) of this fee~~ retain ten dollars ($10.00) of these fees to cover local administrative costs and forward the remaining fees to the State Registrar for the purposes established in subsection (b) of this section.

(2) A fee not to exceed fifteen dollars ($15.00) for in-State requests and not to exceed twenty dollars ($20.00) for out-of-state requests shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section."

CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.23.(a) Funds appropriated in this act from the General Fund to the Department of Health and Human Services for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) shall be used to provide grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the health status of white persons. These grants shall focus on the use of preventive measures to support healthy lifestyles. The areas of focus on health status shall be

infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths.

SECTION 10.23.(b) Funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, for the CFEHDI shall be awarded as a grant-in-aid to honor the memory of the following recently deceased members of the General Assembly: Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, and William Martin. These funds shall be used for concerted efforts to address large gaps in health status among North Carolinians who are African-American, as well as disparities among other minority populations in North Carolina.

SECTION 10.23.(c) The Department of Health and Human Services shall report on the following with respect to funds appropriated to the CFEHDI for the 2009-2010 fiscal year. The report shall address the following:

(1) Which community programs and local health departments received CFEHDI grants.
(2) The amount of funding each program or local health department received.
(3) Which of the minority populations were served by the programs or local health departments.
(4) Which counties were served by the programs or local health departments.
(5) What activities were planned and implemented by the programs or local health departments to fulfill the community focus of the CFEHDI program.
(6) How the activities implemented by the programs or local health departments fulfilled the goal of reducing health disparities among minority populations.

The report shall also include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State. The Department shall submit the report not later than March 15, 2010, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

FUNDS FOR SCHOOL NURSES

SECTION 10.24.(a) All funds appropriated for the school nurse initiative shall be used to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funds shall be used for direct services.

SECTION 10.24.(b) All school nurses funded with State funds shall participate, as needed, in child and family teams.

SECTION 10.24.(c) Of the funds appropriated to the Department of Health and Human Services, Division of Public Health, for the 2009-2010 and 2010-2011 fiscal years, the sum of one million dollars ($1,000,000) in each fiscal year shall be used to hire 20 additional school health nurses bringing the total number of school nurses supported by DHHS to 232. The distribution of additional school nurses shall be made according to the criteria established by the Department in 2006.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.25. For the 2009-2010 and 2010-2011 fiscal years, the Department may, within existing Aids Drug Assistance Program (ADAP) resources, adjust the financial eligibility criterion of the ADAP up to an amount not exceeding three hundred percent (300%) of the federal poverty level in order to serve as many eligible North Carolinians living with HIV disease as possible within existing resources plus any new federal resources. If a waiting list develops as a result of the eligibility criterion being raised, the Department shall give first

priority to those individuals on the waiting list with income at or below one hundred twenty-five percent (125%) of the federal poverty level, and second priority to those individuals with income above one hundred twenty-five percent (125%) and at or below two hundred fifty percent (250%) of federal poverty guidelines.

PUBLIC HEALTH IMPROVEMENT PLAN

SECTION 10.26.(a) The Department of Health and Human Services (DHHS) shall develop a five-year Public Health Improvement Plan (Plan) by March 31, 2010. In developing the Plan the Secretary shall:

(1) Adopt a list of services and activities performed by local health departments that qualify as core public health functions of statewide significance.

(2) Adopt a list of performance measures with the intent of improving health status indicators applicable to core public health functions of statewide significance that local health departments (LHDs) must provide.

(3) Identify a set of health status indicators to be given priority by LHDs.

Under the Plan, all priorities and health status indicators must incorporate as an essential activity the disparity of diseases amongst populations and locales.

SECTION 10.26.(b) In order for measurable benefits to be realized through the implementation of the Plan, the Plan shall include the adoption of levels of performance necessary to promote:

(1) Uniformity across local health departments,

(2) Best evidence-based services,

(3) National standards of performance,

(4) Innovations in public health practice, and

(5) Reduction of geographic and racial health disparities.

LHDs shall have the flexibility and opportunity to use the resources available to achieve the required performance measures in a manner that best suits the LHD.

SECTION 10.26.(c) The Plan will address the need to provide county health departments with financial incentives to encourage and increase local investment in public health functions. County governments shall not supplant existing local funding with State incentive resources. The Secretary may revise the list of activities and performance measures as appropriate, but before doing so, the Secretary shall provide a written explanation of the rationale for the addition, deletion, or revision.

SECTION 10.26.(d) In developing the Plan the Secretary shall establish and chair the Public Health Improvement Plan Task Force (Task Force), the members and expertise of which shall include:

(1) Local health departments,

(2) Department staff,

(3) Individuals and entities with expertise in the development of performance measures, accountability, and systems management,

(4) Experts in development of evidence-based medical guidelines or public health practice guidelines, and

(5) Individuals and entities that will be affected by the performance measures.

SECTION 10.26.(e) The implementation schedule for the Plan shall be as follows:

(1) July 1, 2009, establish the Task Force to develop the Plan,

(2) March 31, 2010, submit the Plan to the 2010 Regular Session of the 2009 General Assembly,

(3) July 1, 2010, implement the Plan, and

(4) November 15, 2011, and annually thereafter, report on Plan implementation.

SECTION 10.26.(f) The Department will identify the programmatic activities and funding in the Division of Public Health associated with the core functions and activities in the

Plan. Funds associated with these activities shall be subject to a flexible spending formula adopted by the Department, as follows:

(1) Beginning in SFY 2010-2011, the flexible spending formula will begin to replace the current spending with a more effective method of funding public health activities at the local level and achieving the results expected.

(2) The Task Force shall identify a reliable and consistent source of State revenue to fund the flexible spending formula.

(3) If sufficient additional revenue is available to implement the Plan, a separate set-aside of available funds would be created. This set-aside would be available to contiguous LHDs that seek to address a specific women's health, child health, or adult health disease or chronic condition, and in doing so, choose to merge into a single Local Health District, thus saving administrative dollars to be focused on public health issues.

SECTION 10.26.(g) Funds appropriated to the Department for flexible spending shall be distributed to county health departments as follows:

(1) Each of the county health departments will receive a base amount to be determined by the DHHS.

(2) The balance of funds in the Flexible Spending Account is to be distributed to the counties on the basis of a formula that takes into consideration the following elements:

a. Population,
b. Per capita income,
c. Rates of:
1. Infant mortality,
2. Teenage pregnancy,
3. Tobacco use,
4. Cancer,
5. Heart disease,
6. Diabetes, and
7. Stroke.
d. Percent of minorities in the county,
e. Body Mass Index (BMI) of public school students, and
f. Other factors as the Secretary may find necessary to achieve the goals of the Plan.

(3) The use of the funds by the LHD would reflect the core public health functions. It will be incumbent upon the LHD to use the funds in a manner that assures its achievement of the performance measures adopted by the Secretary.

SECTION 10.26.(h) To ensure compliance with Department directives, the Task Force shall consider requiring each county health department to submit to the Secretary such data as the Secretary determines is necessary to allow the Secretary to assess whether the county health department has used the funds in a manner consistent with achieving the performance measures associated with this Plan.

SECTION 10.26.(i) Beginning November 15, 2011, and biannually thereafter, the Secretary shall report to the Governor and the General Assembly on:

(1) The distribution of funds to LHDs,

(2) The use of these funds by LHDs,

(3) The specific effect the funding from this Plan has had on:

a. LHDs' performance,
b. Health status indicators, and
c. Health disparities.

The Secretary's initial report will focus on implementation. Subsequent reports will evaluate trends in performance and expenditures.

HEALTH INFORMATION TECHNOLOGY

SECTION 10.27.(a) The Department of Health and Human Services, in cooperation with the State Chief Information Officer and the North Carolina Office of Economic Recovery and Investment, shall coordinate health information technology (HIT) policies and programs within the State of North Carolina. The Department's goal in coordinating State HIT policy and programs shall be to avoid duplication of efforts and to ensure that each State agency, public entity, and private entity that undertakes health information technology activities associated with the American Recovery and Reinvestment Act of 2009 (ARRA) does so within the area of its greatest expertise and technical capability, and in a manner that supports coordinated State and national goals, which shall include at least all of the following:

(1) Ensuring that patient health information is secure and protected, in accordance with applicable law.

(2) Improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care.

(3) Providing appropriate information to guide medical decisions at the time and place of care.

(4) Ensuring meaningful public input into HIT infrastructure development.

(5) Improving the coordination of information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.

(6) Improving public health services and facilitating early identification and rapid response to public health threats and emergencies, including bioterrorist events and infectious disease outbreaks.

(7) Facilitating health and clinical research.

(8) Promoting early detection, prevention, and management of chronic diseases.

SECTION 10.27.(b) The Department of Health and Human Services shall establish and direct a HIT management structure that is efficient and transparent and that is compatible with the Office of the National Health Coordinator for Information Technology (National Coordinator) governance mechanism. The HIT management structure shall be responsible for all of the following:

(1) Developing a State plan for implementing and ensuring compliance with national HIT standards, and for the most efficient, effective, and widespread adoption of HIT.

(2) Ensuring that (i) specific populations are effectively integrated into the State plan, including aging populations, populations requiring mental health services, and populations utilizing the public health system; and (ii) unserved and underserved populations receive priority consideration for HIT support.

(3) Identifying all HIT stakeholders and soliciting feedback and participation from each stakeholder in the development of the State plan.

(4) Ensuring that existing HIT capabilities are considered and incorporated into the State plan.

(5) Identifying and eliminating conflicting HIT efforts where necessary.

(6) Identifying available resources for the implementation, operation, and maintenance of health information technology, including, but not limited to, the ARRA, with emphasis on identifying resources and available opportunities for North Carolina institutions of higher learning.

(7) Ensuring that the appropriate State entities receive all the necessary information and support to successfully compete for funding included in the ARRA.
(8) Ensuring that potential State plan participants are aware of HIT policies and programs and the opportunity for improved health information technology.
(9) Monitoring HIT efforts and initiatives in other States and replicating successful efforts and initiatives in North Carolina.
(10) Monitoring the development of the National Coordinator's strategic plan and ensuring that all stakeholders are aware of and in compliance with its requirements.
(11) Monitoring the progress and recommendations of the HIT Policy and Standards Committees and ensuring that all stakeholders remain informed of the Committee's recommendations.
(12) Monitoring all studies and reports provided to the United States Congress and reporting to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the impact of report recommendations on State efforts to implement coordinated HIT.

SECTION 10.27.(c) Beginning October 1, 2009, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:

(1) Current status of federal HIT initiatives.
(2) Current status of State HIT efforts and initiatives among both public and private entities.
(3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.
(4) Department efforts to coordinate HIT initiatives within the State, and any obstacles or impediments to coordination.
(5) HIT research efforts being conducted within the State, and sources of funding for research efforts.
(6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.
(7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues.

HOSPITAL-ACQUIRED INFECTIONS

SECTION 10.28. The Department of Health and Human Services shall apply for federal funds that are available through P.L. 111-15, the American Recovery and Reinvestment Act, to develop and implement a mandatory statewide hospital-acquired infections surveillance and reporting system, as recommended by the Joint Study Committee on Hospital Infection Control and Disclosure.

MEN'S HEALTH

SECTION 10.29. The Department of Health and Human Services, Division of Public Health, shall use funds available to delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include (i) developing a strategic plan to improve health care services, (ii) build public heath awareness, and (iii) develop initiatives within existing programs.

FACILITATION OF ENROLLMENT AND REENROLLMENT OF ELIGIBLE CHILDREN IN MEDICAID AND NC HEALTH CHOICE

SECTION 10.30. The Department of Health and Human Services shall increase its efforts to simplify the eligibility determination and recertification process to facilitate the enrollment and reenrollment of eligible Medicaid and NC Health Choice individuals. The Department shall also:

(1) Explore various opportunities through public awareness campaigns and enlisting community organizations to alert families of the opportunities of Medicaid and NC Health Choice to provide preventive health care to their children; and

(2) Pursue opportunities in the federal Children's Health Insurance Program Reauthorization Act (CHIPRA) to enhance outreach efforts and enrollment for children in Medicaid and NC Health Choice. These enhancements include funding for outreach and enrollment activities and implementation of the "Express Lane" option that uses agencies that determine eligibility for TANF, IV-D SNAP, Head Start, and School Lunch programs to enroll children.

The Department shall also submit a Medicaid State Plan Amendment to take advantage of recent federal legislation (CHIPRA) allowing states to provide medical assistance to children and pregnant women who are lawfully residing in the United States.

NC HEALTH CHOICE TRANSITION

SECTION 10.31.(a) The Secretary of the Department of Health and Human Services shall develop and implement a plan for assuming administrative responsibility for the North Carolina Health Choice for Children program by transitioning all administrative oversight and claims processing activities from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Division of Medical Assistance. The transition of all administrative oversight and claims processing from the State Health Plan to the Division of Medical Assistance shall be completed not later than July 1, 2010. The Secretary shall report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days prior to effecting the transition of the responsibilities for the administration and processing of claims for benefits provided under the North Carolina Health Choice for Children program from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Department.

SECTION 10.31.(b) In consultation with the Department of Health and Human Services, Division of Medical Assistance, and other appropriate organizations, the Office of State Budget and Management (OSBM) shall conduct an independent analysis of the cost to determine appropriate staffing levels to manage and implement the transition of NC Health Choice from the State Health Plan to the Division to ensure that the transition of NC Health Choice occurs with minimal disruption and that the Division has adequate staffing and an organizational structure that fits with its existing structure. The Office of State Budget and Management shall report with staffing recommendations by March 1, 2010, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

NC HEALTH CHOICE/PROCEDURES FOR CHANGING MEDICAL POLICY

SECTION 10.32. Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-54.3. Procedures for changing medical policy.

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy applicable to the North Carolina Health Choice Program for Children, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:

a. Publish the proposed new or amended medical coverage policy on the Department's Web site;

b. Notify all North Carolina Health Choice Program for Children providers of the proposed, new, or amended policy; and

c. Upon request, provide persons copies of the proposed medical coverage policy.

(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.

(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:

a. Notify all North Carolina Health Choice Program for Children providers of the proposed policy;

b. Upon request, provide persons notice of amendments to the proposed policy; and

c. Accept additional oral or written comments during this 15-day period."

NC HEALTH CHOICE MEDICAL POLICY

SECTION 10.33. Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of NC Health Choice health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds one million dollars ($1,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding one million dollars ($1,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with a five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report

itemizing all medical policy changes with total requirements of less than one million dollars ($1,000,000).

NC HEALTH CHOICE ENROLLMENT

SECTION 10.34. The Department of Health and Human Services may, in the NC Health Choice Program for the 2009-2010 fiscal year, allow enrollment to grow by not more than 15,583 children.

NCHC FUNDS REDUCTION/CCNC

SECTION 10.35.(a) The last paragraph of G.S. 108A-70.21(b) reads as rewritten:

"**§ 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; purchase of extended coverage.**

...

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina (CCNC) and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid. The Department shall pay for these services only if sufficient information is available to the Department for utilization management of the services provided through CCNC."

SECTION 10.35.(b) The Department of Health and Human Services, Division of Medical Assistance, shall reduce or eliminate funding for per member/per month fees paid to Community Care of North Carolina (CCNC) if sufficient information is not available to the Department for utilization management of the provider services.

COMMUNITY CARE OF NORTH CAROLINA

SECTION 10.36.(a) Given the primary care case management foundation established by Community Care of North Carolina, the Department shall build upon that foundation to ensure quality care and cost control of CCNC by implementing the activities listed in subsection (b) of this section.

SECTION 10.36.(b) The Department shall contract with CCNC to manage the care of Medicaid recipients, through a per member, per month reimbursement. In the contract DHHS shall ensure that CCNC adheres to the following tenets, adapted from the National Committee of Quality Assurance's (NCQA) national measures for Medical Homes Models. The CCNC networks must demonstrate proficiency in:

(1) Written standards for patient access and patient communication;

(2) Use of data to show patients are meeting this standard;

(3) Adoption and implementation of evidenced-based guidelines for priority diseases and conditions as identified by DHHS;

(4) Active support, monitoring, follow-up, and documentation on patient self-management;

(5) Tracking system to test and identify abnormal results, and follow-up in a timely manner;

(6) Tracking referrals from and to other acute and long-term care facilities and providers, so as to provide continuous management of patient care;

(7) Measurement of clinical and/or service performance by physician or across a practice; and

(8) Reporting performance according to baseline data and performance measure established by the DHHS Independent Advisory Group across CCNC networks, practices, and physicians to achieve the maximum savings possible through the improvement in the quality of care.

SECTION 10.36.(c) By July 1, 2009, or as soon a possible thereafter, the Department shall establish an Independent Advisory Group (IAG) for the purpose of

developing targeted (i) baseline data, (ii) clinically acceptable performance measures that recognize nationally accredited treatment protocols, and (iii) patient, physician, and practice goals that improve quality of care, and realize necessary savings within Medicaid. The members of the Independent Advisory Group shall have demonstrated experience in actuarial analysis, health policy analysis, medical practice, hospital administration, or management of long-term chronic conditions. The Independent Advisory Group and the Department shall ensure the following:

(1) The IAG shall begin work immediately so that baseline data, clinically acceptable performance measures, and practice goals to improve quality and cost savings can be implemented no later than January 1, 2010.

(2) The Department shall prepare a report to the General Assembly on the baseline data, clinically acceptable performance measures, and practice goals adopted by the IAG, and the improved quality and cost savings expected as a result of their implementation. This report will be due January 31, 2010.

(3) The IAG shall establish baseline information and performance measures for the diseases and conditions listed in this subdivision, the focus of which shall be on Medicaid recipients who are children, adults, and among those who are aged, blind, or disabled. The diseases and conditions shall include:
   a. Asthma,
   b. Diabetes,
   c. Heart disease,
   d. Chronic Obstructive Pulmonary Disease,
   e. Mental illness,
   f. Substance abuse,
   g. Obesity, and
   h. High risk maternity care

(4) The baseline information, performance measures, and practice and physician goals developed for the continuing care of Medicaid recipients, who are also eligible for Medicare shall include attention to this population's:
   a. Increased primary care visit rate,
   b. Hospital admission rate,
   c. Hospital readmission rate,
   d. Emergency department visit rate,
   e. Mortality rate, and
   f. Prescription drug management, including:
      1. Number of prescriptions prescribed,
      2. Number of generic versus brand-name prescriptions, and
      3. Reconciliation of a patient's prescriptions between hospital, nursing facility, and primary care physician.

SECTION 10.36.(d) The Department shall conduct a Request for Proposal (RFP) process to solicit bids from qualified outside entities with proven experience in conducting actuarial and health care studies and evaluations to:

(1) Report, assess, and evaluate the CCNC networks proficiency in fulfilling the eight tenets described above,

(2) Report, assess, and evaluate the CCNC networks implementation and achievement of the baseline data, clinically acceptable performance measures, and practice goals to improve quality and cost savings established by the IAG, and

(3) Report on the Medicaid cost savings achieved by the CCNC networks during a 12-month period.

SECTION 10.36.(e) The contractor's report, information, and data shall be in a format that allows the Department to manipulate and assess the performance of CCNC as a whole and for its 14 networks individually. Not later than November 1, 2010, the Department shall provide to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division copies of the contractor's report for CCNC activities conduced during the 2009-2010 fiscal year.

SECTION 10.36.(f) Under the Children's Health Insurance Program Reauthorization Act, P.L. 111-1, the U.S. Secretary of Health and Human Services is directed to:

(1) Develop a standardized reporting format that encourages states to report information regarding the quality of pediatric health care delivered through the State Children's Health Insurance Program, and

(2) Establish a set of pediatric quality measures not later than January 1, 2011.

Given this directive, the IAG shall develop targeted baseline data, clinically acceptable performance measures that recognize nationally accredited treatment protocols, and patient, physician, and practice goals that improve quality of care, in order to realize necessary savings within North Carolina's Health Choice program. The IAG shall begin this effort so that baseline data, clinically acceptable performance measures, and practice goals to improve quality and cost savings can be implemented by July 1, 2010, the date on which the Department of Health and Human Services' Division of Medical Assistance assumes management responsibility of the Health Choice program from the State Health Plan.

COMMUNITY HEALTH CENTER CHANGES

SECTION 10.37. Of the funds appropriated in this act for Community Health Grants, the sum of seven million eight hundred sixty thousand dollars ($7,860,000) in recurring funds for the 2009-2010 fiscal year and the sum of seven million eight hundred sixty thousand dollars ($7,860,000) for the 2010-2011 fiscal year. These funds shall be allocated as grants on a competitive basis to rural health centers, free clinics, public health departments, school-based health centers, qualified health centers, and other nonprofit organizations that provide primary care and preventive health services to uninsured and indigent persons. Community health centers that have received federal funds through the American Recovery and Reinvestment Act to provide new, expanded, or continuing health services are not eligible to receive funds under this section.

LIABILITY INSURANCE

SECTION 10.38.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.38.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know

constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.38.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

FUNDS FOR JIM "CATFISH" HUNTER CHAPTER OF THE ALS ASSOCIATION

SECTION 10.39. Funds appropriated in this act for the Jim "Catfish" Hunter Chapter of the ALS Association shall be expended only for services provided within North Carolina.

DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES

SECTION 10.40. Subject to rules adopted by the State Controller, an employee of the Department of Health and Human Services may authorize, in writing, the periodic deduction from the employee's salary or wages for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department.

MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FUNDS/IMPLEMENTATION OF MMIS

SECTION 10.41.(a) Of the funds appropriated in this act to the Department of Health and Human Services (Department) from prior year earned revenues received by the Department for the Medicaid Management Information System (MMIS), the sum of eleven million seventy-one thousand five hundred two dollars ($11,071,502) for fiscal year 2009-2010 and the sum of nine million eight hundred twenty thousand six hundred eighty-nine dollars ($9,820,689) for fiscal year 2010-2011 shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the procurement, design, development, and implementation of the new MMIS system and to fund the central management of the project. In the event that the Department does not receive prior year earned revenues in these amounts, the Department is authorized with approval of the Office of State Budget and Management to use other over-realized receipts to the level appropriated in this act for MMIS expenditures.

SECTION 10.41.(b) The Department shall make full development of the replacement MMIS a top priority. During the development and implementation of MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

(1) Receiving and tracking premium or other payments required by law.

(2) Compatibility with the administration of the Health Information System.

The Department shall make every effort to expedite the implementation of the enhancements. The Office of Information Technology Services shall work in cooperation with the Department to ensure the timely and effective implementation of the MMIS and enhancements. The contract between the Department and the contract vendor shall contain an explicit provision requiring that the MMIS have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the

Cost of Services under the CAP-MR/DD, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract. Any contract between the Department and a vendor for the MMIS that does not contain the explicit provision required under this subsection is void on its face. Notwithstanding any other provision of law to the contrary, the Secretary of the Department does not have the authority to sign a contract for the MMIS if the contract does not contain the explicit provision required under this section.

SECTION 10.41.(c) Notwithstanding G.S. 114-2.3, the Department shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with MMIS. The counsel engaged by the Department shall review the MMIS contract between the Department and the vendor to ensure that the requirements of subsection (a) of this section are met in their entirety.

SECTION 10.41.(d) The Department shall develop a comprehensive schedule for the development and implementation of the MMIS that fully incorporates federal and State project management and review requirements. The Department shall ensure that the schedule is as accurate as possible. Any changes to the design, development, and implementation schedule shall be reported as part of the Department's quarterly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. Any change to key milestones in either schedule shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division with a full explanation of the reason for the change.

SECTION 10.41.(e) Beginning July 1, 2009, the Department shall make quarterly reports on changes in the functionality and projected costs of the MMIS. The first quarterly submission shall contain a final report on the contract award to include total costs and functionality of the MMIS. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. A copy of the final report on the contract award shall also be submitted to the Joint Legislative Commission on Governmental Operations.

SECTION 10.41.(f) Upon initiation of the NC MMIS Program Reporting and Analytics Project and the Division of Health Services Regulation Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reporting identified in subsections (d) and (e) of this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the North Carolina Teachers' and State Employees' Health Plan. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics contract. The Reporting and Analytics solution must be completed simultaneously with the replacement MMIS.

NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST) FUNDS

SECTION 10.42. The sum of eighteen million three hundred twenty-seven thousand four hundred seventy-eight dollars ($18,327,478) is appropriated from Budget Code 24441, Fund Code 2006, to the Department of Health and Human Services, Division of Central

Management Services, for the 2009-2010 fiscal year. These funds shall be used for the development and implementation of North Carolina Families Accessing Services Through Technology (NC FAST). Funds will be placed in the Department's information technology budget code and will match federal funds for project implementation.

PROGRAM ON PREVENTION OF ABUSE AND NEGLECT

SECTION 10.43.(a) The Children's Trust Fund, a program on prevention of abuse and neglect, is transferred from the Department of Public Instruction to the Division of Social Services in the Department of Health and Human Services, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer.

SECTION 10.43.(b) G.S. 7B-1301 reads as rewritten:

"**§ 7B-1301. Program on Prevention of Abuse and Neglect.**

(a) The ~~State Board of Education~~ Department of Health and Human Services, through the ~~Department of Public Instruction~~ Division of Social Services, shall implement the Program on Prevention of Abuse and Neglect. The ~~Department of Public Instruction~~ Division of Social Services ~~subject to the approval of the State Board of Education,~~ shall provide the staff and support services for implementing this program.

(b) In order to carry out the purposes of this Article:

(1) The ~~Department of Public Instruction~~ Division of Social Services shall review applications and make recommendations ~~to the State Board of Education~~ concerning the awarding of contracts under this Article.

(2) The ~~State Board of Education~~ Division of Social Services shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of abuse and neglect. Every contract entered into by the ~~State Board of Education~~ Division of Social Services shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the ~~Department of Public Instruction~~ Division of Social Services for funding under this Article shall include assurances that the proposal has been forwarded to the local department of social services for comment so that the ~~Department of Public Instruction~~ Division of Social Services may consider coordination and duplication of effort on the local level as criteria in making recommendations ~~to the State Board of Education~~.

(3) The ~~State Board of Education~~ Division of Social Services, with the assistance of the Department of ~~Public Instruction~~ Health and Human Services, shall develop appropriate guidelines and criteria for awarding contracts under this Article. These criteria shall include, but are not limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded under this Article; demonstrated effectiveness of the proposed strategy or program for preventing abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.

(4) The ~~State Board of Education~~ Division of Social Services, with the assistance of the Department of ~~Public Instruction~~ Health and Human

Services, shall develop guidelines for regular monitoring of contracts awarded under this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.

(5) The ~~State Board of Education~~ Division of Social Services shall develop a State plan for the prevention of abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) To assist in implementing this Article, the ~~State Board of Education~~ Division of Social Services may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All monies received by the ~~State Board of Education~~ Division of Social Services from contributions, grants, or gifts and not through appropriation by the General Assembly shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the ~~State Board of Education or that Board's duly authorized representative~~ Department of Health and Human Services. In order to maintain an effective expenditure and revenue control, the funds are subject in all respects to State law and regulations, but no appropriation is required to permit expenditure of the funds.

(d) Programs contracted for under this Article are intended to prevent abuse and neglect of juveniles. Abuse and neglect prevention programs are defined to be those programs and services which impact on juveniles and families before any substantiated incident of abuse or neglect has occurred. These programs may include, but are not limited to:

(1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and

(2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(e) No more than twenty percent (20%) of each year's total awards may be utilized for funding State-level programs to coordinate community-based programs."

SECTION 10.43.(c) G.S. 7B-1302 reads as rewritten:

"**§ 7B-1302. Children's Trust Fund.**

(a) There is established a fund to be known as the "Children's Trust Fund," in the Department of State Treasurer, which shall be funded by a portion of the marriage license fee under G.S. 161-11.1 and a portion of the special license plate fee under G.S. 20-81.12. The money in the Fund shall be used by the ~~State Board of Education~~ Division of Social Services to fund abuse and neglect prevention programs so authorized by this Article.

(b) The Department of ~~Public Instruction~~ Health and Human Services shall report annually on revenues and expenditures of the Children's Trust Fund to the Joint Legislative Commission on Governmental Operations."

INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS

SECTION 10.44.(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

SECTION 10.44.(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

(1) An established follow-up system with a minimum of six months of follow-up services.
(2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.
(3) Cost-benefit data.
(4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.
(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
(6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

SECTION 10.44.(c) The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

SECTION 10.44.(d) The Department shall publish an annual report on the Intensive Family Preservation Services Program, including the information and data under subdivisions (b)(2) through (b)(6) of this section.

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS

SECTION 10.45.(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $475.00 per child per month for children aged birth through 5;
(2) $581.00 per child per month for children aged 6 through 12; and
(3) $634.00 per child per month for children aged 13 through 18.

SECTION 10.45.(b) The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

(1) $475.00 per child per month for children aged birth through 5;
(2) $581.00 per child per month for children aged 6 through 12; and
(3) $634.00 per child per month for children aged 13 through 18.

SECTION 10.45.(c) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

SECTION 10.45.(d) The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

(1) $800.00 per child per month with indeterminate HIV status;
(2) $1,000 per child per month confirmed HIV-infected, asymptomatic;
(3) $1,200 per child per month confirmed HIV-infected, symptomatic; and
(4) $1,600 per child per month terminally ill with complex care needs.

SECTION 10.45.(e) The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child placing agency in a family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent (50%) of the nonfederal share of the cost for a child currently in a

family foster home or residential child care facility until the child leaves foster care or experiences a placement change.

SECTION 10.45.(f) The Department of Health and Human Services may establish foster care and adoption assistance rates based on the United States Department of Agriculture (USDA) "Expenditures on Children by Families" index subject to State appropriations for each fiscal year.

CHILD SUPPORT PROGRAM/ENHANCED STANDARDS

SECTION 10.46. G.S. 110-129.1(a) is amended by adding the following new subdivision to read:

"(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

...

(8) Implement and maintain performance standards for each of the State and county child support enforcement offices across the State. The performance standards shall include the following:

a. Cost per collections.
b. Consumer satisfaction.
c. Paternity establishments.
d. Administrative costs.
e. Orders established.
f. Collections on arrearages.
g. Location of absent parents.
h. Other related performance measures.

The Department shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department shall publish an annual performance report that includes the statewide and local office performance of each child support office."

CHILD CARING INSTITUTIONS

SECTION 10.47. Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements.

SPECIAL CHILDREN ADOPTION FUND

SECTION 10.48. Part 4 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-50.2. Special Children Adoption Fund.**

(a) Funds appropriated by the General Assembly in the Current Operations Appropriations Act shall be used to support the Special Children Adoption Fund. The Division of Social Services of the Department of Health and Human Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services. No local

match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

(b) Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31 of each State fiscal year, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

(c) The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to ensure that the funds are used in accordance with the guidelines established in subsection (a) of this section. The Division of Social Services shall implement strategies to ensure that funds that have historically reverted for this program are used for the intended purpose."

LIMITATION ON STATE ABORTION FUND

SECTION 10.49. The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2009-2010 and 2010-2011 fiscal years.

CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM/USE OF ESCHEAT FUND

SECTION 10.50.(a) There is appropriated from the Escheat Fund income to the Department of Health and Human Services the sum of three million one hundred sixty-eight thousand two hundred fifty dollars ($3,168,250) for the 2009-2010 fiscal year. These funds shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 1087ll. The Department shall collaborate with the State Education Assistance Authority to develop policies and procedures for the distribution of these funds.

If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f).

Funds appropriated by this section shall be allocated by the State Education Assistance Authority.

The purpose for which funds are appropriated under this section is in addition to other purposes for which Escheat Fund income is distributed under G.S. 116B-7 and shall not be construed to otherwise affect the distribution of funds under G.S. 116B-7.

SECTION 10.50.(b) Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of fifty thousand dollars ($50,000) for the 2009-2010 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2010-2011 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA). The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

SECTION 10.50.(c) Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of five hundred thousand dollars ($500,000) for the 2009-2010 fiscal year and the sum of five hundred thousand dollars ($500,000) for the 2010-2011 fiscal year shall be used to contract with an entity to develop and

administer the child welfare postsecondary support program described under subsection (a) of this section, which development and administration shall include the performance of case management services.

SECTION 10.50.(d) Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State.

SECTION 10.50.(e) It is the intent of the General Assembly that for the 2010-2011 fiscal year and beyond, support for the child welfare postsecondary support program shall be appropriated from the General Fund.

TANF BENEFIT IMPLEMENTATION

SECTION 10.51.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2009-2011," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2009, through September 30, 2011. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2009 General Assembly.

SECTION 10.51.(b) The counties approved as Electing Counties in North Carolina's Temporary Assistance for Needy Families State Plan FY 2009-2011, as approved by this section are: Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, and Wilson.

SECTION 10.51.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2009 through 2011, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2009.

EVALUATION OF CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS OF COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.52.(a) The Department of Health and Human Services, Division of Social Services, shall study the consolidation of administrative functions among county departments of social services.

SECTION 10.52.(b) The Department shall collaborate with counties to identify opportunities for functional consolidation, affected administrative functions, estimated cost savings, and requisite policy changes, if applicable, to accommodate the consolidation. The Department shall not consolidate administrative functions except as directed by an act of the General Assembly.

SECTION 10.52.(c) The Department shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Education/Higher Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division by April 1, 2010.

ENHANCE MARKETING OF PUBLIC ASSISTANCE AVAILABILITY

SECTION 10.53. To ensure that working families are aware of the availability of assistance from Food and Nutrition Services programs and Medical Assistance, the Office of Economic Opportunity, Division of Social Services, and county departments of social services shall enhance the marketing of available services, including Food and Nutrition Services, and Medical Assistance, for prospective recipients.

EVALUATION AND IMPLEMENTATION OF COST-EFFECTIVE EDUCATION FOR STUDENTS WHO ARE DEAF OR HEARING-IMPAIRED

SECTION 10.54.(a) The Department of Health and Human Services, in collaboration with the Department of Public Instruction and the Free Appropriate Public Education Task Force (Task Force), shall develop a plan to reduce the costs of residential instruction for students who are deaf or hearing-impaired. The Plan shall include:

(1) The transitioning, as appropriate, of students served by the Western North Carolina School for the Deaf and Eastern North Carolina School for the Deaf to local education agencies (LEAs), and the identification of LEA resource requirements for the provision of appropriate instruction; and

(2) Additional instructional alternatives.

SECTION 10.54.(b) The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall report their findings and reduction plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Education/Higher Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division no later than April 1, 2010.

NON-MEDICAID REIMBURSEMENT CHANGES

SECTION 10.55. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no higher than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of this section, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

DSB Medical Eye Care	125% FPL
DSB Independent Living <55	125% FPL
DSB Independent Living 55>	200% FPL
DSB Vocational Rehabilitation	125% FPL
DVR Independent Living	125% FPL
DVR Vocational Rehabilitation	125% FPL

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

DIVISION OF SERVICES FOR THE DEAF AND HARD OF HEARING/FUNDS TRANSFER AND APPROPRIATION

SECTION 10.56.(a) Notwithstanding G.S. 62-157, on July 1, 2009, the State Controller shall transfer five million dollars ($5,000,000) from the Special Account for Telecommunications Relay Service to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

SECTION 10.56.(b) Of funds appropriated with Budget Code 67425, Fund Code 6725, and Fund Code 6726 the sum of one million five hundred thousand dollars ($1,500,000) shall be transferred to Budget Code 24410 for Information Technology Projects in the Department of Health and Human Services, Division of Central Management and Support for the Data Collection and Case Management Systems initiative. This initiative shall also be supported with federal funds from the Rehabilitation Act. Funds made available under this section shall be used for the development and implementation of a data collection and case management information system to replace the current system in use by the Division of Services for the Blind, Division of Services for the Deaf and Hard of Hearing, and the Division of Vocational Rehabilitation Services. The Department shall use federal funds first and then State funds, only as necessary, from Budget Code 67425. In accordance with G.S. 143C-1-2(b), funds appropriated for this project shall not revert to the fund from which they came until the project is complete.

SECTION 10.56.(c) If, upon the transfer and appropriation of funds under this section, available funds are insufficient to support recurring services the Division of Services for the Deaf and Hard of Hearing is authorized to provide, the Department of Health and Human Services, shall, pursuant to G.S. 62-157, file a petition with the North Carolina Utilities Commission to reset the surcharge provided for in G.S. 62-157 to maintain a reasonable margin for reserve for the operation of the statewide telecommunications relay service.

STATE-COUNTY SPECIAL ASSISTANCE

SECTION 10.57.(a) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars ($1,231) per month per resident.

SECTION 10.57.(b) Effective January 1, 2009, the maximum monthly rate for residents in adult care home facilities shall be one thousand two hundred seven dollars ($1,207) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.57.(c) The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.57.(d) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be

adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.57.(e) The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

MEDICAID

SECTION 10.58.(a) Use of Funds, Allocation of Costs, Other Authorizations.

(1) Use of funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.

(2) Allocation of nonfederal cost of Medicaid. – The State shall pay one hundred percent (100%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay one hundred percent (100%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

(3) Use of funds for development and acquisition of equipment and software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software and related operational costs through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed funds allocated for the 2009-2010 and 2010-2011 fiscal years for the new contract for the fiscal agent for the Medicaid Management Information System.

(4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee for Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal

Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

SECTION 10.58.(b) Policy.

(1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

(2) Cost containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(3) Fraud and abuse. – The Division of Medical Assistance, Department of Health and Human Services, shall provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(4) Medical policy. – Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with the five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

SECTION 10.58.(c) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

(1) Medicaid and Work First Family Assistance.

a. Income eligibility standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

	CATEGORICALLY	MEDICALLY

	NEEDY – WFFA*		NEEDY
Family Size	Standard of Need & Families and Families and Children Income Level	WFFA* Payment Level	Children & AA, AB, AD* Income Level
1	$4,344	$2,172	$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

b. The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need. These standards may be changed with the approval of the Director of the Budget.

c. The Department of Health and Human Services shall provide Medicaid coverage to 19- and 20-year-olds in accordance with federal rules and regulations.

d. Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

(2) For the following Medicaid eligibility classifications for which the federal poverty guidelines are used as income limits for eligibility determinations, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to the following:

a. All elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines.

b. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources. Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy.

c. Infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

d. Children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.

e. Children aged six through 18 with family incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines and without regard to resources.

f. Family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources.

g. Workers with disabilities described in G.S. 108A-54.1 with unearned income equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines.

(3) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

(4) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to "independent foster care adolescents," ages 18, 19, and 20, as defined in section 1905(w)(1) of the Social Security Act [42 U.S.C. § 1396d(w)(1)], without regard to the adolescent's assets, resources, or income levels.

(5) ICF and ICF/MR work incentive allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services, who are regularly engaged in work activities as part of their developmental plan, and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	**Monthly Incentive Allowance**
\$1.00 to \$100.99	Up to \$50.00
\$101.00 to \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00

(6) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to women who need treatment for breast or cervical cancer and who are defined in 42 U.S.C. § 1396a.(a)(10)(A)(ii)(XVIII).

SECTION 10.58.(d) Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

(1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.

(2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

(3) Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State

facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.

(4) Physicians, certified nurse midwife services, certified registered nurse anesthetists, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services.

(5) Community Alternative Program, EPSDT Screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.

(6) Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.

(7) Hearing aids. – Wholesale cost plus dispensing fee to provider.

(8) Rural health clinical services. – Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.

(9) Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.

(10) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.

(11) Ambulatory surgical centers.

(12) Private duty nursing, clinic services, prepaid health plans.

(13) Intermediate care facilities for the mentally retarded.

(14) Chiropractors, podiatrists, optometrists, dentists.

(15) Limitations on dental coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

(16) Medicare Buy-In. – Social Security Administration premium.

(17) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

(18) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

(19) Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.

(20) Physical therapy, occupational therapy, and speech therapy. – Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.

(21) Personal care services. – Payment in accordance with the State Plan developed by the Department of Health and Human Services.

(22) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

(23) Hospice.

(24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

(25) Health insurance premiums.

(26) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.

(27) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

(28) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary."

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an

order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of HIV/AIDS.

(29) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

b. For children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed

marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance.

SECTION 10.58.(e) Provider Performance Bonds and Visits. –

(1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

a. The provider fails to demonstrate financial viability,

b. The Department determines there is significant potential for fraud and abuse,

c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

(1a) The Department may waive or limit the requirements of this paragraph for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

a. The provider's or provider class's dollar amount of monthly billings to Medicaid.

b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.

c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.

d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.

e. The need to ensure adequate access to care.

In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

(2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: hospital outpatient providers, physicians, nurse practitioners, nurse midwives, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life threatening disorder or as an alternative to more costly care options.

SECTION 10.58.(f) Exceptions and Limitations on Services; Authorization of Co-Payments and Other Services. –

(1) Exceptions to service limitations, eligibility requirements, and payments. – Service limitations, eligibility requirements, and payment bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(2) Co-payment for Medicaid services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation.

SECTION 10.58.(g) Rules, Reports, and Other Matters. –

(1) Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules

requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

(2) Changes to Medicaid program; reports. – The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subdivision (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee.

DMA CONTRACT SHORTFALL

SECTION 10.59.(a) Budget approval is required by the Office of State Budget and Management prior to the Department of Health and Human Services, Division of Medical Assistance, entering into any new contract or the renewal or amendment of existing contracts that exceed the current contract amounts.

SECTION 10.59.(b) The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division.

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.60.(a) The Department of Health and Human Services may use up to five million dollars ($5,000,000) in the 2009-2010 fiscal year and up to five million dollars ($5,000,000) in the 2010-2011 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services, hiring additional staff, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs.

Medicaid cost containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost containment activity and documentation of the amount of savings expected to be realized from the cost containment activity.

SECTION 10.60.(b) The Department shall provide a copy of proposals for expenditures under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human

Services, and the Fiscal Research Division. On or before April 1, 2010, the Department shall report on the methods used to achieve savings and the amount saved by these methods. If the Department deploys fraud detection software, a report on the software implementation and fraud detection results shall be submitted to the House and Senate Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division of the General Assembly not later than April 1, 2010.

MEDICAID SPECIAL FUND TRANSFER

SECTION 10.61. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars ($43,000,000) for the 2009-2010 fiscal year and the sum of forty-three million dollars ($43,000,000) for the 2010-2011 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2009-2010 fiscal year for this purpose.

EXTEND IMPLEMENTATION OF COMMUNITY ALTERNATIVES PROGRAMS REIMBURSEMENT SYSTEM

SECTION 10.62. Full implementation for the Community Alternatives Programs reimbursement system shall be not later than 12 months after the date on which the replacement Medicaid Management Information System becomes operational and stabilized.

DMA REDUCTION OPTION FLEXIBILITY

SECTION 10.63.(a) The Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with provider groups and other interested parties, review ways to improve health care quality, ensure appropriate use of services, improve clinical outcomes, and reduce the cost of care for beneficiaries with medically complex conditions as well as to strengthen fraud and abuse oversight efforts. In the review the Division shall explore all viable options to improve the quality of care and to control health care costs, including, but not limited to, the following options:

(1) Increasing utilization review and management practices to improve value and quality internally or with private vendors with proven records in other states' Medicaid programs;

(2) Expanding and enhancing programs that increase Aged, Blind, and Disabled (ABD) Medicaid eligibles participation within CCNC's medical home efforts and/or encourage single physician care management;

(3) Developing and enhancing incentives for increased provider participation in CCNC;

(4) Requiring inpatient and outpatient care management for select Medicaid enrollees;

(5) Adopting specific network and physician performance and compliance standards within the Community Care of North Carolina (CCNC) that are tied to any enhanced reimbursement structure;

(6) Initiative to address State nursing home payment methods and to offer incentives in payment methods to achieve certain quality and cost goals;

(7) Initiative to control drug cost and utilization as well as to maximize collection of supplemental rebates;

(8) Increasing third-party recovery and/or cost avoidance efforts, including enhancing Medicaid fraud and abuse oversight initiatives;

(9) Reducing or eliminating the occurrence of hospital "never events" – nonreimbursement for serious and costly errors in the provision of health care services that should never happen.

SECTION 10.63.(b) In order to consider all proposals prior to preparing adjustments to the fiscal year 2010-2011 budget, the Division shall report its recommendations on methods to better manage and save Medicaid costs to the Governor's Office by January 15, 2010. All proposals shall include the steps necessary for implementation, including time frames, and the amount of projected savings over a five-year period.

ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE

SECTION 10.64.(a) Receivables reserved at the end of the 2009-2010 and 2010-2011 fiscal years shall, when received, be accounted for as nontax revenue for each of those fiscal years.

SECTION 10.64.(b) For the 2009-2010 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred twenty-four million nine hundred ninety-four thousand nine hundred fifty-four dollars ($124,994,954) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2010-2011 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred million dollars ($100,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. Any revenue collected in each of the fiscal years in excess of one of the amounts listed above shall be reserved by the State Treasurer in the Department's account for future appropriations by the General Assembly. These deposits shall represent the return of General Fund appropriations provided to the Department of Health and Human Services to provide indigent care services at State-owned and operated mental hospitals. The treatment of any revenue derived from federal programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Volume 2, Part 225.

FAMILIES PAY PART OF THE COST OF SERVICES UNDER THE CAP-MR/DD PROGRAM AND THE CAP-CHILDREN'S PROGRAM BASED ON FAMILY INCOME

SECTION 10.65.(a) Subject to approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Community Alternatives Program (CAP) stakeholders, develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit to share in the costs of their child's Medicaid expenses under the CAP-MR/DD (Community Alternatives Program for Mental Retardation and Developmentally Disabled) and the CAP-C (Community Alternatives Program for Children). The cost-sharing amounts shall be based on a sliding scale of family income and shall take into account the impact on families with more than one child in the CAP programs. In developing the schedule, the Department shall also take into consideration how other states have implemented cost-sharing in their CAP programs. The Division of Medical Assistance may establish monthly deductibles as a means of implementing this cost-sharing. The Department shall provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

SECTION 10.65.(b) The Division of Medical Assistance shall also, in collaboration with the Controller's Office of the Department of Health and Human Services, the

Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, develop business rules, program policies and procedures, and define relevant technical requirements.

SECTION 10.65.(c) Prior to seeking approval from CMS, but not later than October 1, 2009, the Department shall report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, and to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include a summary of comments the Department has received at the public hearing, business rules, policies and procedures, and technical requirements of the initiative and shall also indicate any barriers to implementing the cost-sharing.

PREFERRED DRUG LIST PROGRAM

SECTION 10.66.(a) In the event insufficient savings are realized from enhancing the utilization management of the Prescription Advantage List, increasing the utilization of generic drugs in place of brand-name drugs and increasing rebate collections on generic drugs, the Department of Health and Human Services shall establish and implement a preferred drug list program under the Division of Medical Assistance. The Department shall submit a medical assistance State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services to implement the program.

SECTION 10.66.(b) The pharmaceutical and therapeutics committee of the Physician's Advisory Group (PAG) shall provide ongoing review of the preferred drug list. Members of the committee shall submit conflict of interest disclosure statements to the Department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

SECTION 10.66.(c) The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including:

(1) Guidelines for the presentation and review of drugs for inclusion on the preferred drug list,

(2) The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness,

(3) An appeals process for the resolution of disputes, and

(4) Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall: (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

SECTION 10.66.(d) This section becomes effective if the Department cannot demonstrate by June 1, 2010, that twenty million seven hundred ninety-one thousand two hundred sixty-four dollars ($20,791,264) in prescription drug savings have been realized by employing the methods outlined in subsection (a) of this section.

MEDICAID APPEALS/FUNDS DO NOT REVERT

SECTION 10.67. Funds transferred from the Department of Health and Human Services to the Office of Administrative Hearings in the 2008-2009 fiscal year for mediation services shall not revert to the General Fund on June 30, 2009, but shall remain in the Office of Administrative Hearings for the purposes for which the funds were transferred.

CLARIFYING CHANGES TO STATE MEDICAID RESPONSIBILITIES

SECTION 10.68. Consistent with Sections 31.16.1(c) and (d) of S.L. 2007-323 that require the State to assume responsibility for the nonfederal share of the costs of medical services provided under the Medicaid Program starting June 1, 2009, the counties shall neither bear any responsibility for settlement payments to providers nor refunds of expenditures for program service claims paid on or before June 1, 2009. Counties will continue to participate in their share of administrative costs.

CO-PAYMENTS FOR TICKET TO WORK

SECTION 10.69. G.S. 108A-54.1(d) reads as rewritten:

"§ 108A-54.1. Medicaid buy-in for workers with disabilities.

...

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars ($50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the ~~North Carolina Health Choice Program.~~ Medical Assistance Program."

MEDICAID FALSE CLAIMS

SECTION 10.70.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance and or its fiscal agent."

SECTION 10.70.(b) G.S. 108A-70.12(a) reads as rewritten:

"§ 108A-70.12. Liability for certain acts; damages; effect of repayment.

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program ~~to:~~to do any of the following:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or ~~approval; or~~ approval.

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program.

(3) Conspire to defraud the Medical Assistance Program by obtaining a false or fraudulent claim allowed or paid.

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program. Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 10.70.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider."

SECTION 10.70.(d) Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"§ 108A-70.17. Civil action filed by private persons.

(a) A person may initiate a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed prior to service of the complaint upon the defendant under subsection (c) of this section only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information. The State may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The time period to respond to any complaint filed under this section shall commence 21 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall either proceed with the action, in which case the action shall be conducted by the State, or notify the court that it declines to take over the action, in which case the person initiating the action shall have the right to prosecute the action.

(e) When a person initiates an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action. If another action is filed based on the facts underlying the pending action while the complaint is sealed under subsections (b) and (c) of this section, the court may consolidate the actions or dismiss the subsequent action.

"§ 108A-70.17A. Rights of private plaintiff and State.

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by any act of the person initiating the action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(d) If the State proceeds with the action, the court may, in its discretion, impose limitations on the person's participation in the litigation as set forth in subsection (e) of this section. Such limitations must be imposed after any of the following:

(1) A showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment.

(2) A showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense.

(e) Limitations on participation of the person initiating the action shall include all of the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of such witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Other limits on the participation by the person initiating the action in the litigation as the court deems appropriate.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person initiating the action proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or prosecution of the criminal or civil matter.

(h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. Any finding of fact or conclusion of law made in the alternate proceeding that has become final shall be conclusive on all parties to an action under this Part. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal by a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusions are not subject to judicial review.

"**§ 108A-70.17B. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement

of the claim, if any, depending upon the extent to which the person substantially contributed to the prosecution of the action. The plaintiff's share in the proceeds of the action or settlement is administrative costs of the action. A share of the proceeds of an action or settlement of the claim shall not be awarded to the person initiating the action in State court under this Part if the person has received or may receive a share of the proceeds or settlement of an action or claim on the same facts brought in federal court. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person initiating the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may reduce the award under this subsection to such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation.

(b) If the State does not proceed with an action, the person initiating the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages, if awarded. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds.

(c) Notwithstanding subsections (a) and (b) of this section, if the person initiating the action is a person who primarily planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, that person shall be dismissed as a qui tam plaintiff and shall not receive any share of the proceeds of the action. If the person initiating the action is convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person initiating the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under this Part based on information discovered by a present or former employee of the State or a political subdivision of the State during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State or political subdivision failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under this Part that is based upon allegations or transactions that are the subject of a criminal action, civil action, or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under this Part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person initiating the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Part that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under this Part.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

"§ 108A-70.17D. Procedure; statute of limitations.

(a) A civil action under this Part may not be brought after the later of either of the following:

(1) More than six years after the date on which the violation is committed.

(2) More than three years after the date when facts material to the right of the action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances.

(b) If the civil action is brought under subdivision (a)(2) of this section, it may not be brought more than 10 years after the date on which the violation is committed."

SECTION 10.70.(e) G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~ Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under ~~G.S. 108A-70.12,~~ G.S. 108A-70.12, or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under ~~G.S. 108A-70.12,~~ G.S. 108A-70.12, or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 10.70.(f) Provided that the Medicaid False Claims State legislation is adopted, and the State legislation meets federal Center for Medicare and Medicaid Services criteria to receive ten percent (10%) bonuses subject to the False Claims Act, the Department of Health and Human Services, Division of Medical Assistance, shall transfer three hundred fifty-two thousand one hundred thirty-six dollars ($352,136) in fiscal year 2010-2011, and each year thereafter, to fund five permanent staff positions at the Attorney General's Office necessary to implement the Medicaid False Claims Act.

SECTION 10.70.(g) Subsection (b) of this section becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this section becomes effective July 1, 2009, and applies to civil actions that accrue on or after that date.

PROVIDER RATES

SECTION 10.71. The Department of Health and Human Services shall freeze rates for fiscal year 2009-2010 for most Medicaid providers at the level authorized in fiscal year 2008-2009. The rate freeze applies to all Medicaid private and public providers with the following exceptions: federally qualified health clinics, rural health centers, State institutions, outpatient hospital, pharmacy, and the noninflationary components of the case-mix reimbursement system for nursing facilities. Medicaid rates predicated upon Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required. Inflationary increases for Medicaid providers paying provider fees (private ICF-MRs and nursing facilities) can occur if the State share of the increases can be funded with provider fees.

MEDICAID WAIVER FOR LOW-INCOME PERSONS WITH HIV

SECTION 10.72. The Department of Health and Human Services, Division of Medical Assistance, shall study whether to apply to the Centers for Medicare and Medicaid Services (CMS) for a 1115 waiver to permit individuals who test positive for HIV and have incomes at or below two hundred percent (200%) of the federal poverty level to access Medicaid services. The study shall determine the number of people who may be eligible, and the financial, programmatic, and technical impact of the waiver. The Department shall report on the results of its study of the waiver to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than December 31, 2009.

MAINTAIN MEDICAID ELIGIBILITY

SECTION 10.73. The Department of Health and Human Services, Division of Medical Assistance, shall study policies that will prevent a Medicaid recipient from losing Medicaid eligibility when the annual Social Security and Railroad Retirement Cost of Living Adjustments (COLAs) and the annual Federal Poverty Level adjustment cause a Medicaid recipient to become income-ineligible for Medicaid. The policies shall apply only in cases where Medicaid income eligibility is affected only by Social Security and Railroad Retirement COLAs and Federal Poverty Level adjustments and shall not render a Medicaid recipient eligible if all other eligibility requirements are not met. The Department shall report the results of the study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before December 31, 2009. The Department shall also study policies that allow individuals who are at or marginally above Medicaid income limits to buy-in to Medicaid coverage on a sliding fee scale.

REDUCE INFANT MORTALITY AND PRETERM BIRTHS

SECTION 10.74.(a) The Department of Health and Human Services, Division of Medical Assistance, shall seek a Medicaid 1115 waiver or implement other available Medicaid options to provide interconceptional coverage to low-income women with incomes below one hundred eighty-five percent (185%) of the federal poverty guidelines who have given birth to a high-risk infant. A high-risk infant is defined as weighing less than 1500 grams, is born less than 34 weeks gestation, is born with a congenital anomaly, or who has died within the first 28 days of life.

SECTION 10.74.(b) Interconceptional care shall be limited to two years following the birth of a high-risk infant, or until a subsequent birth, whichever comes first.

SECTION 10.74.(c) The Division is authorized to develop a benefit package to improve interconceptional care to decrease poor birth outcomes in subsequent pregnancies.

SECTION 10.74.(d) The Division shall provide estimates of the cost savings from improved birth outcomes that will offset the cost of providing Medicaid coverage to this targeted population. The Division shall report the status of the waiver to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before October 1, 2009. The Division shall not implement the waiver unless authorized by an act of the General Assembly.

NC NOVA

SECTION 10.75. The Department of Health and Human Services, Division of Health Services Regulation, may use up to eighty-eight thousand dollars ($88,000) for fiscal year 2009-2010 and ninety-three thousand seven hundred dollars ($93,700) for fiscal year 2010-2011 of existing resources to continue the NC New Organizational Vision Award

certification program. The Division shall use federal civil monetary penalty receipts as a source of support for this initiative, when appropriate.

DHSR LICENSE FEE INCREASES

SECTION 10.76.(a) G.S. 131D-2(b) reads as rewritten:

"**§ 131D-2. Licensing of adult care homes for the aged and disabled.**

(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~two hundred fifty dollars ($250.00).~~three hundred fifteen dollars ($315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~three hundred fifty dollars ($350.00)~~three hundred sixty dollars ($360.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents ($12.50)~~seventeen dollars and fifty cents ($17.50)."

SECTION 10.76.(b) G.S. 131E-147 reads as rewritten:

"**§ 131E-147. Licensure requirement.**

(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~seven hundred dollars ($700.00)~~eight hundred fifty dollars ($850.00) plus a nonrefundable annual per-operating room fee in the amount of ~~fifty dollars ($50.00).~~seventy-five dollars ($75.00)."

SECTION 10.76.(c) G.S. 131E-167(a) reads as rewritten:

"**§ 131E-167. Certificate requirement.**

(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~two hundred fifty dollars ($250.00).~~three hundred eighty-five dollars ($385.00)."

SECTION 10.76.(d) G.S. 131E-138(c) reads as rewritten:

"**§ 131E-138. Licensure requirements.**

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules

promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~four hundred dollars ($400.00).~~five hundred ten dollars ($510.00)."

SECTION 10.76.(e) G.S. 131E-77 reads as rewritten:

"**§ 131E-77. Licensure requirement.**

(a) No person or governmental unit shall establish or operate a hospital in this state without a license. An infirmary is not required to obtain a license under this Part.

(b) The Commission shall prescribe by rule that any licensee or prospective applicant seeking to make specified types of alteration or addition to its facilities or to construct new facilities shall submit plans and specifications before commencement to the Department for preliminary inspection and approval or recommendations with respect to compliance with the applicable rules under this Part.

(c) An applicant for licensing under this Part shall provide information related to hospital operations as requested by the Department. The required information shall be submitted by the applicant on forms provided by the Department and established by rule.

(d) The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	Number of Beds	Base Fee	Per-Bed Fee
General Acute Hospitals:	1-49 beds	$250.00	~~$12.50~~ $17.50
	50-99 beds	$350.00	~~$12.50~~ $17.50
	100-199 beds	$450.00	~~$12.50~~ $17.50
	200-399 beds	$550.00	~~$12.50~~ $17.50
	400-699 beds	$750.00	~~$12.50~~ $17.50
	700+ beds	$950.00	~~$12.50~~ $17.50
Other Hospitals:		$500.00	~~$12.50~~ $17.50

(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department. The license shall designate the number and types of inpatient beds, the number of operating rooms, and the number of gastrointestinal endoscopy rooms.

(f) The operator shall post the license on the licensed premises in an area accessible to the public."

SECTION 10.76.(f) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non-ICF/MR):	0 beds	~~$175.00~~ $215.00	$0
	1 to 6 beds	~~$250.00~~ $305.00	$0
	More than 6 beds	~~$350.00~~ $475.00	~~$12.50~~ $17.50
ICF/MR Only:	1 to 6 beds	~~$650.00~~ $845.00	$0
	More than 6 beds	~~$650.00~~ $800.00	~~$12.50~~ $17.50"

SECTION 10.76.(g) G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual

license fee in the amount of ~~four hundred fifty dollars ($450.00)~~ four hundred twenty dollars ($420.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents ($12.50).~~seventeen dollars and fifty cents ($17.50)."

DHSR INITIAL LICENSURE FEES NEW FACILITIES

SECTION 10.77. Article 16 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-272. Initial licensure fees for new facilities.**

The following fees are initial licensure fees for new facilities and are applicable as follows:

Facility Type	Number of Beds	Initial License Fee	Initial Bed Fee
Adult Care Licensure	More than 6	$400.00	$19.00
	6 or Fewer	$350.00	$ -
Acute and Home Care			
General Acute Hospitals	1-49	$550.00	$19.00
	50-99	$750.00	$19.00
	100-199	$950.00	$19.00
	200-399	$1150.00	$19.00
	400-699	$1550.00	$19.00
	700+	$1950.00	$19.00
Other Hospitals		$1050.00	$19.00
Home Care	-	$560.00	$ -
Ambulatory Surgical Ctrs.	-	$900.00	$85.00
Hospice (Free Standing)	-	$450.00	$ -
Abortion Clinics	-	$750.00	$ -
Cardiac Rehab. Centers	-	$425.00	$ -
Nursing Home & L&C			
Nursing Homes		$470.00	$19.00
All Others		$ -	$19.00
Mental Health Facilities			
Nonresidential		$265.00	$ -
Non ICF-MR	6 or fewer	$350.00	$ -
ICF-MR only	6 or fewer	$900.00	$ -
Non ICF-MR	More than 6	$525.00	$19.00
ICF-MR only	More than 6	$850.00	$19.00."

DHHS BLOCK GRANTS

SECTION 10.78.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES
(TANF) BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance (Cash Assistance)	$87,518,579
02.	Work First County Block Grants	94,453,315
03.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
04.	Work First – Boys and Girls Clubs	800,000
05.	Work First – Connect, Inc.	67,523
06.	Child Welfare Collaborative	887,517
	Division of Child Development	
07.	Subsidized Child Care Program	61,087,077
	Division of Public Health	
08.	Teen Pregnancy Prevention Initiatives	450,000
	DHHS Administration	
09.	Division of Social Services	1,093,176
10.	Office of the Secretary	75,392
11.	Office of the Secretary/DIRM – TANF Automation Projects	720,000
12.	Office of the Secretary/DIRM – NC FAST Implementation	1,200,000
	Transfers to Other Block Grants	
	Division of Child Development	
13.	Transfer to the Child Care and Development Fund	84,330,900
	Division of Social Services	
14.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	2,550,000
15.	Transfer to Social Services Block Grant for Maternity Homes	60,503
16.	Transfer to Social Services Block Grant for Teen Pregnancy Prevention Initiatives	2,500,000

17.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
18.	Transfer to Social Services Block Grant for Foster Care Services	390,000
19.	Transfer to Social Services Block Grant for Medically Fragile Children	260,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		$357,396,373

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) CONTINGENCY FUNDS BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance (Cash Assistance)	$1,857,193
02.	Work First – Boys and Girls Clubs	1,200,000
03.	Work First – Afterschool Services For At-Risk Children	1,229,785
04.	Work First – Afterschool Programs For At-Risk Youth in Middle Schools	300,000
05.	Work First – Connect, Inc. (Work Central)	301,025
06.	Work First – Citizens Schools Program	360,000
07.	County Demonstration Grants	3,239,789
08.	Adoption Services – Special Children's Adoption Fund	3,000,000
09.	Family Violence Prevention	2,200,000
10.	Child Welfare Collaborative	987,995
11.	Work First Functional Assessment	600,000
12.	Electing County State Funding Swap Out	2,378,213
13.	State Subsidized Child Care Funding Swap	12,452,484
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) CONTINGENCY FUNDS BLOCK GRANT		$30,106,484

SOCIAL SERVICES BLOCK GRANT

Local Program Expenditures

Divisions of Social Services and Aging and Adult Services		
01.	County Departments of Social Services (Transfer from TANF – $4,500,000)	$ 28,868,189
02.	State In-Home Services Fund	2,101,113
03.	State Adult Day Care Fund	2,155,301
04.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	243,121
05.	Foster Care Services (Transfer from TANF – $390,000)	2,372,619
06.	Maternity Homes (Transfer from TANF – $60,503)	943,002
07.	Special Children Adoption Incentive Fund	500,000
08.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	2,550,000
Division of Aging and Adult Services		
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
10.	Mental Health Services Program	422,003
11.	Developmental Disabilities Services Program	5,000,000
12.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
Division of Child Development		
13.	Subsidized Child Care Program	3,150,000
Division of Vocational Rehabilitation		
14.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263

Division of Public Health		
15.	Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000
16.	Services for Medically Fragile Children (Transfer from TANF – $260,000)	360,000
DHHS Program Expenditures		
Division of Aging and Adult Services		
17.	UNC-CARES Training Contract	247,920
Division of Services for the Blind		
18.	Independent Living Program	3,714,211
Division of Health Service Regulation		
19.	Adult Care Licensure Program	411,897
20.	Mental Health Licensure and Certification Program	205,668
DHHS Administration		
21.	Division of Aging and Adult Services	688,436
22.	Division of Social Services	892,624
23.	Office of the Secretary/Controller's Office	138,058
24.	Office of the Secretary/DIRM	87,483
25.	Division of Child Development	15,000
26.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
27.	Division of Health Service Regulation	235,625
28.	Office of the Secretary-NC Inter-Agency Council For Coordinating Homeless Programs	250,000
29.	Office of the Secretary	48,053
Transfers to Other State Agencies		
Department of Administration		
30.	NC Commission of Indian Affairs In-Home	

Services for the Elderly	203,198
Transfers to Other Block Grants	
Division of Public Health	
31. Transfer to Preventive Health Services Block Grant For HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT	$ 63,735,946
LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT	
Local Program Expenditures	
Division of Social Services	
01. Low-Income Energy Assistance Program (LIEAP)	$ 25,909,124
02. Crisis Intervention Program (CIP)	20,224,269
Office of the Secretary – Office of Economic Opportunity	
03. Weatherization Program	1,000,000
04. Heating Air Repair & Replacement Program (HARRP)	3,385,583
Local Administration	
Division of Social Services	
05. County DSS Administration	3,608,360
Office of the Secretary – Office of Economic Opportunity	
06. Local Residential Energy Efficiency Service Providers – Weatherization	420,035
07. Local Residential Energy Efficiency Service Providers – HARRP	195,910
DHHS Administration	
08. Division of Social Services	275,000
09. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	8,128
10. Office of the Secretary/DIRM	269,935
11. Office of the Secretary/Controller's Office	12,332

12. Office of the Secretary/Office of Economic Opportunity – Weatherization	294,874
13. Office of the Secretary/Office of Economic Opportunity – HARRP	137,574
Transfers to Other State Agencies	
14. Department of Administration – N.C. State Commission of Indian Affairs	67,042
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT	$ 55,808,166
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	
Local Program Expenditures	
Division of Child Development	
01. Subsidized Child Care Services (CCDF)	$144,097,307
02. Contract Subsidized Child Care Services Support	507,617
03. Subsidized Child Care Services (Transfer from TANF)	84,330,900
04. Quality and Availability Initiatives	20,760,876
05. T.E.A.C.H. Program	3,800,000
Division of Social Services	
06. Local Subsidized Child Care Services Support	$16,594,417
DHHS Administration	
Division of Child Development	
07. DCD Administrative Expenses	6,539,277
Division of Central Administration	
08. DHHS Central Administration – DIRM Technical Services	763,356
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	$277,393,750

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	
Local Program Expenditures	
Division of Child Development	
01. Subsidized Child Care Services (CCDF) (High Quality Four-Year-Old Classrooms)	$53,993,329
02. Contract Subsidized Child Care Services Support	29,030
DHHS Program Expenditures	
Division of Child Development	
03. Quality and Availability Initiatives	11,519,144
Local Administration	
Division of Social Services	
04. Subsidy Services Support	2,001,631
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH ARRA	$67,543,143
MENTAL HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
01. Mental Health Services – Adult	$ 5,977,762
02. Mental Health Services – Child	3,921,991
03. Comprehensive Treatment Service Program	1,500,000
04. Mental Health Services – UNC School of Medicine, Department of Psychiatry	300,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	$ 11,699,753
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	
Local Program Expenditures	
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
01. Substance Abuse Services – Adult	$ 22,258,080

02.	Substance Abuse Treatment Alternative for Women	8,069,524
03.	Substance Abuse – HIV and IV Drug	5,116,378
04.	Substance Abuse Prevention – Child	7,186,857
05.	Substance Abuse Services – Child	4,940,500
06.	Implementation – Institute of Medicine's Study Recommendations	250,000
	Division of Public Health	
07.	Risk Reduction Projects	633,980
08.	Aid-to-Counties	209,576
09.	Maternal Health	37,779
	TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 48,702,674
	MATERNAL AND CHILD HEALTH BLOCK GRANT	
	Local Program Expenditures	
	Division of Public Health	
01.	Children's Health Services	7,534,865
02.	Women's Health	7,701,691
03.	Oral Health	38,041
	DHHS Program Expenditures	
	Division of Public Health	
04.	Children's Health Services	1,359,636
05.	Women's Health	135,452
06.	State Center for Health Statistics	179,483
07.	Quality Improvement in Public Health	14,646
08.	Health Promotion	88,746
09.	Office of Minority Health	55,250

10. Immunization Program – Vaccine Distribution	382,648
DHHS Administration	
Division of Public Health	
11. Division of Public Health Administration	631,966
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	$ 18,122,424
PREVENTIVE HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
Division of Public Health	
01. NC Statewide Health Promotion	$1,730,653
02. Services to Rape Victims	197,112
03. HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819
DHHS Program Expenditures	
Division of Public Health	
04. NC Statewide Health Promotion	1,699,044
05. Oral Health	70,000
06. State Laboratory of Public Health	16,600
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	$3,859,228
COMMUNITY SERVICES BLOCK GRANT	
Local Program Expenditures	
Office of Economic Opportunity	
01. Community Action Agencies	$ 16,673,336
02. Limited Purpose Agencies	926,297
DHHS Administration	
03. Office of Economic Opportunity	926,296
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 18,525,929

COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Local Program Expenditures

Office of Economic Opportunity		
01.	Community Action Agencies	$ 20,558,585
02.	Limited Purpose Agencies	1,093,541
DHHS Administration		
03.	Office of Economic Opportunity	218,709
TOTAL COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH ARRA		$ 21,870,834

GENERAL PROVISIONS

SECTION 10.78.(b) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section.

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

SECTION 10.78.(c) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the schedule enacted for State fiscal year 2009-2010 or until a new schedule is enacted by the General Assembly.

SECTION 10.78.(d) All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)

SECTION 10.78.(e) The sum of one million ninety-three thousand one hundred seventy-six dollars ($1,093,176) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.78.(f) The sum of two million two hundred thousand dollars ($2,200,000) appropriated under this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall jointly develop a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2009. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2009, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2009. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 10.78.(g) The sum of one million two hundred twenty-nine thousand seven hundred eighty-five dollars ($1,229,785) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration.

SECTION 10.78.(h) The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars ($14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2009-2010 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train,

license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

SECTION 10.78.(i) The sum of three million dollars ($3,000,000) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2009-2010 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of this act. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.78.(j) The sum of one million two hundred thousand dollars ($1,200,000) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant for the 2009-2010 fiscal year shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance, and Child Development. The statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2010.

SECTION 10.78.(k) The sum of three hundred thousand dollars ($300,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF Contingency funds for the 2009-2010 fiscal year shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools.

SECTION 10.78.(l) In implementing the TANF Block Grants, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

SECTION 10.78.(m) The sum of sixty-seven thousand five hundred twenty-three dollars ($67,523) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant and the sum of three hundred one thousand twenty-five dollars ($301,025) appropriated in this section to the Department in TANF Contingency funds for the 2009-2010 fiscal year shall be transferred to Connect, Inc. Connect, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Connect, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in

the nine counties served by Connect, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2010.

SECTION 10.78.(n) The sum of eight hundred thousand dollars ($800,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant and the sum of one million two hundred thousand dollars ($1,200,000) appropriated in this section to the Department in TANF Contingency funds for Boys and Girls Clubs for the 2009-2010 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 10.78.(o) The Department of Health and Human Services, Division of Social Services, shall continue implementing county demonstration grants that began in the 2006-2007 fiscal year. The county demonstration grants may be awarded for up to three years with all projects ending no later than the end of fiscal year 2009-2010. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates. The Division of Social Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2009-2010.

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

The Department of Health and Human Services, Division of Social Services, shall report on the status of county demonstration grants implemented pursuant to this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than February 1, 2010.

SECTION 10.78.(p) The sum of one million eight hundred seventy-five thousand five hundred twelve dollars ($1,875,512) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant and in TANF Contingency funds for the 2009-2010 fiscal year shall be used to continue support for the Child Welfare Collaborative.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.78.(q) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and the North Carolina Housing Coalition are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.78.(r) The sum of two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.

(2) Provide training for residential child caring facilities.

(3) Provide for various other child welfare training initiatives.

SECTION 10.78.(s) The sum of nine hundred forty-three thousand two dollars ($943,002) appropriated in this section to the Department of Health and Human Services in the

Social Services Block Grant for the 2009-2010 fiscal year shall be used to support payments to maternity home providers.

SECTION 10.78.(t) The sum of three hundred sixty thousand dollars ($360,000) appropriated in this section to the Department of Health and Human Services, Division of Public Health, in the Social Services Block Grant for the 2009-2010 fiscal year shall be used to continue support for the Medically Fragile Children program.

SECTION 10.78.(u) The sum of two million three hundred seventy-two thousand six hundred nineteen dollars ($2,372,619) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2009-2010 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

SECTION 10.78.(v) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.78.(w) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require fifty percent (50%) local match.

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.78.(x) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

In addition to funds available for weatherization appropriated within the Low-Income Home Energy Assistance Block Grant, funds available through the American Recovery and Reinvestment Act shall be used to continue to enhance weatherization activities coordinated by local agencies.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.78.(y) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.78.(z) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SECTION 10.78.(aa) Funds from the Child Care and Development Fund Block Grant and Child Care and Development Fund Block Grant received through the American Recovery and Reinvestment Act shall be used to increase access to child care subsidy. To help address the economic downturn and increasing unemployment in North Carolina, the Department of Health and Human Services, Division of Child Development shall adopt temporary policies that facilitate and expedite the prudent expenditure of these funds as follows:

(1) Permit the local purchasing agencies to issue time-limited vouchers to assist counties in managing one-time, nonrecurring subsidy funding.

(2) Extend the current 30/60 day job search policy to six months when a recipient experiences a loss of employment.

(3) Provide an upfront job search period of six months for former recipients who have lost employment since October 1, 2008.

(4) Provide a job search period of six months for recipients that complete school and are entering the job market.

(5) Notwithstanding any other provision of law, extend the 24-month education time limit for an additional 12 months for a child care recipient who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.

(6) Lower the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

SECTION 10.78.(bb) If American Recovery and Reinvestment Act funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

MENTAL HEALTH BLOCK GRANT

SECTION 10.78.(cc) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year and the sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.78.(dd) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2009-2010 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 10.78.(ee) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

SECTION 10.78.(ff) The sum of two hundred fifty thousand dollars ($250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year shall be used to implement one or more priority recommendations of the North Carolina Institute of Medicine (NCIOM) Substance Abuse Task Force, which include:

(1) Development of a comprehensive substance abuse prevention plan for use at the State and local levels.
(2) Providing funding for the establishment of six pilot projects to implement county or multicounty comprehensive prevention plans.
(3) Supporting efforts to reduce high-risk drinking on college campuses.
(4) Development of a pilot program to provide chronic disease management services to substance abuse clients and former clients. The purpose of the pilot is to decrease the number of short-term hospital admissions and to provide discharge planning and follow-up to reduce substance abuse client recidivism.
(5) Educating and encouraging health care professionals to use the screening, brief intervention, and referral to treatment (SBIRT) model promoted by the federal government.

COMMUNITY SERVICES BLOCK GRANT

SECTION 10.78.(gg) In accordance with the intent of the American Recovery and Reinvestment Act, the North Carolina General Assembly strongly encourages recipients of Community Services Block Grant and Community Services Block Grant Recovery funds to enhance cooperation with county departments of social services and regional food banks to increase benefits enrollment for eligible persons, including Food and Nutrition Services and Medical Assistance.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

COMMERCIAL FERTILIZER FEES

SECTION 11.1. G.S. 106-671(a) reads as rewritten:

"(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of ~~twenty five cents (25¢)~~fifty cents (50¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of ~~twenty five cents (25¢)~~fifty cents (50¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax."

INCREASE PESTICIDE REGISTRATION FEE

SECTION 11.2. G.S. 143-442(b) reads as rewritten:

"(b) The applicant shall pay an annual registration fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars ($50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars ($5,000.00) and twenty-five dollars ($25.00) if gross sales were less than five thousand dollars ($5,000.00). An additional two hundred dollars ($200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and

additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency."

BOARD OF AGRICULTURE REVIEW OF FEE SCHEDULES

SECTION 11.3. G.S. 106-6.1 reads as rewritten:

"**§ 106-6.1. Fees.**

(a) A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services.

(b) No later than February 1 of each odd numbered year, the Board of Agriculture shall review the fees it established under this section to determine whether any of these fees should be changed and report to the Fiscal Research Division the amount of each fee reviewed, when the fee was last changed, the number of times the fee was collected during the prior fiscal year, the total receipts from the fee during the prior fiscal year, and any recommendations for increasing or decreasing the amount of any such fees. This report shall also include for each fee an evaluation of any inflationary change since the last change to the amount of the fee and any other information deemed relevant to this evaluation."

PART XII. DEPARTMENT OF LABOR

DEPARTMENT OF LABOR/APPRENTICESHIP PROGRAM

SECTION 12.1. Chapter 94 of the General Statutes is amended by adding a new section to read as follows:

"**§ 94-12. Fees.**

In order to meet the costs of administering the Apprenticeship Program, the Department is authorized to charge and collect such reasonable fees as it may by rule establish."

PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

REVISE CLEAN WATER MANAGEMENT TRUST FUND OPERATIONS LIMIT

SECTION 13.1. Notwithstanding G.S. 113A-253(d), no more than three percent (3%) of the funds appropriated to the Clean Water Management Trust Fund in each fiscal year of the 2009-2011 fiscal biennium may be used for administrative and operating expenses of the Board of Trustees of the Clean Water Management Trust Fund and its staff.

FOOD AND LODGING INSPECTION FEES INCREASES

SECTION 13.2.(a) G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of ~~fifty dollars ($50.00).~~sixty dollars ($60.00). The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 13.2.(b) G.S. 130A-248(e) reads as rewritten:

"(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of ~~two hundred dollars ($200.00)~~two hundred thirty-five dollars ($235.00) for plan

review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part."

SECTION 13.2.(c) G.S. 130A-248(f) reads as rewritten:

"(f) Any local health department may charge a fee not to exceed ~~two hundred dollars ($200.00)~~two hundred thirty-five dollars ($235.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e) of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection."

RADIATION PROTECTION SECTION SUPPORTED BY FEES

SECTION 13.3. G.S. 104E-19 reads as rewritten:

"**§ 104E-19. Fees.**

(a) In order to meet the anticipated costs of administering ~~the educational and training programs in G.S. 104E-11(e), of enforcing and carrying out the inspection provisions in G.S. 104E-7(a)(7) and G.S. 104E-11(a), and of administering the licensing program in G.S. 104E-10.3;~~this Chapter, the Department is authorized to charge and collect such reasonable fees as it may by rule establish.

(b) Repealed by Session Laws 1987, c. 850, s. 13."

SCRAP TIRE DISPOSAL ACCOUNT FUNDS

SECTION 13.4. Notwithstanding the provisions of G.S. 105-187.19(b), effective for taxes levied during the 2009-2010 fiscal year, the Secretary of Revenue shall credit to the General Fund three million dollars ($3,000,000) of the net tax proceeds that G.S. 105-187.19(b) directs the Secretary to credit to the Scrap Tire Disposal Account.

MARINE FISHERIES FUNDS FOR THE FISHERY RESOURCES GRANT PROGRAM

SECTION 13.5. Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Division of Marine Fisheries for the Fishery Resource Grant Program established under G.S. 113-200, the sum of one hundred forty-six thousand three hundred twelve dollars ($146,312) for the 2009-2010 fiscal year and the sum of one hundred forty-six thousand three hundred twelve dollars ($146,312) for the 2010-2011 fiscal year shall be used for river herring research in the Department. The remaining funds appropriated in this act to the Department for the Fishery Resource Grant Program for the 2009-2011 biennium shall be used for research related to the Sea Grant College Program only and shall not be used for any other purpose.

NEW LEASE PURCHASE/INSTALLMENT CONTRACTS FOR FORESTRY EQUIPMENT

SECTION 13.6. Prior to the Division of Forest Resources of the Department of Environment and Natural Resources entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment, the Division of Forest Resources shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Prior to the Department of Administration entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment on behalf of the Division of Forest Resources, the Department of Administration shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission

on Governmental Operations and the Fiscal Research Division. If a list is modified after it is submitted under this section, the modified list shall be submitted to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division prior to entering into the contract.

GRASSROOTS SCIENCE PROGRAM

SECTION 13.7.(a) Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million four hundred eleven thousand seven hundred thirteen dollars ($3,411,713) for the 2009-2010 fiscal year and the sum of three million four hundred eleven thousand seven hundred thirteen dollars ($3,411,713) for the 2010-2011 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2009-2010	2010-2011
Aurora Fossil Museum	$57,875	$57,875
Cape Fear Museum	$157,787	$157,787
Carolina Raptor Center	$109,931	$109,931
Catawba Science Center	$143,429	$143,429
Colburn Earth Science Museum, Inc.	$73,054	$73,054
Core Sound Waterfowl Museum	$49,000	$49,000
Discovery Place	$649,608	$649,608
Eastern NC Regional Science Center	$49,000	$49,000
Fascinate-U	$79,451	$79,451
Granville County Museum Commission, Inc.–Harris Gallery	$55,294	$55,294
Greensboro Children's Museum	$132,374	$132,374
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$152,499	$152,499
Highlands Nature Center	$77,683	$77,683
Imagination Station	$84,313	$84,313
The Iredell Museums, Inc.	$60,080	$60,080
Kidsenses	$79,656	$79,656
Museum of Coastal Carolina	$76,460	$76,460
The Natural Science Center of Greensboro, Inc.	$182,627	$182,627
North Carolina Museum of Life and Science	$372,229	$372,229
Pisgah Astronomical Research Institute	$49,000	$49,000
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	$49,000	$49,000
Rocky Mount Children's Museum	$70,809	$70,809
Schiele Museum of Natural History and Planetarium, Inc.	$224,956	$224,956
Sci Works Science Center and Environmental Park of Forsyth County	$143,569	$143,569
Sylvan Heights Waterfowl Park and Eco-Center	$49,000	$49,000
Western North Carolina Nature Center	$110,621	$110,621
Wilmington Children's Museum	$72,408	$72,408

Total	$3,411,713	$3,411,713

SECTION 13.7.(b) No later than March 1, 2010, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2008-2009 fiscal year.

(2) The proposed operating budget for the 2009-2010 fiscal year.

(3) The total attendance at the museum during the 2009 calendar year.

SECTION 13.7.(c) No later than March 1, 2011, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The actual operating budget for the 2009-2010 fiscal year.

(2) The proposed operating budget for the 2010-2011 fiscal year.

(3) The total attendance at the museum during the 2010 calendar year.

SECTION 13.7.(d) As a condition for qualifying to receive funding under this section, all of the following documentation shall, no later than November 1 of each year of the 2009-2011 biennium, be submitted for each museum under this section to the Department of Environment and Natural Resources for fiscal years ending between July 1, 2007, and June 30, 2008, and only those costs that are properly documented under this subsection are allowed by the Department in calculating the distribution of funds under this section:

(1) Each museum under this section shall submit its IRS (Internal Revenue Service) Form 990 to show its annual operating expenses, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report.

(2) Each friends association of a museum under this section shall submit its IRS Form 990 to show its reported expenses for the museum, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report, unless the association does not have both an IRS Form 990 and an annual report available, in which case, it shall submit either an IRS Form 990 or an annual report.

(3) The chief financial officer of each county or municipal government that provides funds for the benefit of the museum shall submit a detailed signed statement of documented costs spent for the benefit of the museum that includes documentation of the name, address, title, and telephone number of the person making the assertion that the museum receives funds from the county or municipality for the benefit of the museum.

(4) The chief financial officer of each county or municipal government or each friends association that provides indirect or allocable costs that are not directly charged to a museum under this section but that benefit the museum shall submit in the form of a detailed statement enumerating each cost by type and amount that is verified by the financial officer responsible for the completion of the documentation and that includes the name, address, title, and telephone number of the person making the assertion that the county, municipality, or association provides indirect or allocable costs to the museum.

SECTION 13.7.(e) As used in subsection (d) of this section, "friends association" means a nonprofit corporation established for the purpose of supporting and assisting a museum that receives funding under this section.

TIMBER ASSESSMENT DESPITE APPROPRIATION

SECTION 13.8. G.S. 113A-192(c) is repealed.

FOREST DEVELOPMENT FUND/FOREST PRODUCTS ASSESSMENT RATES

SECTION 13.9.(a) G.S. 113A-192(c) through G.S. 113A-192(e) are repealed.

SECTION 13.9.(b) G.S. 113A-193(b) is amended by adding a new subdivision to read:

"(6) Determine the appropriate assessment to be levied on primary forest products in accordance with G.S. 113A-194."

SECTION 13.9.(c) G.S. 113A-194(b) reads as rewritten:

"(b) The assessment levied on primary forest products shall ~~be at~~not exceed the following rates:

(1) ~~Fifty cents (50¢)~~One dollar ($1.00) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board ~~feet;~~feet.

(2) ~~Forty cents (40¢)~~Eighty cents (80¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board ~~feet;~~feet.

(3) ~~Twenty cents (20¢)~~Forty cents (40¢) per cord for softwood pulpwood and other softwood products normally measured in ~~cords;~~cords.

(4) ~~Twelve cents (12¢)~~ Twenty-four cents (24¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in ~~cords;~~cords.

(5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State."

BEAVER DAMAGE CONTROL PROGRAM FUNDS

SECTION 13.10. G.S. 113-291.10(f) reads as rewritten:

"(f) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars ($4,000) in local funds no later than September 30 of that year. At least three hundred forty-nine thousand dollars ($349,000) each fiscal year of the biennium shall be paid from funds available to the Wildlife Resources Commission to provide the State share necessary to support this program, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share."

PART XIV. DEPARTMENT OF COMMERCE

ONE NORTH CAROLINA FUND

SECTION 14.1. Of the funds appropriated in this act to the One North Carolina Fund for the 2009-2010 fiscal year, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2009-2010 fiscal year.

ONE NORTH CAROLINA FUNDS/USE OF CASH BALANCE

SECTION 14.2.(a) Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the Department of Commerce shall use the sum of

one million dollars ($1,000,000) in the 2009-2010 fiscal year to market the State as a business destination.

SECTION 14.2.(b) Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the sum of two million dollars ($2,000,000) shall be transferred to the One North Carolina Small Business Fund for the 2009-2010 fiscal year.

SECTION 14.2.(c) Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the Department of Commerce shall allocate the sum of one million dollars ($1,000,000) for the 2009-2010 fiscal year to the North Carolina Minority Support Center, Inc., to expand economic development lending. The funds allocated under this subsection shall be used to assist small businesses having difficulty accessing credit due to a lack of liquidity in financial markets. It is the General Assembly's intent that these funds be used to further community economic development lending and support in low-wealth communities and to make capital accessible to small businesses in a way that will have an economic stimulus impact.

SMALL BUSINESS ASSISTANCE FUND

SECTION 14.3.(a) Part 2I of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2I. ~~One~~ North Carolina Small Business ~~Program.~~ Assistance.

"Subpart A. One North Carolina Small Business Program."

SECTION 14.3.(b) Part 2I of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Small Business Assistance Fund.

"**§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.**

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the Department. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds appropriated by the State, repayments of principal of and interest on loans, fees, and other amounts received by the Department with respect to financial assistance provided by the Department, and any other public or private funds made available to the Fund.

(b) Department Authority; Loan Terms. – The Department may approve for disbursements of moneys in the Fund to small businesses in accordance with the provisions of this section. The Department shall develop criteria, technical specifications, policies, and procedures to be used in determining whether the conditions of this section are satisfied and whether the activities described in the application are otherwise consistent with the purposes of this section. As used in this section, "moneys" means a disbursement from the Fund in the form of a loan, and "small business" means a business whose annual receipts and number of full-time employees, combined with the annual receipts and full-time employees of all related persons, did not exceed one million dollars ($1,000,000) or 100 full-time employees. A small business may apply for a loan for:

(1) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within five years at the prime rate plus four percent (4%).

(2) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 10 years at the prime rate plus six percent (6%).

(3) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 15 years at the prime rate plus eight percent (8%).

(c) Eligible Purposes. – Moneys in the Fund shall be used for any of the following eligible purposes:

(1) To guarantee commercial loans.

(2) To finance bonds to allow small business to better leverage federal stimulus dollars.

(3) To provide emergency bridge loans where clear and apparent ability to repay has been established but credit remains unavailable.

(4) To lend for other purposes related to small business job preservation as approved or recommended by the Department.

(d) Application. – Any small business may apply for moneys from the Fund by submitting an application to the Department. The application shall list each of the following:

(1) The proposed activities for which the moneys are to be used.

(2) The amount of moneys requested for these activities.

(3) Projections of the dollar amount of private investment that is expected to occur as a direct result of the proposed activities.

(4) An explanation of the nature of the private investment that will result from the proposed activities.

(5) A requirement for any reports, disclosures, or information required by this section or necessary for the Department to fulfill its duties under this section.

(6) The total compensation received for the previous year from the small business and all related persons for each of the five highest-compensated employees of the small business.

(7) Any additional or supplemental information required by the Department upon written request.

(e) Determination. – The Department shall review an application submitted by a small business, determine whether the activities listed in the application are activities that are eligible for moneys from the Fund, and determine which applicants are selected to receive moneys from the Fund. A small business whose application is denied may file a new or amended application.

(f) Limitation. – A small business that is selected may not receive moneys from the Fund pursuant to this section with an aggregate total of more than thirty-five thousand dollars ($35,000).

(g) Disbursements of Moneys. – The Department shall not disburse moneys for any loans until the small business has confirmed a method of repayment for the loan. The terms for repayment established for a given loan shall apply through the period of that loan. A small business that has been selected to receive moneys shall use the full amount of the moneys for the activities that were approved pursuant to subsection (b) of this section. Moneys are deemed used if the small business is legally committed to spend the moneys on the approved activities. For purposes of this section, approved activities do not include an increase in the total compensation of any employee identified in the application under subdivision (d)(6) of this section. A small business shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Fund. A small business that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or credited to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund exists.

(h) Cost Report. – After activities financed in whole or in part pursuant to this section have been completed, the small business shall report the actual cost of the project to the Department. If the actual costs of the activities exceed the projected cost upon which the moneys were based, the small business may submit an application to the Department for

additional moneys for the difference. If the actual costs of the activities are less than the projected cost, the small business shall arrange to pay the difference to the Fund according to terms set by the Department.

(i) Inspection. – Inspection of a project for which moneys have been awarded may be performed by personnel of the Department. No person may be approved to perform inspections who is an officer or employee of the small business to which the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the activities for which the moneys were disbursed.

(j) Administration. – The Department may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(k) Legislative Reports. – The Department shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of moneys authorized by this section, including a separate listing of the moneys disbursed to historically underutilized businesses. The report shall set forth for the preceding fiscal year itemized and total allocations from the Fund. The Department shall also prepare a summary report of all allocations made from the Fund for each fiscal year; the total funds received and allocations made; the total amount of moneys repaid to the Fund; and the total unallocated funds in the Fund.

Small businesses that have been selected to receive moneys from the Fund shall prepare and file a report that shall include the following information:

(1) The total amount of private funds that was committed and the amount that was invested in activities for which moneys from the Fund were made available during the preceding fiscal year.

(2) The total amount and character of moneys received from the Fund during the preceding fiscal year.

(3) The total amount of moneys repaid to the Fund during the preceding fiscal year.

(4) A description of how moneys from the Fund and funds from private investors were used during the preceding fiscal year.

(5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities."

SECTION 14.3.(c) This act becomes effective July 1, 2009.

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 14.4.(a) Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

SECTION 14.4.(b) Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for securing adequate channel maintenance of the Oregon Inlet and for operations, maintenance, repair, and

capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

SECTION 14.4.(c) This section becomes effective June 30, 2009.

NER BLOCK GRANTS

SECTION 14.5.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	$	1,000,000
02. Urgent Needs and Contingency		1,000,000
03. Scattered Site Housing		13,200,000
04. Economic Development		8,710,000
05. Small Business/Entrepreneurship		1,000,000
06. Community Revitalization		13,000,000
07. State Technical Assistance		450,000
08. Housing Development		1,500,000
09. Infrastructure		5,140,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2009 Program Year	$	45,000,000

SECTION 14.5.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 14.5.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 14.5.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; not less than one million dollars ($1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars ($13,200,000) may be used for Scattered Site Housing; eight million seven hundred ten thousand dollars ($8,710,000) may be used for Economic Development; up to one million dollars ($1,000,000) may be used for Small Business/Entrepreneurship; not less than thirteen million dollars ($13,000,000) shall be used for Community Revitalization; up to

four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to one million five hundred thousand dollars ($1,500,000) may be used for Housing Development; up to five million one hundred forty thousand dollars ($5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 14.5.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 14.5.(f) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

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

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

SECTION 14.5.(g) By September 1, 2009, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year.

MAIN STREET GRANT FUNDS

SECTION 14.6.(a) Part 15 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 15. Main Street ~~Financial Incentive Fund.~~Solutions.

"§ 143B-472.35. Establishment of fund; use of ~~moneys;~~funds; application for ~~grants and loans;~~grants; disbursal; repayment; inspections; rules; reports.

(a) A ~~revolving~~ fund to be known as the Main Street ~~Financial Incentive~~Solutions Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all ~~moneys~~funds as provided in this section. Interest earnings shall be credited to the Main Street ~~Financial Incentive~~Solutions Fund.

(b) ~~Moneys~~Funds in the Main Street ~~Financial Incentive~~Solutions Fund shall be available to ~~the North Carolina cities affiliated with the North Carolina Main Street Center Program.~~micropolitan cities in development tier two and three counties in the State. For purposes of this section, a "micropolitan city" is a city located within the State with a population, according to the most recent U.S. census, of between 10,000 and 50,000 people.

~~Moneys~~Funds in the Main Street ~~Financial Incentive~~Solutions Fund shall be used for any of the following eligible activities:

(1) The acquisition or rehabilitation of properties in connection with private investment in a designated downtown ~~area;~~area.

(2) The establishment of revolving loan programs for private investment in a designated downtown ~~area;~~area.

(3) The subsidization of interest rates for these revolving loan ~~programs;~~programs.

(4) The establishment of facade incentive grants in connection with private investment in a designated downtown ~~area;~~area.

(5) Market studies, design studies, design assistance, or strategic planning efforts, provided the activity can be shown to lead directly to private investment in a designated downtown ~~area;~~area.

(6) Any approved project that provides construction or rehabilitation in a designated downtown area and can be shown to lead directly to private investment in the designated downtown ~~area; and~~area.

(7) Public improvements and public infrastructure within a designated downtown area, provided these improvements are necessary to create or stimulate private investment in the designated downtown area.

(c) Any ~~North Carolina~~micropolitan city ~~affiliated with the North Carolina Main Street Center Program~~ located within a development tier two or three county may apply for ~~moneys~~ assistance from the Main Street ~~Financial Incentive~~Solutions Fund by submitting an application to the Main Street Center in the Division of Community Assistance, Department of Commerce. Any city affiliated with the North Carolina Main Street Center Program may apply for a grant ~~equal to ten percent (10%) of the projected cost of the~~for a proposed project. ~~A city may apply for additional moneys as one or more loans from the Fund. Specifically, a city may apply for a loan for:~~

~~(1) Up to fifteen percent (15%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within fifteen years at five percent (5%) interest;~~

~~(2) Up to twenty percent (20%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within ten years at eight percent (8%) interest; and~~

~~(3) Up to thirty five percent (35%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within seven years at ten percent (10%) interest.~~

(c1) The application shall ~~list:~~include each of the following:

(1) A copy of the consensus local economic development plan developed by the micropolitan city in conjunction with the Department's Main Street Program and the city's regional economic development commission or its local council of government or both.

(1a) The proposed activities for which the ~~moneys~~ funds are to be used and the projected cost of the ~~project;~~project.

(2) The amount of grant ~~moneys and any loans~~funds requested for these ~~activities;~~activities.

(3) Projections of the dollar amount of private investment that is expected to occur in the designated downtown area as a direct result of the city's proposed ~~activities;~~activities.

(4) Whether local public dollars are required to match any grant ~~plus any loan moneys~~funds according to the provisions of subdivision (g)(2) of this section, and if so, the amount of local public ~~dollars required;~~funds required.

(5) An explanation of the nature of the private investment in the designated downtown area that will result from the city's proposed ~~activities;~~activities.

(6) Projections of the time needed to complete the city's proposed ~~activities;~~activities.

(7) Projections of the time needed to realize the private investment that is expected to result from the city's proposed ~~activities; and~~activities.

(8) Identification of the proposed source of funds to be used for repayment of any loan obligations.

(9) Any additional or supplemental information requested by the Division.

~~The applicant shall furnish additional or supplemental information upon written request.~~

(d) A committee, comprised of representatives of: the Division of Community Assistance of the Department of Commerce, the North Carolina Main Street Program, the Local Government Commission, and the League of Municipalities ~~shall:~~shall do each of the following:

(1) Review a city's ~~application;~~application.

(2) Determine whether the activities listed in the application are activities that are eligible for a ~~loan, and~~grant.

(3) Determine which applicants are selected to receive ~~moneys~~ funds from the Main Street ~~Financial Incentive~~Solutions Fund.

A city whose application is denied may file a new or amended application.

(e) A Main Street City that is selected may not receive a grant ~~plus any loans~~ pursuant to this section totaling less than twenty thousand dollars ($20,000) or more than three hundred thousand dollars ($300,000).

~~(f) The Department of Commerce may not disburse moneys for any loans until the city has confirmed a method of repayment of the loan. The terms for repayment established for a given loan shall apply throughout the period of that loan.~~

~~The Department of Commerce shall establish an account in the amount of the grant plus any loans for each city that is selected. These moneys shall be disbursed as expended through warrants drawn on the Department of Commerce.~~

(g) (1) A city that has been selected to receive a grant ~~plus any loans~~ shall use the full amount of the grant ~~plus any loans~~ for the activities that were approved pursuant to subsection (d) of this section. ~~Moneys~~ Funds are deemed used if the city is legally committed to spend the ~~moneys~~ funds on the approved activities.

(2) If a city has received approval to use the grant ~~plus any loans~~ for public improvements or public infrastructure, that city shall be required to raise, before ~~moneys~~ funds for these public improvements may be drawn from the city's account, local public funds to match the amount of the grant ~~plus any loans~~ from the Main Street ~~Financial Incentive~~Solutions Fund on the basis of at least one local public dollar ($1.00) for every one dollar ($1.00) from the Main Street ~~Financial Incentive~~Solutions Fund. This match requirement applies only to those ~~moneys~~ funds received for public improvements or public infrastructure and is in addition to the requirement set forth in subdivision (1) of this subsection.

(3) A city that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any ~~moneys~~funds that have not been used within three years of being selected. These unused ~~moneys~~funds shall be credited to the Main Street ~~Financial Incentive~~Solutions Fund. A city that fails to satisfy the conditions set forth in subdivisions (1) and (2) of this subsection may file a new application.

(4) Any ~~moneys~~funds repaid or credited to the Main Street ~~Financial Incentive~~Solutions Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street ~~Financial Incentive~~Solutions Fund is in effect.

~~(h) Each city is authorized to agree to apply any available revenues of that city to the repayment of a loan obligation to the extent the generation of these revenues is within the power of that city to enter into covenants to take action in order to generate these revenues; provided:~~

~~(1) The agreement to use this source of funds to make repayment or the covenant to generate these revenues does not constitute a pledge of the city's taxing power; and~~

~~(2) The repayment agreement specifically identifies the source of funds to be pledged.~~

(i) After a project financed in whole or in part pursuant to this section has been completed, the city shall report the actual cost of the project to the Department of Commerce. If the actual cost of the project exceeds the projected cost upon which the grant ~~plus any loans were~~ was based, the city may submit an application to the Department of Commerce for a grant ~~or loans~~ for the difference. If the actual cost of the project is less than the projected cost, the city shall arrange to pay the difference to the Main Street ~~Financial Incentive~~Solutions Fund according to terms set by the Department.

(j) Inspection of a project for which a grant ~~plus any loans have~~ has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant ~~plus any loans were~~was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant ~~plus any loans were~~was made.

(k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(l) The Department of Commerce and cities that have been selected to receive a grant ~~plus any loans~~ from the Main Street ~~Financial Incentive~~Solutions Fund shall prepare and file on or before ~~July 31~~September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants ~~plus any loans~~ authorized by this section.

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street ~~Financial Incentive~~Solutions Fund for ~~grants and loans.~~grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations ~~made; the total amount of loan moneys repaid to the Fund,~~made and the total unallocated funds in the Fund.

The portion of the report prepared by the city shall ~~include:~~include each of the following:

(1) The total amount of private funds that was committed and the amount that was invested in the designated downtown area during the preceding fiscal ~~year;~~year.

(2) The total amount of local public matching funds that was raised, if required by subdivision (g)(2) of this ~~section;~~section.

(3) The total amount of ~~grant plus any loans~~ grants received from the Main Street ~~Financial Incentive~~Solutions Fund during the preceding fiscal ~~year;~~year.

~~(4) The total amount of loan moneys repaid to the Main Street Financial Incentive Fund during the preceding fiscal year;~~

(5) A description of how the grant ~~and loan moneys~~funds and funds from private investors were used during the preceding fiscal ~~year;~~year.

(6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities."

SECTION 14.6.(b) This act becomes effective July 1, 2009.

INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT

SECTION 14.7. The North Carolina Industrial Commission may retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar ($200.00) fee charged by the Commission for filing a compromised settlement.

INDUSTRIAL COMMISSION/SAFETY EDUCATION SECTION

SECTION 14.8. The Safety Education Section of the Industrial Commission shall become fee supported effective July 1, 2010. The Industrial Commission shall establish a fee schedule for services provided by the Safety Education Section to support the operations of the Safety Education Section. At least fifty percent (50%) of the revenue used to support the Safety Education Section must come from fees charged for services provided by the Safety Education Section.

EMPLOYMENT SECURITY COMMISSION FUNDS

SECTION 14.9.(a) Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2009-2010 fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000).

SECTION 14.9.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars ($20,000,000) for the 2009-2010 fiscal year to be used for the following purposes:

(1) Nineteen million seven hundred thousand dollars ($19,700,000) for the operation and support of local Employment Security Commission offices.

(2) Two hundred thousand dollars ($200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.

(3) One hundred thousand dollars ($100,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

SECTION 14.9.(c) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million dollars ($1,000,000) for the 2009-2010 fiscal year to fund State initiatives not currently funded through federal grants.

EMPLOYMENT SECURITY COMMISSION/USE OF FEDERAL UNEMPLOYMENT TRUST FUNDS

SECTION 14.10. Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Employment Security Commission of North Carolina may expend the sum of fourteen million dollars ($14,000,000) for the 2009-2011 biennium for the following purposes:

(1) Implementing and administering the provisions of State law that qualify the State for the incentive payments.

(2) Improved outreach to individuals who might be eligible by virtue of these provisions.

(3) The improvement of unemployment benefits and tax operations, including responding to increased demand for unemployment benefits.

(4) Staff-assisted reemployment services for unemployment claimants.

COUNCIL OF GOVERNMENT FUNDS

SECTION 14.11.(a) Of the funds appropriated in this act to the Department of Commerce, eight hundred seven thousand three hundred fifty-one dollars ($807,351)for the 2009-2010 fiscal year and eight hundred seven thousand three hundred fifty-one dollars ($807,351) for the 2010-2011 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to forty-seven thousand four hundred ninety-two dollars ($47,492) for the 2009-2010 and the 2010-2011 fiscal years.

SECTION 14.11.(b) A regional council of government may use funds allocated to it by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 14.11.(c) Funds allocated by this section shall be paid by electronic transfer in two equal installments. Upon receipt of the report required by subsection (e) of this section, the first installment shall be paid no later than September 15, 2009.

SECTION 14.11.(d) Funds allocated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 14.11.(e) By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

NONPROFIT REPORTING REQUIREMENTS

SECTION 14.12.(a) The North Carolina Institute of Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of

Community Development Corporations, Inc., North Carolina Biotechnology Center, and Partnership for the Sounds, Inc., shall do the following:

(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.12.(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section.

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

SECTION 14.13.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

SECTION 14.13.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and

(2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of three hundred eight thousand six hundred sixty-six dollars ($308,666) in the 2009-2010 fiscal year, which sum represents: (i) the total interest earnings in the prior fiscal year on the estimated balance of seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of three hundred eight thousand six hundred sixty-six dollars ($308,666) in the 2009-2010 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

SECTION 14.13.(c) No more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

SECTION 14.13.(d) The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State.

SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 14.14.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2009.

SECTION 14.14.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2009-2010 fiscal year is two hundred thousand dollars ($200,000).

SECTION 14.14.(c) This section becomes effective July 1, 2009.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 14.15.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million three hundred sixty-four thousand seven hundred eighty-five dollars ($4,364,785) for the 2009-2010 fiscal year and the sum of four million three hundred sixty-four thousand seven hundred eighty-five dollars ($4,364,785) for the 2010-2011 fiscal year shall be allocated as follows:

	2009-2010	2010-2011
Technical Assistance and Center Administration of Research and Demonstration Grants	$431,156	$431,156
Center Administration, Oversight, and Other Programs	$586,290	$586,290
Water/Wastewater Administration and Technical Assistance	$449,203	$449,203
Research and Demonstration Grants	$366,300	$366,300
Institute for Rural Entrepreneurship	$142,560	$142,560
Community Development Grants	$987,436	$987,436
Community Development Grants Administration	$ 48,510	$ 48,510
Microenterprise Loan Program	$193,050	$193,050
Water/Sewer/Business Development Matching Grants	$874,170	$874,170
Statewide Water/Sewer Database	$ 99,000	$ 99,000
Agricultural Advancement Consortium	$114,345	$114,345
Agricultural Advancement Consortium Operating	$ 72,765	$ 72,765

SECTION 14.15.(b) Funds allocated in subsection (a) of this section for community development grants shall support development projects and activities within the State's minority communities. Any new or previously funded community development corporation, as that term is defined in subsection (c) of this section, is eligible to apply for community development grant funds. However, no community development grant funds shall be released to a community development corporation unless the corporation can demonstrate

that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

SECTION 14.15.(c) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;

(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;

(3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;

(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and

(5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 14.15.(d) The Rural Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 14.15.(e) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 14.16.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million two hundred ninety-seven thousand two hundred and seventy-eight dollars ($19,297,278) for the 2009-2010 fiscal year and the sum of nineteen million two hundred ninety-seven thousand two hundred and seventy-eight dollars ($19,297,278) for the 2010-2011 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fourteen million eight hundred and fifty thousand dollars ($14,850,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

SECTION 14.16.(b) The Rural Center may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

SECTION 14.16.(c) During each year of the 2009-2011 biennium, the Rural Center may use up to three hundred seventy-eight thousand three hundred seventy-eight dollars

($378,378) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 14.16.(d) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year.

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 14.17.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of three hundred fifty-seven thousand three hundred ninety dollars ($357,390) for the 2009-2010 fiscal year and the sum of three hundred fifty-seven thousand three hundred ninety dollars ($357,390) for the 2010-2011 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers).

SECTION 14.17.(b) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior fiscal year program activities, objectives, and accomplishments for each of the OI Centers receiving funds pursuant to subsection (a) of this section. This report shall include data for each OI Center on itemized expenditures and fund sources for the prior State fiscal year.

SECTION 14.17.(c) The Rural Center shall ensure that each OI Center files annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statements must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

SECTION 14.17.(d) No funds appropriated under this act shall be released to an OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

RURAL ECONOMIC DEVELOPMENT CENTER/CLEAN WATER PARTNERS FUNDING

SECTION 14.18. By September 1 of each year, and more frequently as requested, the North Carolina Rural Economic Development Center, Inc., shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the water/sewer improvement grants (commonly referred to as funding for Clean Water Partners) as appropriated in Section 13.13A of S.L. 2007-323 and Section 13.8 of S.L. 2008-107. Each report shall include a list of grants made since the last report, the total amount contracted, and the amount of funds remaining. This reporting requirement shall replace all previous reporting requirements and shall remain in effect until all funds from this program are expended.

RURAL ECONOMIC DEVELOPMENT CENTER/AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS

SECTION 14.19. If the North Carolina Rural Economic Development Center, Inc., (Rural Center) finds that North Carolina will not maximize the amount of funding for water and wastewater projects the State could receive under the American Recovery and Reinvestment Act of 2009, the Rural Center shall use funds appropriated to the Rural Center in this act to maximize such funding.

PART XV. JUDICIAL DEPARTMENT

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 15.1. Funds appropriated to the Judicial Department in the 2009-2011 fiscal biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

GRANT FUNDS

SECTION 15.2. Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars ($1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

DEATH PENALTY LITIGATION FUNDS

SECTION 15.3. Of the funds appropriated in this act to the Office of Indigent Defense Services for the 2009-2011 fiscal biennium, the Office may use up to the sum of five hundred thirty-one thousand dollars ($531,000) for the 2009-2010 fiscal year and up to the sum of five hundred thirty-one thousand dollars ($531,000) for the 2010-2011 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1, of each year in the biennium, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the activities funded by this section.

REPORT ON BUSINESS COURTS

SECTION 15.4. The Administrative Office of the Courts shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, average age of pending cases, and annual expenditures for the prior fiscal year.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 15.5. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2009, for the purchase or repair of office or information technology equipment during the 2009-2010 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

DISPUTE RESOLUTION FEES

SECTION 15.6. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission.

REIMBURSEMENT FOR USE OF PERSONAL VEHICLES

SECTION 15.7. Notwithstanding the provisions of G.S. 138-6(a)(1), the Judicial Department, during the 2009-2011 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

REPEAL ASSISTANT DISTRICT ATTORNEY AUTHORIZATIONS

SECTION 15.8. G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	11
2	Beaufort, Hyde, Martin, Tyrrell, Washington	8
3A	Pitt	11
3B	Carteret, Craven, Pamlico	12
4	Duplin, Jones, Onslow, Sampson	18
5	New Hanover, Pender	18
6A	Halifax	5
6B	Bertie, Hertford, Northampton	6
7	Edgecombe, Nash, Wilson	19
8	Greene, Lenoir, Wayne	14
9	Franklin, Granville, Vance, Warren	12
9A	Person, Caswell	6
10	Wake	~~42~~ 41
11	Harnett, Johnston, Lee	19
12	Cumberland	23
13	Bladen, Brunswick, Columbus	13
14	Durham	18
15A	Alamance	11
15B	Orange, Chatham	10
16A	Scotland, Hoke	7
16B	Robeson	13
17A	Rockingham	7
17B	Stokes, Surry	8
18	Guilford	32
19A	Cabarrus	9
19B	Montgomery, Randolph	10
19C	Rowan	8
19D	Moore	5
20A	Anson, Richmond, Stanly	12
20B	Union	10
21	Forsyth	25

22A	Alexander, Iredell	11
22B	Davidson, Davie	11
23	Alleghany, Ashe, Wilkes, Yadkin	8
24	Avery, Madison, Mitchell, Watauga, Yancey	7
25	Burke, Caldwell, Catawba	19
26	Mecklenburg	~~58~~ 57
27A	Gaston	15
27B	Cleveland, Lincoln	11
28	Buncombe	14
29A	McDowell, Rutherford	7
29B	Henderson, Polk, Transylvania	8
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	11

GUIDELINES FOR MAXIMIZING EFFICIENCY OF PROCEEDINGS

SECTION 15.9. By December 1, 2009, the Administrative Office of the Courts shall develop guidelines to be applied to maximize efficient use of the time of probation officers and court personnel participating in probation revocation proceedings. The Administrative Office of the Courts may also adopt guidelines for maximizing the efficient use of the time of law enforcement personnel participating in the Criminal District Courts.

ELIMINATE SPECIAL ALLOWANCE FOR SUPERIOR COURT JUDGES

SECTION 15.10. G.S. 7A-44(a) reads as rewritten:

"(a) A judge of the superior court, regular or special, shall receive the annual salary set forth in the Current Operations Appropriations Act, and in addition shall be paid the same travel allowance as State employees generally by G.S. 138-6(a)(1) and (2), provided that no travel allowance be paid for travel within his county of residence. ~~In addition, a judge of the superior court shall be allowed seven thousand dollars ($7,000) per year, payable monthly, in lieu of necessary subsistence expenses while attending court or transacting official business at a place other than in the county of his residence and in lieu of other professional expenses incurred in the discharge of his official duties.~~ The Administrative Officer of the Courts may also reimburse superior court judges, in addition to the above funds for ~~travel and subsistence,~~ travel, for travel and subsistence expenses incurred for professional education."

CLARIFY THAT DWI TREATMENT COURTS ARE A TYPE OF DRUG TREATMENT COURT UNDER THE DRUG TREATMENT COURT ACT

SECTION 15.11. G.S. 7A-791 reads as rewritten:

"**§ 7A-791. Purpose.**

The General Assembly recognizes that a critical need exists in this State for judicial programs that will reduce the incidence of alcohol and other drug abuse or dependence and crimes, including the offense of driving while impaired, delinquent acts, and child abuse and neglect committed as a result of alcohol and other drug abuse or dependence, and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court ~~programs.~~ programs and driving while impaired (DWI) treatment court programs."

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 15.12. The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million five hundred one thousand one hundred fifty dollars ($2,501,150) in appropriated funds during the 2009-2010 fiscal year and up to the sum of two million four hundred thirty-three thousand seven hundred dollars ($2,433,700) in appropriated funds during the 2010-2011 fiscal year for the expansion of existing or new public defender offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to 20 new attorney positions and 10 new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 15.13.(a) The Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

(1) The volume and cost of cases handled in each district by assigned counsel or public defenders;

(2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;

(3) Plans for changes in rules, standards, or regulations in the upcoming year; and

(4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

SECTION 15.13.(b) In its March 1, 2010 report, the Office of Indigent Defense Services shall provide a progress report on the pilot program for alternative scheduling authorized by Section 14.1 of S.L. 2008-107. In its March 1, 2011 report, the Office of Indigent Defense Services shall provide a final report on that pilot program.

SECTION 15.13.(c) In its March 1, 2010 report, the Office of Indigent Defense Services shall provide a progress report on the feasibility study directed by Section 14.7 of S.L. 2008-107 on developing a statewide system for obtaining indigent case information when counsel is first appointed. In its March 1, 2011 report, the Office of Indigent Defense Services shall provide a final report on that feasibility study.

INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS

SECTION 15.14. Notwithstanding G.S. 143C-6-9, the Office of Indigent Defense Services may use the sum of up to fifty thousand dollars ($50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

OFFICE OF INDIGENT DEFENSE SERVICES FLEXIBILITY

SECTION 15.15. Notwithstanding the provisions of G.S. 143C-6-9, in implementing reductions to the 2009-2011 budget for legal training and resources, the Office of Indigent Defense Services may use available funds as needed for registration fees, academic services, travel, and book purchases.

SENTENCING SERVICES FLEXIBILITY

SECTION 15.16. In implementing the reduction to Sentencing Services' budget, the Director of the Office of Indigent Defense Services may close programs in certain districts in the State based on current and historical performance, local support and interest, the amount of funding to be saved, and other relevant factors. The Director may choose not to contract with certain nonprofit programs or to eliminate certain State-funded programs and associated positions.

STUDY STRATEGIES TO REDUCE DEMAND FOR SERVICES OF OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 15.17. The Office of Indigent Defense Services shall consult with the Administrative Office of the Courts, the Conference of District Attorneys, the North Carolina Sentencing and Policy Advisory Commission, and other court system actors in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor misdemeanor offenses for which jail sentences are rarely or never imposed and improving the manner in which potentially capital cases are screened and processed. The Office shall include any proposals in its reports during the 2009-2011 fiscal biennium.

NEW FEE FOR COSTS OF SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION AND THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION 15.18. G.S. 7A-304 is amended by adding a new subsection to read:

"(3b) For the services, staffing, and operations of the Criminal Justice Education and Standards Commission and the Sheriffs' Education and Training Standards Commission, the sum of two dollars ($2.00) to be remitted to the Department of Justice. One dollar and sixty-five cents ($1.65) of this sum shall be used exclusively for the Criminal Justice Education and Standards Commission, and thirty-five cents (35¢) shall be used exclusively for the Sheriffs' Education and Training Standards Commission."

INCREASE CONVICTED CRIMINAL LAB ANALYSIS FEE

SECTION 15.19.(a) G.S. 7A-304(a)(7) reads as rewritten:

"(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars ($300.00)~~six hundred dollars ($600.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 15.19.(b) G.S. 7A-304(a)(8) reads as rewritten:

"(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars ($300.00)~~ six hundred dollars ($600.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the

laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

INCREASE CERTAIN COURT FEES

SECTION 15.20.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars ($5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar ($1.00),~~ three dollars ($3.00), to be credited to the Court Information Technology Fund.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of six dollars and twenty-five cents ($6.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e).

(3a) For the supplemental pension benefits of sheriffs, the sum of one dollar twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of ~~ninety-five dollars and fifty cents ($95.50)~~ one hundred three dollars ($103.00) in the district court, including cases before a magistrate, and the sum of ~~one hundred two dollars and fifty cents ($102.50)~~ one hundred fifteen dollars ($115.00) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

(4a) For support of the General Court of Justice, the sum of five dollars ($5.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, the sum of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee. This fee shall be remitted to the State Treasurer.

(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.

(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 15.20.(b) Effective July 1, 2010, G.S. 7A-304(a), as rewritten by subsection (a) of this section, reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars ($5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such

county, or to supplement the operations of the General Court of Justice in the county.

(2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars ($3.00),~~ four dollars ($4.00), to be credited to the Court Information Technology Fund.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of six dollars and twenty-five cents ($6.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e).

(3a) For the supplemental pension benefits of sheriffs, the sum of one dollar twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of ~~one hundred three dollars ($103.00)~~ one hundred five dollars ($105.00) in the district court, including cases before a magistrate, and the sum of ~~one hundred fifteen dollars ($115.00)~~ one hundred thirty-five dollars ($135.00) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

(4a) For support of the General Court of Justice, the sum of ~~five dollars ($5.00)~~ ten dollars ($10.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee. This fee shall be remitted to the State Treasurer.

(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the

crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.

(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 15.20.(c) G.S. 7A-304 is amended by adding a new subsection to read:

"(f) Defendants owing costs under this section may either make payment in full when costs are assessed or may make payment on an installment plan arranged with the court. Defendants making use of an installment plan shall pay a onetime setup fee of twenty dollars ($20.00) to cover the additional costs to the court of receiving and disbursing installment payments. Notwithstanding the provisions of G.S. 7A-304(d)(1), the setup fee authorized by this subsection shall be paid prior to the disbursement of funds for any other purpose. Fees collected under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 15.20.(d) G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar ($1.00),~~ three dollars ($3.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of ~~ninety-three dollars ($93.00)~~ one hundred thirty dollars ($130.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of ~~seventy-three dollars ($73.00)~~ seventy-eight dollars ($78.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~sixty-three dollars~~

~~($63.00).~~ fifty-five dollars ($55.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 15.20.(e) Effective July 1, 2010, G.S. 7A-305(a), as rewritten by subsection (d) of this section, reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars ($3.00),~~ four dollars ($4.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of ~~one hundred thirty dollars ($130.00)~~ one hundred forty dollars ($140.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of ~~seventy-eight dollars ($78.00)~~ eighty dollars ($80.00) in the district court except that if the case is assigned to a magistrate the sum shall be fifty-five dollars ($55.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 15.20.(f) G.S. 7A-306(a)(1a) reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar ($1.00),~~ three dollars ($3.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(g) Effective July 1, 2010, G.S. 7A-306(a)(1a), as amended by subsection (f) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars ($3.00),~~ four dollars ($4.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(h) G.S. 7A-307(a)(1a) reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar ($1.00),~~ three dollars ($3.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(i) Effective July 1, 2010, G.S. 7A-307(a)(1a), as amended by subsection (h) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars ($3.00),~~ four dollars ($4.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(j) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court ~~costs in the sum of seventy-five dollars ($75.00).~~ costs. Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars ($10.00) and no court costs. ~~Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer.~~ Conviction of an infraction under this section has no other consequence."

SECTION 15.20.(k) G.S. 20-140.4 reads as rewritten:

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

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

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

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

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

(c) Any person convicted of violating this section shall have committed an infraction and shall ~~be fined according to G.S. 20-135.2A(e) and (f).~~ pay a penalty of twenty-five dollars ($25.00) plus court costs. Conviction of an infraction under this section has no other consequence.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section."

SECTION 15.20.(l) Subsections (a), (j), and (k) of this section become effective July 1, 2009, and apply to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsection (b) of this section becomes effective July 1, 2010, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (b) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsections (e), (g), and (i) of this section become effective July 1, 2010, and apply to fees assessed or collected on or after that date. The remainder of this section becomes effective July 1, 2009, and applies to fees assessed or collected on or after that date.

PART XVI. DEPARTMENT OF JUSTICE

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 16.1. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 16.2.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2009-2011 fiscal biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 16.2.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 16.2.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 16.3. Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED

SECTION 16.4. The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

HIRING OF SWORN STAFF POSITIONS FOR THE STATE BUREAU OF INVESTIGATION

SECTION 16.5. The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the

State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.

REDUCE DEPARTMENT SHARE OF PAYMENT FOR JUDGMENTS AGAINST COUNTY AND CITY BOARDS OF EDUCATION

SECTION 16.6.(a) G.S. 143-300.1(c) reads as rewritten:

"(c) In the event ~~that~~ of settlement pursuant to G.S. 143-295 or in the event the Industrial Commission awards damages against any county or city board of education under this section, the Attorney General shall draw a voucher for the amount required to pay the award. The funds necessary to cover ~~the first one hundred fifty thousand dollars ($150,000) of liability per claim~~ the liability for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the State Board of ~~Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4.~~ Education for that purpose. On January 1 and June 1 of each year, each county and city board of education shall pay the State Board of Education an amount equal to fifty percent (50%) of the damages paid by the State Board of Education pursuant to this subsection during the preceding six months. These receipts shall be used to offset fifty percent (50%) of the costs incurred by the State Board of Education pursuant to this subsection. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon a voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295."

SECTION 16.6.(b) G.S. 143-300.1(d) reads as rewritten:

"(d) Except as otherwise provided in this subsection, the Attorney General may, upon the request of an employee or former employee, defend any civil action brought against the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic when the driver or mechanic is employed and paid by the local school administrative unit, when the monitor is acting in accordance with G.S. 115C-245(d), when the transportation safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative unit. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in the civil action not to exceed the limit provided under the Tort Claims Act. The funds necessary to cover ~~the first one hundred fifty thousand dollars ($150,000) of liability per claim~~the liability shall be made available from funds appropriated to the State Board of ~~Education. The balance of any liability owed shall be paid in accordance with G.S. 143-299.4.~~ Education for that purpose. On January 1 and June 1 of each year, each county and city board of education shall pay the State Board of Education an amount equal to fifty percent (50%) of the damages paid by the State Board of Education pursuant to this subsection during the preceding six months. These receipts shall be used to offset fifty percent (50%) of the costs incurred by the State Board of Education pursuant to this subsection. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims that would be within the jurisdiction of the Industrial Commission under the Tort Claims Act.

The Attorney General shall refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the Attorney General determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State."

PART XVII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

REPORT ON THE USE OF ILLEGAL IMMIGRATION PROJECT FUNDS

SECTION 17.1. No later than March 1, 2010, the North Carolina Sheriffs' Association, Inc., shall submit a report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the operations and effectiveness of the Illegal Immigration Project. The report shall include all of the following:

(1) An overview of the program.

(2) The program budget.

(3) A summary of work done with funds received, which shall include the following information:

a. The total number of law enforcement agencies that received funding from the program for officer training.

b. The total number of officers trained.

c. The total number of training sessions administered.

d. Copies of educational/informational materials distributed.

(4) Recommendations on ways that federal, State, and local resources can be used to further improve the effectiveness of the Illegal Immigration Project and other immigration enforcement initiatives.

ABOLISH BUTNER PUBLIC SAFETY DIVISION

SECTION 17.2.(a) G.S. 122C-408 is repealed.

SECTION 17.2.(b) Beginning on the effective date of this act, the Town of Butner shall provide fire and police protection within its incorporated limits. The service required by this section shall be at least the same level of service that the Town of Butner was previously provided pursuant to contract with the Department of Crime Control and Public Safety.

SECTION 17.2.(c) The Charter of the Town of Butner, as enacted by Section 1 of S.L. 2007-269, is amended by adding a new Article to read:

"ARTICLE IX. POLICE DEPARTMENT.

"Section 9.1. **Appointment; Powers; and Duties of Chief of Police and Police Officers.**

(a) Chief. The Mayor shall appoint the Chief of Police. The Chief of Police shall have immediate direction and control of the Police Department, subject to the supervision of the Mayor, and to such rules, regulations, and orders as the Mayor may prescribe.

(b) General Powers. The Chief of Police and each member of the police force shall have, for the purpose of enforcing Town ordinances and regulations, or preserving the peace of the Town, and of suppressing disturbances, and apprehending offenders, the powers of peace officers vested in sheriffs and constables.

(c) Public Peace. The Chief of Police and other police officers of the Town shall have the power, and it shall be their duty, to suppress all breaches of the public peace, and all

disturbances of the quiet and good order of the Town, and they may, with or without warrant, arrest, anywhere within the corporate limits of the Town, or within one mile thereof, any person charged with the violation of any ordinance of the Town, or with any other offense whatsoever against the public peace, and the quiet and good order of the community.

(d) Other Duties. In addition to the foregoing, the Chief of Police and other police officers shall perform such other duties as may from time to time be prescribed by the Mayor not inconsistent with the Constitution and laws of the State of North Carolina and the provisions of this Charter.

"Section 9.2. **Police Emergency Lines.** The Chief of Police or other police officer in charge at the scene of a parade, accident, disturbance, crime scene, natural or artificial disaster, or emergency, or any large gathering of people shall have authority to provide barricades, ropes, signs, or other means of restraint, and it shall be unlawful for any person other than a law enforcement officer, firefighter, or other person having official business at the scene to cross such a line without express permission of the police officer at the scene."

SECTION 17.2.(d) The Charter of the Town of Butner, as enacted by Section 1 of S.L. 2007-269, is amended by adding a new Article to read:

"ARTICLE X. FIRE DEPARTMENT.

"Section 10.1. **Appointment; Powers; and Duties of Fire Chief.**

(a) Appointment; General Authority. The Mayor shall appoint a Fire Chief. The Fire Chief shall have immediate direction and control of the Fire Department, subject to the supervision of the Mayor and to such rules, regulations, and orders as the Mayor may prescribe.

(b) Destroying Property at Fires. The Fire Chief, and in the Fire Chief's absence, any assistant, may order the blowing up, tearing down, or other destruction of any building when it is deemed necessary to stop the progress of a fire. No person shall be held liable, civilly or criminally, for acting in obedience to their orders, nor shall the Fire Chief or any assistant, the Town, the Mayor, or the Town Council be held liable, civilly or criminally, for the giving of such orders or for damages to property ordered destroyed.

(c) Fire, etc., Emergency Lines. The Chief of Police or other police officer, or the Fire Chief or any assistant, in charge at the scene of a fire, accident, disturbance, natural or artificial disaster or emergency, or any large gathering of people shall have authority to provide barricades, ropes, signs, or other means of restraint, and it shall be unlawful for any person other than a law enforcement officer, firefighter, or other person having official business at the scene to cross such a line without express permission of the person in charge at the scene.

(d) Other Duties. The Fire Chief and other firefighters shall perform such other duties in addition to those provided in this Charter as may be prescribed by law or Town ordinances, or that may from time to time be prescribed by the Mayor."

SECTION 17.2.(e) G.S. 122C-414 is repealed.

SECTION 17.2.(f) G.S. 143-341(8)i.3. reads as rewritten:

"3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement ~~purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency~~ purposes."

SECTION 17.2.(g) G.S. 160A-288(d)(4) is repealed.

SECTION 17.2.(h) G.S. 160A-288.2(d)(3) is repealed.

SECTION 17.2.(i) Subsections 1(a) and 1(b) of Chapter 830 of the 1983 Session Laws, as amended by Section 43.3 of S.L. 2005-276 and Section 14 of S.L. 2007-269, are repealed.

SECTION 17.2.(j) Subsection (i) of this section shall have no effect upon the validity of any liens of the State, Durham County, Granville County, or the Butner Police and Fire Protection District for ad valorem taxes outstanding before the effective date of subsection (i) of this section. Such liens may be collected or foreclosed upon after the effective date of subsection (i) of this section as though the property were still within the corporate limits of the District.

TRANSFER OF STATE CAPITOL POLICE TO THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

SECTION 17.3.(a) The State Capitol Police is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Department of Crime Control and Public Safety.

SECTION 17.3.(b) G.S. 143-340(21) and (22) are repealed.

SECTION 17.3.(c) G.S. 143-341.1 is repealed.

SECTION 17.3.(d) G.S. 143B-475(a) reads as rewritten:

"(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans ~~Affairs;~~Affairs.
(2) Civil Preparedness, Department of Military and Veterans ~~Affairs;~~Affairs.
(3) State Civil Air Patrol, Department of Military and Veterans ~~Affairs;~~Affairs.
(4) State Highway Patrol, Department of ~~Transportation;~~Transportation.
(5) State Board of Alcoholic Control Enforcement Division, Department of ~~Commerce;~~Commerce.
(6) Governor's Crime Commission, Department of Natural and Economic ~~Resources;~~Resources.
(7) Crime Control Division, Department of Natural and Economic ~~Resources;~~Resources.
(8) Criminal Justice Information System Board, Department of Natural and Economic ~~Resources; and~~Resources.
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.
(10) The Commercial Vehicle, Oversize/Overweight, Motor Carrier Safety Regulation and Mobile Home and Manufactured Housing regulatory and enforcement functions of the Department of Transportation, Division of Motor Vehicles Enforcement Section.
(11) State Capitol Police, Department of Administration."

SECTION 17.3.(e) G.S. 143B-476(a) reads as rewritten:

"(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

(1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime ~~Commission;~~Commission.
(2) Making grants for use in pursuing the objectives of the Governor's Crime ~~Commission;~~Commission.

(3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.

(4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its ~~duties; and~~duties.

(5) Administering the Assistance Program for Victims of Rape and Sex Offenses.

(6) Appointing, with the Governor's approval, a special police officer to serve as Director of the State Capitol Police Division."

SECTION 17.3.(f) Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. State Capitol Police Division.

"**§ 143B-508. State Capitol Police Division – powers and duties.**

(a) Division Established. – There is hereby established, within the Department of Crime Control and Public Safety, the State Capitol Police Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. – The State Capitol Police Division shall serve as a special police agency of the Department of Crime Control and Public Safety. The Director of the State Capitol Police, appointed by the Secretary pursuant to G.S. 143B-476(6), with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. – Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. – Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(f) Public Safety. – The Director of the State Capitol Police, or the Director's designee, shall exercise at all times those means that, in the opinion of the Director or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Director, or the Director's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

STUDY CONSOLIDATION OF LAW ENFORCEMENT AGENCIES

SECTION 17.4. The Office of State Budget and Management shall study the feasibility of consolidating the law enforcement agencies in the executive branch of State government for the purpose of coordinating the activities of these agencies, and reducing duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies. The Office of State Budget and

Management shall report its findings and recommendations by February 1, 2010, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

LAW ENFORCEMENT SUPPORT SERVICES FEES

SECTION 17.5. Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. Law Enforcement Support Services Division.

"**§ 143B-508. Law Enforcement Support Services Division established.**

(a) There is hereby established, within the Department of Crime Control and Public Safety, the Law Enforcement Support Services Division, which shall be organized and staffed in accordance with this Part and within the limits of authorized appropriations.

(b) The Law Enforcement Support Services Division is authorized to perform the following functions:

(1) Manage State, local, and federal programs that facilitate or enable the transfer of technology, goods, and services through programs for excess property, property acquisition, and equipment loans.

(2) Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and create and maintain a data bank or statewide storage location of postconviction evidence or other similar programs.

(3) Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.

(4) Acquire, maintain, and control equipment to be loaned to law enforcement agencies for use in undercover investigations and to other agencies for other purposes.

(5) Develop, test, and promulgate innovative and technological solutions for the first responder community.

(c) In order to meet the anticipated costs of administering its functions, the Division is authorized to charge and collect such fees as it may by rule establish. Fees collected under this Section shall be credited to the Division and applied to the cost of administering the program."

INCREASE CHARITABLE BINGO LICENSING FEE

SECTION 17.6. G.S. 14-309.7(a) reads as rewritten:

"(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Crime Control and Public Safety on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~two hundred dollars ($200.00) to defray the cost of issuing bingo licenses and handling bingo audit reports. The fees collected shall be deposited in the General Fund of the State. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee."

INCREASE FEES FOR LICENSING BOXERS AND FOR TICKETS SOLD AT BOXING EVENTS

SECTION 17.7.(a) G.S. 143-655(a) reads as rewritten:

"(a) License Fees. – The Division shall collect the following license fees:

Announcer	$75.00

Contestant	~~$37.50~~$50.00
Judge	$75.00
Manager	$150.00
Matchmaker	$300.00
Promoter	$450.00
Referee	$75.00
Timekeeper	$75.00
Second	~~$37.50.~~$50.00."

SECTION 17.7.(b) G.S. 143-655(b1) reads as rewritten:

"(b1) Admission Fees. – The Division shall collect a fee in the amount of ~~one dollar and fifty cents ($1.50)~~ two dollars ($2.00) per each ticket sold to attend events regulated in this Article."

PART XVIII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 18.1. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs and of multipurpose group homes.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

REPORTS ON CERTAIN PROGRAMS

SECTION 18.2.(a) Project Challenge North Carolina, Inc., shall report to the Department of Juvenile Justice and Delinquency Prevention and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

(1) The source of referrals for juveniles.
(2) The types of offenses committed by juveniles participating in the program.
(3) The amount of time those juveniles spend in the program.
(4) The number of juveniles who successfully complete the program.
(5) The number of juveniles who commit additional offenses after completing the program.
(6) The program's budget and expenditures, including all funding sources.

SECTION 18.2.(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the

report shall include information on the Center's budget and expenditures, including all funding sources.

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 18.3. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2009-2010 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2009-2010 fiscal year, the amount of funds anticipated for the 2009-2010 fiscal year, and the allocation of funds by program and purpose.

TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 18.4. The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2009-2011 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

ESTABLISHMENT OF A GANG PREVENTION AND INTERVENTION PILOT PROGRAM

SECTION 18.5.(a) As part of the Governor's Comprehensive Gang Initiative, the Department of Juvenile Justice and Delinquency Prevention shall establish a two-year Gang Prevention and Intervention Pilot Program that will focus on youth at risk for gang involvement and those who are already associated with gangs and gang activity. The Department of Juvenile Justice and Delinquency Prevention shall:

(1) Ensure that measurable performance indicators and systems are put in place to evaluate the effectiveness of the pilot program, and

(2) Conduct both process- and outcome-focused evaluations of the pilot program to determine community and institutional impacts of the pilot program pertaining to gang behavior, desistance, and activities. These evaluations may consider the degree of successful implementation of the program and measurable changes in gang-related and gang-affiliated behaviors noted in institutional, court system, communities, and related programs.

SECTION 18.5.(b) The Department of Juvenile

Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation and continuing operation of the pilot program by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the

effectiveness of the pilot program. In addition, the report shall include the information set out in subsection (a) of this section.

ELIMINATE SUPPORT OUR STUDENTS PROGRAM

SECTION 18.6. Part 5A of Article 3 of Chapter 143B of the General Statutes is repealed.

JUVENILE CRIME PREVENTION COUNCIL (JCPC) GRANT REPORTING AND CERTIFICATION

SECTION 18.7. On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

(1) The amount of the grant awarded.
(2) The membership of the local committee or council administering the award funds on the local level.
(3) The type of program funded.
(4) A short description of the local services, programs, or projects that will receive funds.
(5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
(6) The number of at-risk, diverted, and adjudicated juveniles served by each county.
(7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.
(8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

PART XIX. DEPARTMENT OF CORRECTION

INMATE ROAD SQUADS AND LITTER CREWS

SECTION 19.1. Of the funds appropriated to the Department of Transportation in this act, the sum of eleven million three hundred thousand dollars ($11,300,000) per year shall be transferred by the Department to the Department of Correction during the 2009-2010 and 2010-2011 fiscal years for the cost of operating medium custody inmate road squads, as authorized by G.S. 148-26.5, and minimum custody inmate litter crews. This transfer shall be made quarterly in the amount of two million eight hundred twenty-five thousand dollars ($2,825,000). The Department of Transportation may use funds appropriated in this act to pay an additional amount exceeding the eleven million three hundred thousand dollars ($11,300,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

The Office of State Budget and Management shall conduct a study, in consultation with the Department of Correction and the Department of Transportation, to determine the actual cost and cost/benefit of operating medium custody road squads and minimum custody

litter crews. The Office of State Budget and Management shall report the results of this study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Joint Legislative Transportation Oversight Committee by March 1, 2010. The study shall include a recommendation on whether or not the amount transferred from the Department of Transportation to the Department of Correction for this work is adequate.

FEDERAL GRANT REPORTING

SECTION 19.2. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 19.3. Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2009-2011 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

USE OF CLOSED PRISON FACILITIES

SECTION 19.4.(a) In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the

provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction also shall provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

SECTION 19.4.(b) The Department of Correction shall study the feasibility of establishing probation revocation centers at closed prison facilities. The Department shall consult with counties to explore cost-sharing of these facilities. The Department shall report its findings to the Chairs of the Appropriations Subcommittees on Justice and Public Safety by February 1, 2010.

LIMIT USE OF OPERATIONAL FUNDS

SECTION 19.5. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except that the Department may establish critical positions prior to 120 days of completion representing no more than twenty percent (20%) of the total estimated number of positions.

CENTER FOR COMMUNITY TRANSITIONS/CONTRACT AND REPORT

SECTION 19.6. The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2009-2011 biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

INMATE MEDICAL COSTS

SECTION 19.7. Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use funds available during the 2009-2011 biennium for the inmate medical program if expenditures are projected to exceed the Department's inmate medical continuation budget. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

PAROLE ELIGIBILITY REPORT/MUTUAL AGREEMENT PAROLE PROGRAM/MEDICAL RELEASE PROGRAM

SECTION 19.8.(a) The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each inmate who is eligible for parole on or before July 1, 2010, has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served

more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 19.8.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 19.8.(c) The Post-Release Supervision and Parole Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2010. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

SECTION 19.8.(d) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year.

SECTION 19.8.(e) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

FEDERAL GRANT MATCHING FUNDS

SECTION 19.9. Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2009-2010 fiscal year from funds available to the Department to provide the State

match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

REPORTS ON NONPROFIT PROGRAMS

SECTION 19.10.(a) Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(b) Summit House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(c) Women at Risk shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(d) Our Children's Place shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the status of the planning, design, and construction of Our Children's Place, the proposed program components and evaluation measures, and on the projected number of inmates and their children to be served. The report shall also provide financial data, including the expenditure of State funds and all funding sources and amounts.

CRIMINAL JUSTICE PARTNERSHIP

SECTION 19.11.(a) G.S. 143B-273.4 reads as rewritten:

"**§ 143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who ~~was convicted of a misdemeanor or a felony offense~~ either is in confinement awaiting trial or was convicted of a misdemeanor or a

felony offense and received a nonincarcerative sentence of an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall ~~be offenders~~ be:

(1) Offenders sentenced to intermediate ~~punishments.~~ punishments; and

(2) Offenders who are appropriate for release from jail prior to trial under the supervision of a pretrial monitoring program."

SECTION 19.11.(b) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

SECTION 19.11.(c) Effective July 1, 2009, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

SECTION 19.11.(d) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 19.11.(e) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 19.11.(f) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;

(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

(3) Any counties the Department anticipates will submit requests for new implementation grants;

(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;

(7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;

(8) The number of community offenders and intermediate offenders served by each county program;
(9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and
(10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives.

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 19.12.(a) The Department of Correction shall report by March 1 of each year to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

(1) Data on current caseload averages and district averages for probation/parole officer positions;
(2) Data on current span of control for chief probation officers;
(3) An analysis of the optimal caseloads for these officer classifications;
(4) An assessment of the role of surveillance officers;
(5) The number and role of paraprofessionals in supervising low-risk caseloads;
(6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;
(7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and
(8) Data on cases supervised solely for the collection of court-ordered payments.

SECTION 19.12.(b) The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 19.12.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2011.

SECTION 19.12.(d) The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

(1) The number of sex offenders enrolled on active and passive GPS monitoring.
(2) The caseloads of probation officers assigned to GPS-monitored sex offenders.
(3) The number of violations.

(4) The number of absconders.
(5) The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.
(6) The total cost of the program, including a per-offender cost.

REPORT ON INMATE WELFARE AND CORRECTION ENTERPRISES

SECTION 19.13. The Department of Correction, in consultation with the Office of State Budget and Management, shall study the feasibility of budgeting positions currently funded from the Inmate Welfare Fund and the Correction Enterprise Fund from the General Fund instead. The Department shall report its findings by April 1, 2010, to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

PRE-SENTENCE INVESTIGATIONS FEASIBILITY STUDY

SECTION 19.14. The Office of Research and Planning of the Department of Correction shall conduct a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. This feasibility study shall be conducted as a pilot implementation, incorporating a variety of districts across the State reflecting both rural and urban settings, as well as diversity of programming available within the district.

The Office of Research and Planning shall report the results of its study by May 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

STUDY INCARCERATED MOTHERS PROGRAM

SECTION 19.15.(a) Our Children's Place, Inc., a nonprofit corporation, shall submit to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2009, a comprehensive plan for the implementation of a contractual program to house incarcerated women with their children. This plan shall include criteria for placement, minimum standards for custody and security, and projections of costs for implementation, including presumptive funding sources and memoranda of intent from affected agencies.

SECTION 19.15.(b) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall make recommendations to the 2010 Session of the 2009 General Assembly concerning the establishment of a program to house incarcerated women with their children. These recommendations shall address legal issues related to the custody of the children while in the program.

PART XX. GENERAL GOVERNMENT

GENERAL GOVERNMENT AGENCIES REPORT ALLOCATION OF DEPARTMENTWIDE REDUCTIONS

SECTION 20.1. No later than September 1, 2009, the following State agencies shall identify the allocation of departmentwide expenditure reductions for the 2009-2011 fiscal biennium and shall report the allocation of reductions to the Joint Legislative Commission on Governmental Operations, the Appropriations Subcommittees on General Government of the Senate and the House of Representatives, and the Fiscal Research Division:

(1) Administration.

(2) Auditor.
(3) Cultural Resources, including the allocation of 6.4% reduction to historic sites, maritime museums, and history museums.
(4) Cultural Resources – Roanoke Island Commission.
(5) General Assembly.
(6) Governor.
(7) Insurance.
(8) Lieutenant Governor.
(9) Administrative Hearings.
(10) Revenue.
(11) State Board of Elections.
(12) State Budget and Management.
(13) State Controller.
(14) Treasurer.

PART XXA. DEPARTMENT OF ADMINISTRATION

NC GREEN BUSINESS FUND/FUNDS

SECTION 20A.1. Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Administration, for the 2009-2010 fiscal year, the sum of five million dollars ($5,000,000) in nonrecurring funds shall be allocated to the North Carolina Green Business Fund in the Department of Commerce.

BIOFUELS CENTER OF NORTH CAROLINA

SECTION 20A.2. Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Administration, for the 2009-2010 fiscal year, the sum of three million dollars ($3,000,000) in nonrecurring funds shall be allocated to the Biofuels Center of North Carolina. These funds shall be used for costs related to implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.

COASTAL SOUNDS WIND STUDY

SECTION 20A.3. Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Administration, for the 2009-2010 fiscal year, the sum of three hundred thousand dollars ($300,000) in nonrecurring funds shall be allocated to The University of North Carolina. These funds shall be used for costs related to implementing the pilot project described in Section 9.14 of this act.

PART XXI. DEPARTMENT OF INSURANCE

SET INSURANCE REGULATORY CHARGE

SECTION 21.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2009 calendar year.

SECTION 21.1.(b) This section is effective when it becomes law.

PART XXII. OFFICE OF STATE BUDGET AND MANAGEMENT

STUDY OSBM, OSC, AND TREASURER CONSOLIDATION

SECTION 22.1. The Office of State Budget and Management, after reviewing the constitutional duties of the Governor in preparing and executing the budget and the constitutional status of the duties of the office of State Treasurer, shall study the feasibility of consolidating the Office of State Controller, the Office of State Budget and Management, and some of the functions of the State Treasurer, or reallocating functions of those state agencies, all with the goal of achieving economies or improving management.

The Office of State Budget and Management, no later than April 1, 2010, shall report to the full chairs of the Senate and House Appropriations Committees and to the Fiscal Research Division its findings and recommendations from the study required by the previous paragraph.

PART XXIII. OFFICE OF THE STATE CONTROLLER

OVERPAYMENTS AUDIT

SECTION 23.1.(a) During the 2009-2011 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

SECTION 23.1.(b) For each year of the 2009-2011 biennium, five hundred thousand dollars ($500,000) of the funds transferred from the Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 23.1.(c) All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2009-2011 biennium are transferred to the General Fund on that date.

SECTION 23.1.(d) Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly.

SECTION 23.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

BEACON STAFF TO SUPPORT STATEWIDE ENTERPRISE TRAINING PROGRAM

SECTION 23.2. For the 2009-2011 fiscal biennium, the Office of the State Controller shall use three hundred sixty-four thousand four hundred thirty-eight dollars ($364,438) of existing BEACON funds to continue the following six full-time, time-limited training positions that are effective July 1, 2009, and that support the statewide enterprise training program established by Section 20.1 of S.L. 2008-107:

(1) Two Staff Development Specialists II ($112,525).
(2) One BEACON University Trainer ($70,928).
(3) One Technical Support Technician ($64,708).
(4) One Administrative Support Specialist ($45,347).
(5) One Business and Technology Application Technician ($70,928).

PART XXIV. DEPARTMENT OF THE SECRETARY OF STATE

INCREASE REGISTRATION FEE RENEWAL FOR SECURITIES SALESMEN

SECTION 24.1. G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of three hundred dollars ($300.00) in the case of a dealer and ~~seventy-five dollars ($75.00)~~one hundred

dollars ($100.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year."

CREATE SPECIAL FUND FOR AUCTION RATE SECURITIES INVESTIGATIONS COSTS

SECTION 24.2.(a) There is established the Auction Rate Securities Investigation Special Fund, which is a special fund created with the unexpended funds from the existing Auction Rate Securities (ARS) fund from fiscal year 2008-2009 for reimbursement of the costs of investigations arising from the Department of the Secretary of State's administration of Chapters 78A, 78C, and 78D of the General Statutes. The Auction Rate Securities Investigation Special Fund shall be used to continue the Department's active participation in the North American Securities Administrators Association (NASAA) ARS Task Force investigation into the marketing of Auction Rate Securities by the regulated community to investors as well as the remedies for harm arising from such marketing. Reimbursements paid by investment banks and firms to the Department as part of the Department's involvement in the NASAA ARS Task Force shall be deposited into the Auction Rate Securities Investigation Special Fund.

SECTION 24.2.(b) The maximum balance of the Auction Rate Securities Investigation Special Fund shall be limited to three million two hundred thousand dollars ($3,200,000). If deposits from investment banks and firms paid as reimbursements for investigation costs cause the fund to exceed three million two hundred thousand dollars ($3,200,000), then the amount exceeding three million two hundred thousand dollars ($3,200,000) shall immediately be transferred to the General Fund.

SECTION 24.2.(c) In the event that the Department of the Secretary of State receives other monies as reimbursement for the costs of investigations into activities which are not a part of the NASAA ARS Task Force, these monies shall also be deposited into the Auction Rate Securities Special Fund and shall remain available to the Department for the administration of Chapters 78A, 78C, and 78D of the General Statutes, subject to the limitations on the Auction Rate Securities Investigation Special Fund's maximum balance in subsection (b) of this section.

PART XXV. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUNDS AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 25.1.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2011-2012	$1,736.5 million
For Fiscal Year 2012-2013	$1,835.2 million
For Fiscal Year 2013-2014	$1,945.3 million
For Fiscal Year 2014-2015	$2,008.7 million

SECTION 25.1.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2011-2012	$ 950.4 million
For Fiscal Year 2012-2013	$1,006.9 million
For Fiscal Year 2013-2014	$1,066.4 million
For Fiscal Year 2014-2015	$1,108.3 million

MODIFY GLOBAL TRANSPARK DEBT

SECTION 25.2. G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, and Section 27.7 of S.L. 2007-323 reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

...

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, ~~2009.~~ 2011. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

...."

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 25.3. Of the funds appropriated in this act to the Department of Transportation:

(1) Fourteen million dollars ($14,000,000) shall be allocated in each fiscal year for small construction projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.

(2) Thirteen million nine hundred fifty thousand dollars ($13,950,000) in fiscal year 2009-2010 and thirteen million nine hundred fifty thousand dollars ($13,950,000) in fiscal year 2010-2011 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

USE SECONDARY ROAD IMPROVEMENT FUNDS FOR HIGHWAY MAINTENANCE IN FISCAL YEAR 2009-2010

SECTION 25.4. Notwithstanding the provisions of G.S. 136-44.2A regarding the annual allocation of funds from the Highway Fund to the Department of Transportation for secondary road improvement programs, the funds required to be allocated for the secondary road improvement programs, established pursuant to G.S. 136-44.7 and G.S. 136-44.8, for fiscal year 2009-2010, shall remain in the Highway Fund for highway maintenance.

NC TURNPIKE AUTHORITY TRANSFERRED TO THE DEPARTMENT OF TRANSPORTATION

SECTION 25.5.(a) G.S. 136-89.182 reads as rewritten:

"**§ 136-89.182. North Carolina Turnpike Authority.**

...

(b) Administrative Placement. – The Authority shall be located within the Department of Transportation ~~for administrative purposes but shall exercise all of its powers independently of the Department of Transportation except as otherwise specified in this Article.~~ and shall be subject to and under the direct supervision of the Secretary of Transportation.

...

(d) Board of Transportation Members. – ~~No more than two members~~ Members of the North Carolina Board of Transportation may serve as members of the Authority Board.

...."

SECTION 25.5.(b) The transfer of the North Carolina Turnpike Authority to the Department of Transportation has all the elements of a Type I transfer under G.S. 143A-6.

Requested by: Senator

ALLOW THE DEPARTMENT OF TRANSPORTATION TO REQUIRE FACILITIES CONSTRUCTED WITHIN RIGHTS-OF-WAY TO BE CONSTRUCTED FROM PERMEABLE PAVEMENT

SECTION 25.6.(a) G.S. 136-18 is amended by adding a new subdivision to read:

"(41) The Department shall, prior to the beginning of construction, determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles that are to be constructed within the right-of-way of a public street or highway that is a part of the State highway system or an urban highway system must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement."

SECTION 25.6.(b) This act becomes effective October 1, 2009, and applies to facilities constructed on or after that date.

PART XXVI. SALARIES AND BENEFITS

GOVERNOR AND COUNCIL OF STATE/NO SALARY INCREASES

SECTION 26.1.(a) For the 2009-2010 and 2010-2011 fiscal years, the salary of the Governor shall remain the amount set by G.S. 147-11(a).

SECTION 26.1.(b) The annual salaries for the members of the Council of State, payable monthly, for the 2009-2010 and 2010-2011 fiscal years are:

Council of State	Annual Salary
Lieutenant Governor	$123,198

Attorney General	123,198
Secretary of State	123,198
State Treasurer	123,198
State Auditor	123,198
Superintendent of Public Instruction	123,198
Agriculture Commissioner	123,198
Insurance Commissioner	123,198
Labor Commissioner	123,198

NONELECTED DEPARTMENT HEAD/NO SALARY INCREASES

SECTION 26.2. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the 2009-2010 and 2010-2011 fiscal years are:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$120,363
Secretary of Correction	120,363
Secretary of Crime Control and Public Safety	120,363
Secretary of Cultural Resources	120,363
Secretary of Commerce	120,363
Secretary of Environment and Natural Resources	120,363
Secretary of Health and Human Services	120,363
Secretary of Juvenile Justice and Delinquency Prevention	120,363
Secretary of Revenue	120,363
Secretary of Transportation	120,363

CERTAIN EXECUTIVE BRANCH OFFICIALS/NO SALARY INCREASES

SECTION 26.3. The annual salaries, payable monthly, for the 2009-2010 and 2010-2011 fiscal years for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$109,553
State Controller	153,319
Commissioner of Motor Vehicles	109,553
Commissioner of Banks	123,198
State Personnel Director	120,363
Chairman, Parole Commission	100,035
Members of the Parole Commission	46,178
Chairman, Utilities Commission	137,203
Members of the Utilities Commission	123,198
Executive Director, Agency for Public Telecommunications	92,356
Director, Museum of Art	112,256
Executive Director, North Carolina Agricultural Finance Authority	106,635
State Chief Information Officer	153,227

JUDICIAL BRANCH OFFICIALS/NO SALARY INCREASES

SECTION 26.4.(a) The annual salaries, payable monthly, for specified judicial branch officials for the 2009-2010 and 2010-2011 fiscal years are:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	$140,932
Associate Justice, Supreme Court	137,249
Chief Judge, Court of Appeals	135,061
Judge, Court of Appeals	131,531
Judge, Senior Regular Resident Superior Court	127,957
Judge, Superior Court	124,382
Chief Judge, District Court	112,946
Judge, District Court	109,372
District Attorney	119,305
Administrative Officer of the Courts	126,738
Assistant Administrative Officer of the Courts	115,763
Public Defender	119,305
Director of Indigent Defense Services	123,022

SECTION 26.4.(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed seventy thousand nine hundred forty-six dollars ($70,946), and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-seven thousand one hundred eighty-two dollars ($37,182). The annual salaries in effect on June 30, 2009, shall remain at the same amount for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.4.(c) The annual salaries in effect on June 30, 2009, for permanent, full-time employees of the Judicial Department whose salaries are not itemized in this act shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.4.(d) The annual salaries in effect on June 30, 2009, for permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act, shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

CLERK OF SUPERIOR COURT/NO SALARY INCREASES

SECTION 26.5. The annual salaries of the clerks of superior court provided by G.S. 7A-101(a) shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

ASSISTANT AND DEPUTY CLERKS OF COURT/NO SALARY INCREASES

SECTION 26.6. The annual salaries of the assistant and deputy clerks of superior court provided by G.S. 7A-102(c1) shall remain in effect for the 2009-2010 and 2010-2011 fiscal years, and there shall not be a step increase.

MAGISTRATES/ NO SALARY INCREASES

SECTION 26.7. The annual salaries of magistrates provided by G.S. 7A-171.1(a) shall remain in effect for the 2009-2010 and 2010-2011 fiscal years, and there shall not be a step increase.

GENERAL ASSEMBLY PRINCIPAL CLERKS/NO SALARY INCREASES

SECTION 26.8. The annual salaries of the General Assembly principal clerks provided by G.S. 120-37(c) shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SERGEANT-AT-ARMS AND READING CLERKS/NO SALARY INCREASES

SECTION 26.9. The annual salaries of the General Assembly sergeants-at-arms and reading clerks provided by G.S. 120-37(b) shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

LEGISLATIVE EMPLOYEES/NO SALARY INCREASES

SECTION 26.10. The Legislative Services Officer shall not increase the salaries of nonelected employees of the General Assembly in effect on June 30, 2009. Except as specifically provided in this section, nothing in this act limits any of the provisions of G.S. 120-32.

COMMUNITY COLLEGES PERSONNEL/NO SALARY INCREASES

SECTION 26.11.(a) The annual salaries in effect on June 30, 2009, for faculty, except as otherwise provided by Section 8.1 of this act, and for all permanent, full-time community college institutional personnel supported by State funds, shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.11.(b) The minimum salaries for community college faculty shall be based on the following education levels:

(1) Vocational Diploma/Certificate or Less. – This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.

(2) Associate Degree or Equivalent. – This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.

(3) Bachelor's Degree.

(4) Master's Degree or Education Specialist.

(5) Doctoral Degree.

SECTION 26.11.(c) For the 2009-2010 and 2010-2011 school years, the minimum salaries for nine-month, full-time curriculum community college faculty shall not be increased and shall remain as follows:

Education Level	Minimum Salary
Vocational Diploma/Certificate or Less	$34,314
Associate Degree or Equivalent	$34,819
Bachelor's Degree	$37,009
Master's Degree or Education Specialist	$38,952
Doctoral Degree	$41,753

No full-time faculty member shall earn less than the minimum salary for his or her education level. The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA NO SALARY INCREASES

SECTION 26.12(a) Of funds appropriated to the Faculty Recruiting and Retention Fund under the Office of the President of the University of North Carolina, allocations from the fund shall be made for salary increases at the discretion of the President of the University of North Carolina only for the purpose of recruiting and retaining faculty members as necessary at constituent institutions.

SECTION 26.12.(b) The annual salaries in effect on June 30, 2009, for all employees of The University of North Carolina supported by State funds, and for employees of the North Carolina School of Science and Mathematics shall remain in effect for the 2009-2010 and 2010-2011 fiscal years except for faculty as otherwise provided by the Faculty Recruiting and Retention Fund or the Distinguished Professors Endowment Fund.

MOST STATE EMPLOYEES/NO SALARY INCREASES

SECTION 26.13.(a) The salaries in effect June 30, 2009, of all permanent, full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or the Highway Fund, shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.13.(b) Except as otherwise provided in this act, the salaries in effect on June 30, 2009, for permanent, full-time State officials and persons in exempt positions that are recommended by the Governor and set by the General Assembly shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.13.(c) The salaries in effect on June 30, 2009, for all permanent, part-time State employees shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.13.(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to maintain salaries in accordance with subsection (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, for the permanent, full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

ALL STATE-SUPPORTED PERSONNEL/NO SALARY INCREASES

SECTION 26.14.(a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund, in effect June 30, 2009, shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.14.(b) The salary increase provisions of G.S. 20-187.3 are suspended for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.14.(c) The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal years 2009-2010 and 2010-2011 all funds necessary for the salaries authorized by this act, including funds for the employer's retirement and social security contributions.

SECTION 26.14.(d) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

TEACHER SALARY SCHEDULES

SECTION 26.15.(a) The following monthly salary schedules shall apply for the 2009-2010 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 32 steps with each step corresponding to one year of teaching experience.

2009-2010 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
	"A" Teachers	
0	$3,043	N/A
1	$3,085	N/A
2	$3,129	N/A
3	$3,264	$3,656
4	$3,404	$3,812
5	$3,538	$3,963
6	$3,667	$4,107
7	$3,771	$4,224
8	$3,819	$4,277

9	$3,868	$4,332
10	$3,918	$4,388
11	$3,967	$4,443
12	$4,018	$4,500
13	$4,069	$4,557
14	$4,122	$4,617
15	$4,176	$4,677
16	$4,231	$4,739
17	$4,286	$4,800
18	$4,345	$4,866
19	$4,403	$4,931
20	$4,461	$4,996
21	$4,523	$5,066
22	$4,584	$5,134
23	$4,650	$5,208
24	$4,714	$5,280
25	$4,779	$5,352
26	$4,845	$5,426
27	$4,913	$5,503
28	$4,984	$5,582
29	$5,055	$5,662
30	$5,153	$5,771
31+	$5,255	$5,886

2009-2010 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$3,347	N/A
1	$3,394	N/A
2	$3,442	N/A
3	$3,590	$4,021
4	$3,744	$4,193
5	$3,892	$4,359
6	$4,034	$4,518
7	$4,148	$4,646
8	$4,201	$4,705
9	$4,255	$4,766
10	$4,310	$4,827
11	$4,364	$4,888
12	$4,420	$4,950
13	$4,476	$5,013
14	$4,534	$5,078
15	$4,594	$5,145
16	$4,654	$5,212
17	$4,715	$5,281
18	$4,780	$5,354
19	$4,843	$5,424
20	$4,907	$5,496
21	$4,975	$5,572
22	$5,042	$5,647
23	$5,115	$5,729

24	$5,185	$5,807
25	$5,257	$5,888
26	$5,330	$5,970
27	$5,404	$6,052
28	$5,482	$6,140
29	$5,561	$6,228
30	$5,668	$6,348
31+	$5,781	$6,475

SECTION 26.15.(b) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 26.15.(c) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 26.15.(d) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

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

SECTION 26.15.(e) Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

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

SECTION 26.15.(f) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 26.15.(g) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 26.16.(a) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2009-2010 fiscal year, commencing July 1, 2009, is as follows:

2009-2010 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	$3,781	-	-	-	-
5	$3,931	-	-	-	-
6	$4,074	-	-	-	-
7	$4,189	-	-	-	-
8	$4,243	$4,243	-	-	-
9	$4,298	$4,298	-	-	-
10	$4,353	$4,353	$4,408	-	-
11	$4,408	$4,408	$4,464	-	-
12	$4,464	$4,464	$4,521	$4,579	-
13	$4,521	$4,521	$4,579	$4,640	$4,701
14	$4,579	$4,579	$4,640	$4,701	$4,762
15	$4,640	$4,640	$4,701	$4,762	$4,828
16	$4,701	$4,701	$4,762	$4,828	$4,891
17	$4,762	$4,762	$4,828	$4,891	$4,956
18	$4,828	$4,828	$4,891	$4,956	$5,025
19	$4,891	$4,891	$4,956	$5,025	$5,092
20	$4,956	$4,956	$5,025	$5,092	$5,166
21	$5,025	$5,025	$5,092	$5,166	$5,237
22	$5,092	$5,092	$5,166	$5,237	$5,310
23	$5,166	$5,166	$5,237	$5,310	$5,383
24	$5,237	$5,237	$5,310	$5,383	$5,458
25	$5,310	$5,310	$5,383	$5,458	$5,537
26	$5,383	$5,383	$5,458	$5,537	$5,617
27	$5,458	$5,458	$5,537	$5,617	$5,725
28	$5,537	$5,537	$5,617	$5,725	$5,839
29	$5,617	$5,617	$5,725	$5,839	$5,956
30	$5,725	$5,725	$5,839	$5,956	$6,075
31	$5,839	$5,839	$5,956	$6,075	$6,197
32	-	$5,956	$6,075	$6,197	$6,321
33	-	-	$6,197	$6,321	$6,447
34	-	-	$6,321	$6,447	$6,576
35	-	-	-	$6,576	$6,708
36	-	-	-	$6,708	$6,842
37	-	-	-	-	$6,979

2009-2010 Principal and Assistant Principal Salary Schedules

	Classification			
Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-14	$4,828	-	-	-
15	$4,891	-	-	-
16	$4,956	$5,025	-	-

17	$5,025	$5,092	$5,237	-
18	$5,092	$5,166	$5,310	$5,383
19	$5,166	$5,237	$5,383	$5,458
20	$5,237	$5,310	$5,458	$5,537
21	$5,310	$5,383	$5,537	$5,617
22	$5,383	$5,458	$5,617	$5,725
23	$5,458	$5,537	$5,725	$5,839
24	$5,537	$5,617	$5,839	$5,956
25	$5,617	$5,725	$5,956	$6,075
26	$5,725	$5,839	$6,075	$6,197
27	$5,839	$5,956	$6,197	$6,321
28	$5,956	$6,075	$6,321	$6,447
29	$6,075	$6,197	$6,447	$6,576
30	$6,197	$6,321	$6,576	$6,708
31	$6,321	$6,447	$6,708	$6,842
32	$6,447	$6,576	$6,842	$6,979
33	$6,576	$6,708	$6,979	$7,119
34	$6,708	$6,842	$7,119	$7,261
35	$6,842	$6,979	$7,261	$7,406
36	$6,979	$7,119	$7,406	$7,554
37	$7,119	$7,261	$7,554	$7,705
38	$7,261	$7,406	$7,705	$7,859
39	-	$7,554	$7,859	$8,016
40	-	$7,705	$8,016	$8,176
41	-	-	$8,176	$8,340

SECTION 26.16.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

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

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

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

SECTION 26.16.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 26.16.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 26.16.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 26.16.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

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

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

SECTION 26.16.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 26.16.(h) During the 2009-2010 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

CENTRAL OFFICE SALARIES

SECTION 26.17.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2009-2010 fiscal year, beginning July 1, 2009.

School Administrator I	$3,309	$6,207
School Administrator II	$3,508	$6,583
School Administrator III	$3,724	$6,984
School Administrator IV	$3,874	$7,262
School Administrator V	$4,030	$7,556
School Administrator VI	$4,275	$8,013
School Administrator VII	$4,447	$8,336

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

SECTION 26.17.(b) The monthly salary ranges that follow apply to public school superintendents for the 2009-2010 fiscal year, beginning July 1, 2009.

Superintendent I	$4,720	$8,843
Superintendent II	$5,011	$9,377
Superintendent III	$5,316	$9,948
Superintendent IV	$5,642	$10,552
Superintendent V	$5,988	$11,196

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

SECTION 26.17.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 26.17.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 26.17.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 26.17.(f) The salaries in effect June 30, 2009, for all permanent full-time personnel paid from the Central Office Allotment, shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

NONCERTIFIED SCHOOL PERSONNEL SALARIES

SECTION 26.18.(a) The salaries in effect June 30, 2009, of permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.18.(b) The salaries in effect on June 30, 2009, for all permanent part-time noncertified public school employees whose salaries are supported from the State's General Fund shall remain in effect for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.18.(c) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to maintain salaries in accordance with subsection (a) or (b) of this section including funds for the employer's retirement and social security contributions for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES

SECTION 26.19. Effective July 1, 2009, any permanent certified personnel employed on July 1, 2009, and paid on the teacher salary schedule with 31+ years of experience shall receive a one-time bonus equivalent to one and eight-tenths percent (1.8%). Effective July 1, 2009, any permanent personnel employed on July 1, 2009, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%). For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 26.20.(a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employee's salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

Notwithstanding any other provision of law, an employer who hires or has hired a retiree as an employee shall enroll the retiree in the active group and pay the cost for the hospital-medical benefits if that retiree is employed in a position that would require the employer to pay hospital-medical benefits if the individual had not been retired.

SECTION 26.20.(b) Effective July 1, 2009, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2009-2010 fiscal year are: (i) eight and sixty-five hundredths percent (8.65%) – Teachers and State Employees; (ii) thirteen and sixty-five hundredths percent (13.65%) – State Law Enforcement Officers; (iii) eleven and seventy-six hundredths percent (11.76%) – University Employees' Optional Retirement System; (iv) eleven and seventy-six hundredths percent (11.76%) – Community College Optional Retirement Program; (v) nineteen and fifty-one hundredths percent (19.51%) – Consolidated Judicial Retirement System; and (vi) four and forty hundredths percent (4.40%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and forty hundredths percent (4.40%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 26.20.(c) Effective July 1, 2010, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2010-2011 fiscal year are: (i) nine and five hundredths percent (9.05%) – Teachers and State Employees; (ii) fourteen and five hundredths percent (14.05%) – State Law Enforcement Officers; (iii) twelve and sixteen hundredths percent (12.16%) – University Employees' Optional Retirement System; (iv) twelve and sixteen hundredths percent (12.16%) – Community College Optional Retirement Program; (v) nineteen and ninety-one hundredths percent (19.91%) – Consolidated Judicial Retirement System; and (vi) four and eighty hundredths percent (4.80%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and eighty hundredths percent (4.80%) for hospital and medical benefits. The rate for Teachers and State

Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

NATIONAL GUARD PENSION FUND

SECTION 26.21. G.S. 127A-40 reads as rewritten:

"(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to ~~and transferred from the Department of Crime Control and Public Safety.~~ the Department of State Treasurer. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities."

EXTEND PHASED RETIREMENT PROGRAM EXEMPTION

SECTION 26.22. Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21 of S.L. 2006-66, reads as rewritten:

"**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until the earlier of ~~June 30, 2010,~~ August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service. The remainder of this section becomes effective June 30, 2005."

PART XXVII. CAPITAL APPROPRIATIONS.

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 27.1. The appropriations made by the 2009 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 27.2. There is appropriated from the General Fund for the 2009-2010 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2009-2010**

Department of Environment and Natural Resources	
Water Resources Development Projects	$ 17,600,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$17,600,000**

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 27.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects with costs as indicated:

	Name of Project	**2009-2010**
(1)	Wilmington Harbor Deepening	$ 1,300,000
(2)	B. Everett Jordan Lake Water Supply Storage	200,000
(3)	Carolina Beach Renourishment	738,000
(4)	Carolina Beach South (Kure Beach) Renourishment	842,000
(5)	Wrightsville Beach Renourishment	2,059,000
(6)	Ocean Isle Beach Renourishment	1,211,000
(7)	Nags Head Beach Renourishment	2,000,000
(8)	Bald Head Island Beach Renourishment	5,000,000
(9)	State/Local WRD Grants	1,000,000
(10)	Emerald Isle Boat Launch	1,000,000
(11)	Beaufort Harbor Maintenance	50,000
(12)	Princeville Flood Control	100,000
(13)	Currituck Sound Environmental Restoration	100,000
(14)	West Onslow Beach (Topsail Beach, Pender County)	75,000
(15)	Aquatic Obstruction Removal – Statewide	300,000
(16)	Aquatic Plant Control (State, L. Gaston & Roanoke Rapids L.)	300,000
(17)	Mountain to the Sea Trail – Water Based Recreation	250,000
(18)	Little Fork Creek (Rendezvous State Park)	400,000
(19)	Planning Assistance to Communities	75,000
(20)	Concord Stream Restoration (Cabarrus County) (Sec. 206)	350,000
(21)	Wilson Bay Restoration (Sec. 206), Onslow County	250,000
TOTALS		**$17,600,000**

SECTION 27.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2009-2010 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.

(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2009-2010.

(3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2010-2011 fiscal year.

SECTION 27.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal

Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.

(2) The estimated cost of each project.

(3) The date that work on each project began or is expected to begin.

(4) The date that work on each project was completed or is expected to be completed.

(5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 27.4.(a). The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources:

Name of Project	**Amount of Non-General Fund Funding Authorized for 2009-2010**
Department of Crime Control and Public Safety	
Additions and Renovations to Armories	$ 9,303,442
Camp Butner Cantonment – Phase 1 Design	1,367,000
Family Assistance Centers	2,000,000
Department of Cultural Resources	
Aycock Birthplace Picnic Shelter	86,100
Maritime Museum – Floating Dock	130,000
Museum of History Chronology Exhibit – Phase 2B (1900-1960)	1,200,000
Department of Environment and Natural Resources	
Jennette's Pier Reconstruction	24,446,400
Zoo – Elephant Exhibit New Restrooms	300,000
Wildlife Resources Commission	
Armstrong Hatchery Lower Raceway Replacement	1,725,000
Centennial Campus Education Center Exhibit Completion	180,000
Chinquapin Equipment Storage Pole Shed	60,000
Chowan Bridge Fishing Pier and Edenton Boating Access	450,000
Emerald Isle New Boating Access Area	600,000
Falls Lake Office Building	550,000
Hampstead Land Acquisition	10,000,000
Land Acquisitions – State Gamelands	59,135,000
Lewelyn Branch New Boating Access Area	150,000
Manns Harbor Bridge Marina Acquisition	5,750,000
Marion Depot Drainage Repairs	200,000
McKinney Lake Hatchery Kettles Replacement	1,700,000
Minor Boating Access Area Renovations – Various Locations	150,000
New Coldwater Fish Hatchery Construction	7,900,000
Ocean Isle Boating Access Area Renovations	150,000
Outer Banks Education Center Teaching Facility Repairs	245,000
Pechmann Fishing Education Center Pond Restoration	160,000

Pechmann Fishing Education Center Storage Building	220,000
Pisgah Education Center Gift Shop Renovation and Expansion	200,000
Pisgah Education Center Outdoor Exhibit Renovation	450,000
Pisgah Education Center Repairs	155,000
Pisgah Hatchery Water System Renovation	100,000
Rhodes Pond Dam Repairs	500,000
Sneads Ferry Land Acquisition	6,500,000
Sunset Harbor Land Acquisition	925,000
Swan Quarter Land Acquisition	1,700,000
Sykes Depot Pond, Office, Storage Construction	350,000
Table Rock Hatchery Office and Workshop Replacement	345,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**$139,382,942**

SECTION 27.4.(b) From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2009-2010 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department.

SECTION 27.4.(c) Notwithstanding G.S. 143C-8-7, and subject to approval by the Director of the Budget, during the 2009-2011 fiscal biennium, the Aquariums Division of the Department of Environment and Natural Resources may expend funds from the North Carolina Aquariums Fund for capital improvement projects.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 27.5.(a) Of the funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, fifty-four percent (54%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and forty-six percent (46%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 27.5.(b) In addition to any other funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, the following funds are transferred to that Reserve:

(1) Proceeds of bonds and notes issued pursuant to Section #(f)(2) of this act for the repair and renovation of State facilities and related infrastructure.

(2) The Energy Efficiency and Conservation Block Grant funds appropriated in this act.

SECTION 27.5.(c) Notwithstanding G.S. 143C-4-3(b), Energy Efficiency and Conservation Block Grant funds shall be used for repairs and renovations to State and university facilities that will make those facilities more energy efficient. Eligible projects under this subsection include:

(1) Replacement of incandescent light bulbs with compact fluorescent light bulbs, installation of exit signs that employ light-emitting diode (LED) technology, the installation of occupancy sensors or optical sensors, and other lighting efficiency improvements.

(2) For windows that need replacement, installation of more energy-efficient windows.

(3) Insulation improvements when practicable.

(4) Replacement of inefficient or oversized heating, ventilation, and air-conditioning (HVAC) systems when those systems are subject to replacement and installation of programmable automation systems.

(5) Installation of aerators in sink faucets that reduce the flow rate and other water system projects that reduce water consumption.

(6) Any other retrofit or replacement projects that make State or university facilities more energy efficient for which the incremental cost of the project will be equal to or less than the energy or water savings that result over a period of three years after completion.

SECTION 27.5.(d) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among the University's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

(1) The safety and well-being of the residents of campus housing programs.

(2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.

(3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.

(4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.

(5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports shall also include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 27.5.(e) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 27.6. The appropriations made by the 2009 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2009 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2009 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

CENTER FOR DESIGN AND WINSTON-SALEM STATE AMENDMENTS

SECTION 27.7.(a) Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, Section 2.1 of S.L. 2006-146, and Section 27.8 of S.L. 2008-107, is amended by deleting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."

and substituting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, acquisition of an existing building, construction, or renovation of a Center for Design Innovation to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."

SECTION 27.7.(b) G.S. 142-94 reads as rewritten:

"**§ 142-94. Procurement of capital facilities.**

The provisions of Articles 3, 3B, 3C, 3D, and 8 of Chapter 143 of the General Statutes and any other laws or rules of the State that relate to the acquisition and construction of State property apply to the financing of capital facilities through the use of special indebtedness pursuant to this Article. This section does not apply to the construction and lease-purchase, including leases with an option to purchase at the end of the lease term for a nominal sum, of

State office buildings pursuant to proposals submitted before the effective date of this Article in response to requests for proposals, to the extent any of those proposals, as they may be supplemented or amended, are approved by the Department of Administration and any of these leases or lease-purchase agreements are approved by the Council of State in accordance with G.S. 143-341(4)d2. With the exception of Article 8 of Chapter 143 of the General Statutes, this section does not apply to any special indebtedness issued pursuant to this Article for the purchase, construction, or operation of capital facilities by Gateway University Research Park, Inc., a joint Millennial Campus in Greensboro. This section does not apply to facilities for the Center for Design Innovation to be operated jointly by Winston-Salem State University and the University of North Carolina School of the Arts, as authorized in Section 1.1 of S.L. 2004-179, as amended."

SECTION 27.7.(c) Notwithstanding the Joint Conference Committee Report dated July 17, 2004, for S.L. 2004-124, the two million dollars ($2,000,000) appropriated for Winston-Salem State University shall be used to provide funds to acquire land and renovate space for Winston-Salem State University.

DEBT SERVICE FOR GREEN SQUARE COMPLEX PARKING CONSTRUCTION

SECTION 27.8. Notwithstanding Item 61, Page M-11, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for S.L. 2008-107, the General Fund shall service the debt for the Green Square Complex parking deck during the 2009-2011 fiscal biennium.

ADJUSTMENTS TO COPS FOR REDUCED CONSTRUCTION INFLATION

SECTION 27.9.(a) Section 27.8(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 27.8.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of ~~sixty-nine million dollars ($69,000,000)~~sixty-three million eight hundred nineteen thousand five hundred fifty-eight dollars ($63,819,558) to finance the capital facility costs of completing a School of Dentistry building at East Carolina University and no more than 10 satellite dental clinics across the State. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty million dollars ($60,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(2) In the maximum aggregate principal amount of ~~thirty-six million eight hundred thousand dollars ($36,800,000)~~ thirty-five million six hundred seventy-eight thousand nine hundred seventy-six dollars ($35,678,976) to finance the capital facility costs of completing a family medicine building at East Carolina University. No more than a maximum aggregate amount of sixteen million six hundred thousand dollars ($16,600,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(3) In the maximum aggregate principal amount of ~~eighteen million dollars ($18,000,000)~~seventeen million eighty-two thousand six hundred fifty-five dollars ($17,082,655) to finance the capital facility costs of completing a

School of Education building at Elizabeth City State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fifteen million dollars ($15,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(4) In the maximum aggregate principal amount of two million four hundred thirty-eight thousand dollars ($2,438,000) to finance the capital improvement costs of acquiring land and constructing capital facilities for a horse park in Rockingham County for North Carolina Agricultural and Technical State University.

(5) In the maximum aggregate principal amount of ~~twenty million four hundred ninety thousand dollars ($20,490,000)~~ nineteen million four hundred eighty-one thousand seven hundred thirty-nine dollars ($19,481,739) to finance the capital facility costs of completing a general classroom building at North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(6) In the maximum aggregate principal amount of ~~twenty-four million five hundred thousand dollars ($24,500,000)~~ twenty-three million one hundred twenty-five thousand two hundred twenty-seven dollars ($23,125,227) to finance the capital facility costs of completing a nursing building at North Carolina Central University. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of seventeen million dollars ($17,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(7) In the maximum aggregate principal amount of ~~eleven million one hundred thousand dollars ($11,100,000)~~ ten million four hundred ninety-five thousand nine hundred eighty-one dollars ($10,495,981) to finance the capital facility costs of completing a central storage facility at the North Carolina School of the Arts.

(8) In the maximum aggregate principal amount of ~~twelve million nine hundred thousand dollars ($12,900,000)~~ eleven million nine hundred fifty thousand six hundred seventy-nine dollars ($11,950,679) to finance the capital facility costs of completing a film school production facility at the North Carolina School of the Arts. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars ($2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars ($7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(9) In the maximum aggregate principal amount of ~~one hundred nine million one hundred thousand dollars ($109,100,000)~~ one hundred one million five hundred sixty-eight thousand eight hundred thirty dollars ($101,568,830) to finance the capital facility costs of completing the Centennial Campus library at North Carolina State University. No more than a maximum aggregate amount of forty-nine million dollars ($49,000,000) of special

indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty-eight million one hundred thousand dollars ($68,100,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of ~~one hundred million one hundred thousand dollars ($100,100,000)~~ ninety-two million five hundred sixty-eight thousand eight hundred thirty dollars ($92,568,830) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(10) In the maximum aggregate principal amount of four million dollars ($4,000,000) for the capital facility costs of completing the 4-H Campuses at North Carolina State University.

(11) In the maximum aggregate principal amount of ~~sixty-nine million dollars ($69,000,000)~~sixty-three million eight hundred nineteen thousand five hundred fifty-eight dollars ($63,819,558) to finance the capital facility costs of completing a School of Dentistry expansion at the University of North Carolina at Chapel Hill. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of ~~sixty-one million dollars ($61,000,000)~~fifty-five million eight hundred nineteen thousand five hundred fifty-eight dollars ($55,819,558) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(12) In the maximum aggregate principal amount of ~~fifty-seven million two hundred eighteen thousand dollars ($57,218,000)~~ fifty-three million nine hundred eleven thousand three hundred five dollars ($53,911,305) to finance the capital facility costs of completing the Energy Production Infrastructure Center at the University of North Carolina at Charlotte. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of thirty-two million two hundred eighteen thousand dollars ($32,218,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(13) In the maximum aggregate principal amount of forty-two million six hundred seventy thousand dollars ($42,670,000) to finance the capital facility costs of completing an academic classroom and office building at the University of North Carolina at Greensboro. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(14) In the maximum aggregate principal amount of ten million dollars ($10,000,000) to finance the capital facility costs of installing fire sprinklers in The University of North Carolina System residence halls.

(15) In the maximum aggregate principal amount of twenty-five million dollars ($25,000,000) to finance the capital improvement costs of acquiring State land throughout The University of North Carolina System.

(16) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital improvement costs of purchasing State judicial facilities located at 901 Corporate Drive, Raleigh, NC, and more particularly described as Phase Two, Tract A of Raleigh Corporate Center

consisting of 17.28 acres and as shown on the map recorded in Map book 1987, page 720, and Map book 1990, page 576, of the Wake County Register of Deeds.

(17) In the maximum aggregate principal amount of ~~forty-five million one hundred seventy thousand dollars ($45,170,000)~~forty-two million nine hundred forty-seven thousand three hundred dollars ($42,947,300) to finance the capital facility costs of completing a health care and mental health facility at the North Carolina Correctional Institute for Women. No more than a maximum aggregate amount of twenty-seven million dollars ($27,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(18) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars ($13,010,000)~~ twelve million three hundred sixty-nine thousand eight hundred eleven dollars ($12,369,811) to finance the capital facility costs of completing a minimum security addition at Scotland Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(19) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars ($18,950,000)~~ eighteen million seventeen thousand five hundred nineteen dollars ($18,017,519) to finance the capital facility costs of completing a medium security addition at Bertie Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(20) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars ($13,010,000)~~ twelve million three hundred sixty-nine thousand eight hundred eleven dollars ($12,369,811) to finance the capital facility costs of completing a minimum security addition at Tabor Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(21) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars ($18,950,000)~~ eighteen million seventeen thousand five hundred nineteen dollars ($18,017,519) to finance the capital facility costs of completing a medium security addition at Lanesboro Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(22) In the maximum aggregate principal amount of two million nine hundred twenty-five thousand dollars ($2,925,000) to finance the capital facility costs of completing Phase I of the CSS Neuse State Historic Site.

(23) In the maximum aggregate principal amount of seven million dollars ($7,000,000) to finance the capital facility costs of completing Port of Morehead City Berth Improvements and Phase I of Port of Wilmington Berth 8 Improvements.

(24) In the maximum aggregate principal amount of three million seven hundred thousand dollars ($3,700,000) to finance the capital facility costs of completing a Southeastern North Carolina Agriculture Center Pavilion.

(25) In the maximum aggregate principal amount of ~~eight million one hundred thousand dollars ($8,100,000)~~seven million six hundred twenty thousand eight hundred twenty-three dollars ($7,620,823) to finance the capital facility costs of Department of Agriculture and Consumer Services capital improvements. Sales proceeds shall be allocated between the projects in the following manner:

Project	**Allocation of Sales Proceeds**
Bathroom and truckshed expansion at The Western North Carolina Farmers' Market	$650,000
Davis Arena renovation and expansion at The Western North Carolina Agricultural Center	~~$7,450,000~~$6,970,823

(26) In the maximum aggregate principal amount of four million three hundred three thousand nine hundred forty-four dollars ($4,303,944) to finance the capital facility costs of completing an oyster hatchery.

(27) In the maximum aggregate principal amount of two million seven hundred thousand dollars ($2,700,000) to finance the capital improvement costs of completing an expansion and renovation to the polar bear exhibit at the North Carolina Zoo.

(28) In the maximum aggregate principal amount of ~~fifty million dollars ($50,000,000)~~ ten million dollars ($10,000,000) to finance the capital improvement costs of acquiring State park lands and conservation areas for the Land for Tomorrow initiative in the Department of Environment and Natural Resources. Proceeds shall be allocated to support the conservation priorities of the One North Carolina Naturally program."

SECTION 27.9.(b) Section 29.13(a) of S.L. 2007-323, as amended by Section 27.8(d) of S.L. 2008-107, reads as rewritten:

"**SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State University. No more than a maximum aggregate amount of three million dollars ($3,000,000) of special

indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(2) In the maximum aggregate principal amount of ~~twenty-two million five hundred eighty-seven thousand dollars ($22,587,000)~~ twenty-one million four hundred seventy-five thousand five hundred fifty-one dollars ($21,475,551) to finance the capital facility costs of completing a new Science and Technology Complex at Fayetteville State University. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(3) In the maximum aggregate principal amount of ~~twenty-four million nine hundred twenty thousand dollars ($24,920,000)~~ twenty-three million six hundred six thousand seven hundred twenty-three dollars ($23,606,723) to finance the capital facility costs of completing a new library at the North Carolina School of the Arts. No more than a maximum aggregate amount of one million seven hundred seventy-five thousand six hundred dollars ($1,775,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million three hundred seventy-three thousand six hundred dollars ($14,373,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(4) In the maximum aggregate principal amount of thirty-eight million dollars ($38,000,000) to finance the capital facility costs of completing the Randall B. Terry Companion Animal Hospital at North Carolina State University. No more than a maximum aggregate amount of twenty-eight million five hundred thousand dollars ($28,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(5) In the maximum aggregate principal amount of ~~thirty-four million dollars ($34,000,000)~~ thirty-two million three hundred twenty-six thousand nine hundred forty-seven dollars ($32,326,947) to finance the capital facility costs of completing an addition to Engineering Building III in the School of Engineering at North Carolina State University. No more than a maximum aggregate amount of eight million five hundred thousand dollars ($8,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million five hundred thousand dollars ($25,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(6) In the maximum aggregate principal amount of eight million six hundred eighty-seven thousand dollars ($8,687,000) to finance the capital facility costs of renovating Rhoades Hall at the University of North Carolina at Asheville.

(7) In the maximum aggregate principal amount of one hundred nineteen million six hundred eight thousand two hundred twenty-five dollars ($119,608,225) to finance the capital facility costs of a Genomics Science Building at the University of North Carolina at Chapel Hill. No more than a maximum aggregate amount of thirty-one million dollars ($31,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eighty-six million dollars ($86,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(8) In the maximum aggregate principal amount of nineteen million dollars ($19,000,000) to finance the capital facility costs of completing a Nursing and Allied Health Building at the University of North Carolina at Pembroke. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(9) In the maximum aggregate principal amount of thirty-four million five hundred twenty-five thousand dollars ($34,525,000) to finance the capital facility costs of completing a new teaching laboratory at the University of North Carolina at Wilmington. No more than a maximum aggregate amount of two million five hundred thousand dollars ($2,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eight million six hundred thirty-one thousand two hundred fifty dollars ($8,631,250) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(10) In the maximum aggregate principal amount of ~~forty-one million six hundred five thousand dollars ($41,605,000)~~thirty-eight million eight hundred sixty-two thousand nine hundred sixty dollars ($38,862,960) to finance the capital facility costs of completing a new Health and Gerontological Building at Western Carolina University. No more than a maximum aggregate amount of eighteen million eight hundred two thousand five hundred dollars ($18,802,500) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(11) In the maximum aggregate principal amount of twenty-eight million five hundred seven thousand dollars ($28,507,000) to finance the capital facility costs of completing a new student activities center at Winston-Salem State University. No more than a maximum aggregate amount of two million dollars ($2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million seven hundred ninety-nine thousand dollars ($14,799,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(12) In the maximum aggregate principal amount of ~~fifty-three million dollars ($53,000,000)~~ fifty million three hundred ninety two thousand six dollars ($50,392,006) to finance the capital facility costs of completing a Nanoscience Building to be used jointly by the University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(13) In the maximum aggregate principal amount of thirty-two million five hundred thousand dollars ($32,500,000) to finance the capital facility costs for completing the Coastal Studies Institute. No more than a maximum aggregate amount of eight million dollars ($8,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-three million dollars ($23,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(14) In the maximum aggregate principal amount of nineteen million eight hundred sixteen thousand five hundred dollars ($19,816,500) to finance the

capital facility costs of a medium security facility at the Scotland Correctional Institution. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(15) In the maximum aggregate principal amount of thirteen million one hundred ninety-one thousand three hundred dollars ($13,191,300) to finance the capital facility costs of a minimum security facility at the Alexander Correctional Institution. No more than a maximum aggregate amount of six million five hundred ninety-five thousand six hundred fifty dollars ($6,595,650) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(16) In the maximum aggregate principal amount of thirty-five million dollars ($35,000,000) to finance the capital facility costs of a new education and visitors center at Tryon Palace Historic Sites and Gardens. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009."

SECTION 27.9.(c) Section 23.12 of S.L. 2006-66, as amended by Section 27.8(c) of S.L. 2008-107, reads as rewritten:

"**SPECIAL INDEBTEDNESS PROJECTS**

SECTION 23.12.(a) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million one hundred thirty dollars ($45,130,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of constructing and renovating the project described in this subsection.

SECTION 23.12.(b) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of completing the Central Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(c) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~twenty-four million eight hundred forty-one thousand three hundred dollars ($24,841,300)~~ twenty-four million one hundred sixteen thousand four hundred thirty-three dollars ($24,116,433) to finance the capital facility costs of a new Secondary State Data Center. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(d) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million eight hundred twenty-seven thousand four hundred dollars ($45,827,400) to

finance the capital facility costs of a new Center City Classroom Building at the University of North Carolina – Charlotte. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(e) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred one million dollars ($101,000,000) to finance the capital facility costs of the Department of Health and Human Services Public Health Laboratory and Office of Chief Medical Examiner. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007.

SECTION 23.12.(f) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred forty-five million five hundred thousand dollars ($145,500,000)~~ one hundred forty million four hundred seventy eight thousand seventy dollars ($140,478,070) to finance the capital facility costs of the Eastern Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of one hundred million dollars ($100,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008.

SECTION 23.12.(g) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred thirty-two million two hundred thousand dollars ($132,200,000) to finance the capital facility costs of the Regional Medical Center and Mental Health Center of the Department of Correction. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of eight million two hundred thousand dollars ($8,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of fifty-eight million two hundred thousand dollars ($58,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of ninety-eight million two hundred thousand dollars ($98,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(h) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred sixty two million eight hundred thousand dollars ($162,800,000)~~ one hundred fifty-seven million one hundred eighty thousand nine hundred sixty dollars ($157,180,960) to finance the capital facility costs of the Western Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State

Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(i) This section is effective when it becomes law."

SECTION 27.9.(d) Section 1.2 of S.L. 2004-179, as amended by Section 1 of S.L. 2006-231, reads as rewritten:

"**SECTION 1.2.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~forty-two million dollars ($42,000,000)~~thirty-five million two hundred thousand dollars ($35,200,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

SECTION 27.9.(e) Notwithstanding anything in Section 47.1 of S.L. 2003-284 to the contrary, the maximum amount of special indebtedness authorized by that section for the capital facilities cost of Columbus County Correctional Institution is one hundred one million fifty-six thousand four hundred ninety dollars ($101,056,490).

TWO-THIRDS BONDS ACT OF 2009

SECTION 27.10.(a) Short Title. – This section may be cited as the "Two-Thirds Bonds Act of 2009."

SECTION 27.10.(b) Findings and Determinations. – It is the intent and purpose of the General Assembly by this section to provide for the issuance of general obligation bonds or notes of the State in order to provide funds for the cost of State capital facilities and for the cost of repairs and renovations of State capital facilities and related infrastructure.

SECTION 27.10.(c) Definitions. – The following definitions apply in this section unless the context otherwise requires:

(1) Bonds. – Bonds issued under this section.

(2) Cost. – The term includes all of the following:

a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving State capital facilities, including the acquisition of land, rights-of-way, easements, franchises, equipment, machinery, furnishings, and other interests in real or personal property acquired or used in connection with a State capital facility.

b. The cost of engineering, architectural, and other consulting services as may be required.

c. Administrative expenses and charges.

d. The cost of providing personnel to ensure effective project management.

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs

of bond and note issuance, to the extent and as determined by the State Treasurer.

f. Finance charges, reserves for debt service, and other types of reserves required pursuant to the terms of any bond or note or related documents, interest before and during construction or acquisition of a State capital facility and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction or acquisition.

g. The cost of bond insurance, investment contracts, credit enhancement facilities and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of any bond or note.

h. The cost of reimbursing the State for any payments made for any cost described in this subdivision.

i. Any other costs and expenses necessary or incidental to the purposes of this section.

(3) Credit facility. – An agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(4) Notes. – Notes issued under this section.

(5) Par formula. – A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible.

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(6) State. – The State of North Carolina, including any State agency.

(7) State agency. – Any agency, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include counties, municipal corporations, political subdivisions, local boards of education, or other local public bodies.

SECTION 27.10.(d) Authorization of Bonds and Notes. – The State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell at one time or from time to time general obligation bonds of the State to be designated "State of North Carolina

General Obligation Bonds," with any additional designations as may be determined, or notes of the State, to provide funds, with any other available funds, for the purposes authorized by this section. The aggregate principal amount of indebtedness authorized by this section for each fiscal year may not exceed the lesser of the amount authorized by this subsection for that fiscal year or two-thirds of the amount by which the State's outstanding indebtedness was reduced during the biennium ended June 30th of the preceding fiscal year. If the maximum principal amount of bonds and notes authorized for a fiscal year is in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced, then the maximum amount of bonds and notes authorized in this section for that fiscal year is reduced by such excess.

(1) In the maximum aggregate principal amount of one hundred six million six hundred ten thousand dollars ($106,610,000) for fiscal year 2009-2010.

(2) In the maximum aggregate principal amount of one hundred million dollars ($100,000,000) for fiscal year 2010-2011.

(3) In the maximum aggregate principal amount of fifty million dollars ($50,000,000) for fiscal year 2011-2012.

(4) In the maximum aggregate principal amount of fifty million dollars ($50,000,000) for fiscal year 2012-2013.

SECTION 27.10.(e) Uses of Bond and Note Proceeds. – The proceeds of bonds and notes shall be used for financing the cost of State capital facilities and for repairing and renovating State capital facilities as provided in this section. Any additional moneys which may be received by grant from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any State capital facilities authorized by this section may be placed by the State Treasurer in a separate fund or funds and shall be disbursed, to the extent permitted by the terms of the grant, without regard to any limitations imposed by this section.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for the cost of State capital facilities, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this section is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this section shall be disbursed for the purposes provided in this section upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes.

The Office of State Budget and Management and the Board of Governors of The University of North Carolina shall provide semiannual reports to the Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division on the expenditure of moneys authorized by this section. The reports shall continue until the completion of the projects provided for in this section.

SECTION 27.10.(f) Allocation of Proceeds. – The proceeds of bonds and notes shall be allocated and expended as provided in this subsection:

(1) A maximum aggregate principal amount of two hundred forty million dollars ($240,000,000) to finance the capital facility costs of the new Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill. No more than a maximum aggregate principal amount of seventy-four million dollars ($74,000,000) may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of one hundred seventy-four million dollars ($174,000,000) may be

issued or incurred prior to July 1, 2011. No more than a maximum aggregate amount of two hundred twenty-four million dollars ($224,000,000) may be issued or incurred prior to July 1, 2012. The projected allocation for this capital facility may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants.

(2) A maximum aggregate principal amount of sixty-six million six hundred ten thousand dollars ($66,610,000) to be used only in accordance with this subdivision for the repair and renovation of State facilities and related infrastructure. No more than a maximum aggregate amount of thirty-two million six hundred ten thousand dollars ($32,610,000) may be issued or incurred prior to July 1, 2012.

SECTION 27.10.(g) Issuance of Bonds and Notes. –

(1) Terms and conditions. – Bonds or notes may bear a date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than or greater than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(2) Signatures; form and denomination; registration. – Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the great seal of the State, or a facsimile of the seal shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery. Bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note, although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this section.

(3) Manner of sale; expenses. – Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals,

mailing notices, inviting bids by correspondence, negotiating contracts of purchase, or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than or greater than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(4) Notes; repayment. –

a. By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

1. For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds;
2. For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
3. For the renewal of any loan evidenced by notes authorized in this section;
4. For the purposes authorized in this section; and
5. For refunding bonds or notes as authorized in this section.

b. Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this section. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(5) Refunding bonds and notes. – By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this section. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the

obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(6) Tax exemption. – Bonds and notes shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance or gift taxes, income taxes on the gain from the transfer of bonds or notes, and franchise taxes. The interest on bonds or notes is not subject to taxation as income.

(7) Investment eligibility. – Bonds and notes are securities in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(8) Faith and credit. – The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State expressly reserves the right to amend any provision of this section to the extent it does not impair any contractual right of a bond owner.

(9) Other agreements. – The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest-rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with issuance, incurrence, carrying, or securing of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond or note issue under this section as the State Treasurer considers necessary.

SECTION 27.10.(h) Variable Rate Demand Bonds and Notes. – In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for any period of time, as may be provided in the proceedings providing for the issuance of the bonds or

notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

SECTION 27.10.(i) Interpretation of Section. –

(1) Additional method. – The foregoing sections of this section shall be deemed to provide an additional and alternative method for the doing of the things authorized under it and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

(2) Statutory references. – References in this section to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to such sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(3) Broad construction. – This section, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(4) Inconsistent provisions. – Insofar as the provisions of this section are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this section shall be controlling.

(5) Severability. – If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

SECTION 27.10.(j) G.S 116-29.5 reads as rewritten:

"**§ 116-29.5. Biomedical Research Imaging Center.**

The General Assembly finds that the construction of the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill is a vital component of the State's efforts to improve the health and wellness of its citizens. Therefore, there is appropriated from the General Fund to the Board of Governors of The University of North Carolina the following sums for the corresponding fiscal year to be used for the planning and construction of the Biomedical Research Imaging Center:

Fiscal Year	Amount:
2009-2010	~~$172,000,000~~ $74,000,000
2010-2011	~~$45,000,000~~ $100,000,000
2012-2013	$50,000,000
2013-2014	$16,000,000."

SECTION 27.10.(k) The funds appropriated for the 2009-2010 shall be placed in a Reserve for the Biomedical Research Imaging Center and shall be spent only to the extent that the Council of State does not authorize the issuance of bonds in the amount of $74,000,000 during the 2009-2010 fiscal year.

SECTION 27.10.(l) Effective Date. – This section is effective when it becomes law.

PART XXVIII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 28.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 28.2.(a) The Senate Appropriations Committee Report on the Continuation, Expansion and Capital Budgets dated April 7, 2009, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 28.2.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2008-2009 budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted recommended adjustments to the budget to the General Assembly in March 2009 in the documents "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," for the 2009-2011 fiscal biennium for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report.

SECTION 28.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

MOST TEXT APPLIES ONLY TO THE 2009-2011 FISCAL BIENNIUM

SECTION 28.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium.

EFFECT OF HEADINGS

SECTION 28.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

SEVERABILITY CLAUSE

SECTION 28.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 28.6. Except as otherwise provided, this act becomes effective July 1, 2009.

DRAFT for REVIEW ONLY

SENATE APPROPRIATIONS COMMITTEE

REPORT ON THE CONTINUATION, EXPANSION AND CAPITAL BUDGETS

DRAFT for REVIEW ONLY

Senate Bill 202

Fiscal Research Division
April 6, 2009

DRAFT for REVIEW ONLY

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Budget Reform Statement
General Fund Availability

		FY 2009-2010	FY 2010-2011
1	Unappropriated Balance Remaining from Previous Year	0	104,983,971
2	Projected Reversions FY 2006-07	0	0
3	Projected Overcollections FY 2006-07	0	0
4	Less Earmarkings of Year End Fund Balance		
5	Savings Reserve Account	0	0
6	Repairs and Renovations Reserve Account	0	0
7	**Beginning Unreserved Fund Balance**	**0**	**104,983,971**
8			
9	**Revenues Based on Existing Tax Structure**	**18,030,500,000**	**19,072,800,000**
10			
11	**Non-tax Revenues**		
12	Investment Income	136,400,000	153,800,000
13	Judicial Fees	200,300,000	208,400,000
14	Disproportionate Share	100,000,000	100,000,000
15	Insurance	72,500,000	76,500,000
16	Other Non-Tax Revenues	195,700,000	201,500,000
17	Tobacco Trust Fund Transfer	0	0
18	Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
19	Highway Fund Transfer	17,600,000	17,600,000
20	**Subtotal Non-tax Revenues**	**831,000,000**	**830,600,000**
21			
22	**Total General Fund Availability**	**18,861,500,000**	**20,008,383,971**
23			
24	**Adjustments to Availability: 2009 Session**		
25	Reserve for Tax Adjustments	500,400,000	667,100,000
26	Federal Fiscal Stabilization Funds - Education	580,966,000	580,966,000
27	Federal Fiscal Stabilization Funds - General Purpose	129,261,500	129,261,500
28	IRA Distribution Suspended	(44,000,000)	0
29	Department of Revenue Improved Enforcement	50,000,000	75,000,000
30	Transfer from Disproportionate Share Reserve	24,994,954	0
31	Adjust Transfer from Insurance Regulatory Fund	(2,179,969)	(2,179,969)
32	Adjust Transfer from Treasurer's Office	(885,321)	(885,321)
33	Scrap Tire Disposal Account Funds	3,000,000	0
34	Increase DHHS/HSR Fees	1,122,990	1,122,990
35	Increase SOS Fees	3,632,700	3,632,700
36	Administrative Office of the Courts	32,942,179	38,899,425
37	Reduce Fund Balance - Nurse Educators for Tomorrow	1,000,000	0
38	Inmate Work Release Fund Increase	500,000	500,000
39	Reduce Fund Balance - Telecommunications Relay Trust Fund	5,000,000	0
40	Reduce Fund Balance - Teaching Fellows Trust Fund	4,500,000	0
41	Reduce Fund Balance - DPI Legacy Funds	2,000,000	0
42	**Subtotal Adjustments to Availability: 2009 Session**	**1,292,255,033**	**1,493,417,325**
43			
44	**Revised General Fund Availability**	**20,153,755,033**	**21,501,801,296**
45			
46	**Less: General Fund Appropriations**	**(20,048,771,062)**	**(21,273,033,668)**
47			
48	**Unappropriated Balance Remaining**	**104,983,971**	**228,767,628**

SUMMARY:

GENERAL FUND APPROPRIATIONS

Summary of General Fund Appropriations Fiscal Year 2009-2010 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2009-10	Adjustments	Adjustments	Changes	Changes	2009-10
Education:						
Community Colleges	1,072,571,152	(12,682,883)	0	(12,682,883)	-9.00	1,059,888,269
Public Education	8,245,341,827	(494,385,541)	(121,239,241)	(615,624,782)	-77.00	7,629,717,045
University System	3,026,185,255	(29,454,635)	(5,692,904)	(35,147,539)	16.00	2,991,037,716
Total Education	**12,344,098,234**	**(536,523,059)**	**(126,932,145)**	**(663,455,204)**	**-70.00**	**11,680,643,030**
Health and Human Services:						
Central Management and Support	74,014,863	(17,175,681)	495,000	(16,680,681)	-53.00	57,334,182
Aging Division	37,592,841	1,103,305	(2,768,783)	(1,665,478)	-2.00	35,927,363
Blind and Deaf / Hard of Hearing Services	11,704,522	(425,227)	75,000	(350,227)	-5.00	11,354,295
Child Development	305,403,137	45,230,380	(68,476,650)	(23,246,270)	-3.00	282,156,867
Education Services	40,827,434	(1,848,652)	(151,679)	(2,000,331)	-23.00	38,827,103
Health Service Regulation	19,271,921	(1,075,846)	0	(1,075,846)	-9.00	18,196,075
Medical Assistance	3,681,276,113	(224,720,860)	(928,173,399)	(1,152,894,259)	-15.00	2,528,381,854
Mental Health	819,613,620	(11,178,312)	(23,766,114)	(34,944,426)	-320.49	784,669,194
NC Health Choice	68,789,628	7,138,624	7,000,000	14,138,624	0.00	82,928,252
Public Health	195,214,007	(10,822,227)	(2,324,119)	(13,146,346)	-55.00	182,067,661
Social Services	236,218,110	(9,150,423)	(14,575,400)	(23,725,823)	-30.00	212,492,287
Vocational Rehabilitation	46,418,743	(4,652,764)	0	(4,652,764)	-5.00	41,765,979
Total Health and Human Services	**5,536,344,939**	**(227,577,683)**	**(1,032,666,144)**	**(1,260,243,827)**	**-520.49**	**4,276,101,112**
Justice and Public Safety:						
Correction	1,384,910,571	(87,421,903)	(4,855,320)	(92,277,223)	-427.00	1,292,633,348
Crime Control & Public Safety	43,925,878	(13,167,309)	580,336	(12,586,973)	10.25	31,338,905
Judicial Department	497,649,235	(24,858,825)	(2,324,864)	(27,183,689)	-50.00	470,465,546
Judicial - Indigent Defense	133,881,190	(5,917,126)	6,970,000	1,052,874	0.00	134,934,064
Justice	100,441,147	(8,338,435)	0	(8,338,435)	-57.00	92,102,712
Juvenile Justice & Delinquency Prevention	172,484,415	(25,151,423)	(218,393)	(25,369,816)	-208.00	147,114,599
Total Justice and Public Safety	**2,333,292,436**	**(164,855,021)**	**151,759**	**(164,703,262)**	**-731.75**	**2,168,589,174**

Summary of General Fund Appropriations Fiscal Year 2009-2010 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2009-10	Adjustments	Adjustments	Changes	Changes	2009-10
Natural And Economic Resources:						
Agriculture and Consumer Services	65,402,492	(4,453,034)	650,000	(3,803,034)	-17.20	61,599,458
Commerce	46,019,823	(8,850,878)	7,226,269	(1,624,609)	-23.00	44,395,214
Commerce - State Aid	15,642,232	(337,559)	3,500,000	3,162,441	0.00	18,804,673
Environment and Natural Resources	212,524,097	(13,157,702)	7,918,603	(5,239,099)	-46.25	207,284,998
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	(5,000,000)	(5,000,000)	0.00	95,000,000
Labor	19,064,773	(1,364,669)	0	(1,364,669)	-8.00	17,700,104
NC Biotechnology Center	15,427,561	(308,551)	0	(308,551)	0.00	15,119,010
Rural Economic Development Center	24,059,581	(40,128)	0	(40,128)	0.00	24,019,453
Total Natural and Economic Resources	**498,140,559**	**(28,512,521)**	**14,294,872**	**(14,217,649)**	**-94.45**	**483,922,910**
General Government:						
Administration	78,170,163	(8,941,733)	(65,011)	(9,006,744)	-113.25	69,163,419
Auditor	14,389,111	(1,064,333)	(100,266)	(1,164,599)	-5.00	13,224,512
Cultural Resources	77,933,037	(7,039,804)	(370,444)	(7,410,248)	-17.25	70,522,789
Cultural Resources - Roanoke Island	2,095,402	(134,106)	0	(134,106)	0.00	1,961,296
General Assembly	62,347,066	(3,543,726)	(1,141,554)	(4,685,280)	0.00	57,661,786
Governor	6,616,233	(502,702)	0	(502,702)	0.00	6,113,531
Housing Finance Agency	14,608,417	0	0	0	0.00	14,608,417
Insurance	33,824,822	(1,883,772)	(296,197)	(2,179,969)	0.00	31,644,853
Insurance - Worker's Compensation Fund	4,500,000	0	(2,500,000)	(2,500,000)	0.00	2,000,000
Lieutenant Governor	966,706	(17,696)	(16,831)	(34,527)	0.00	932,179
Office of Administrative Hearings	4,266,407	(298,952)	0	(298,952)	0.00	3,967,455
Revenue	91,347,503	(6,426,907)	0	(6,426,907)	-31.00	84,920,596
Secretary of State	11,854,656	(490,201)	0	(490,201)	-2.00	11,364,455
State Board of Elections	6,627,101	(403,272)	(1,540,007)	(1,943,279)	0.00	4,683,822
State Budget and Management	7,144,221	(583,206)	0	(583,206)	-1.00	6,561,015
State Budget and Management -- Special	4,280,000	(7,000)	750,000	743,000	0.00	5,023,000
State Controller	24,536,602	(1,119,487)	(55,965)	(1,175,452)	-5.75	23,361,150
Treasurer - Operations	11,150,002	6,241,175	(119,053)	6,122,122	-2.00	17,272,124
Treasurer - Retirement / Benefits	10,804,671	0	0	0	0.00	10,804,671
Total General Government	**467,462,120**	**(26,215,722)**	**(5,455,328)**	**(31,671,050)**	**-177.25**	**435,791,070**

Summary of General Fund Appropriations Fiscal Year 2009-2010 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2009-10	Adjustments	Adjustments	Changes	Changes	2009-10
Transportation	**0**	**0**	**0**	**0**	**0.00**	**0**
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	670,494,697	0	0	0	0.00	670,494,697
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	**672,111,077**	**0**	**0**	**0**		**672,111,077**
Statewide Reserves:						
Teachers and Administrators Salary Increases		56,765,776	8,674,720	65,440,496	0.00	65,440,496
Salary Adjustment Fund	4,500,000	(4,500,000)	0	(4,500,000)	0.00	0
Contingency and Emergency Fund	5,000,000			0	0.00	5,000,000
State Retirement System Contributions		21,000,000	0	21,000,000	0.00	21,000,000
Judicial Retirement System Contributions		1,300,000	0	1,300,000	0.00	1,300,000
State Health Plan		128,410,208	0	128,410,208	0.00	128,410,208
Information Technology Funds	14,821,416	0	(5,459,431)	(5,459,431)	0.00	9,361,985
Job Development Investment Grants (JDIG)	27,400,000		(8,400,000)	(8,400,000)	0.00	19,000,000
Reduce Debt Service Requirements		0	(7,500,000)	(7,500,000)	0.00	(7,500,000)
Statewide Administrative Support Reduction		(3,000,000)		(3,000,000)	-75.00	(3,000,000)
Federal Economic Recovery Management		0	1,000,000	1,000,000	0.00	1,000,000
Eliminate Funds for BRIC - General Fund	172,000,000		(172,000,000)	(172,000,000)	0.00	0
Contingency Reserve for BRIC			74,000,000	74,000,000	0.00	74,000,000
Subtotal Statewide Reserves	**223,721,416**	**199,975,984**	**(109,684,711)**	**90,291,273**	**-75.00**	**314,012,689**
Total Reserves and Debt Service	**895,832,493**	**199,975,984**	**(109,684,711)**	**90,291,273**	**-75.00**	**986,123,766**
Total General Fund for Operations	**22,075,170,781**	**(783,708,022)**	**(1,260,291,697)**	**(2,043,999,719)**	**-1668.94**	**20,031,171,062**

Summary of General Fund Appropriations						
Fiscal Year 2009-2010						
2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2009-10	Adjustments	Adjustments	Changes	Changes	2009-10
Capital Improvements						
Water Resources Development Projects	0	0	17,600,000	17,600,000		17,600,000
Total Capital Improvements	**0**	**0**	**17,600,000**	**17,600,000**		**17,600,000**
Total General Fund Budget	**22,075,170,781**	**(783,708,022)**	**(1,242,691,697)**	**(2,026,399,719)**	**-1668.94**	**20,048,771,062**

Summary of General Fund Appropriations
Fiscal Year 2010-2011
2009 Legislative Session

	Adjusted Continuation Budget 2010-11	Legislative Adjustments: Recurring Adjustments	Legislative Adjustments: Nonrecurring Adjustments	Legislative Adjustments: Net Changes	FTE Changes	Revised Appropriation 2010-11
Education:						
Community Colleges	1,114,034,594	(9,592,400)	0	(9,592,400)	-9.00	1,104,442,194
Public Education	8,358,798,223	(512,006,471)	(73,275,369)	(585,281,840)	-277.00	7,773,516,383
University System	3,100,871,575	(31,546,875)	(2,756,597)	(34,303,472)	39.00	3,066,568,103
Total Education	**12,573,704,392**	**(553,145,746)**	**(76,031,966)**	**(629,177,712)**	**-247.00**	**11,944,526,680**
Health and Human Services:						
Central Management and Support	74,482,593	(17,175,681)	2,000,000	(15,175,681)	-53.00	59,306,912
Aging Division	37,594,640	1,103,305	0	1,103,305	-2.00	38,697,945
Blind and Deaf / Hard of Hearing Services	11,763,464	(484,168)	0	(484,168)	-5.00	11,279,296
Child Development	305,417,178	45,230,380	(3,800,000)	41,430,380	-3.00	346,847,558
Education Services	40,879,342	(6,848,652)	(151,679)	(7,000,331)	-23.00	33,879,011
Health Service Regulation	19,277,259	(1,075,846)	0	(1,075,846)	-9.00	18,201,413
Medical Assistance	3,933,921,911	(239,254,554)	(522,714,239)	(761,968,793)	-15.00	3,171,953,118
Mental Health	834,943,177	(17,918,460)	(29,371,412)	(47,289,872)	-618.74	787,653,305
NC Health Choice	68,789,628	7,038,561	7,000,000	14,038,561	0.00	82,828,189
Public Health	198,230,503	(11,962,358)	(3,074,119)	(15,036,477)	-55.00	183,194,026
Social Services	234,498,543	(5,982,173)	(5,030,294)	(11,012,467)	-30.00	223,486,076
Vocational Rehabilitation	46,762,707	(4,983,670)	0	(4,983,670)	-5.00	41,779,037
Total Health and Human Services	**5,806,560,945**	**(252,313,316)**	**(555,141,743)**	**(807,455,059)**	**-818.74**	**4,999,105,886**
Justice and Public Safety:						
Correction	1,406,791,264	(71,506,648)	(899,259)	(72,405,907)	-411.00	1,334,385,357
Crime Control & Public Safety	44,067,870	(13,167,279)	0	(13,167,279)	6.25	30,900,591
Judicial Department	507,638,940	(29,411,240)	(6,390,013)	(35,801,253)	-50.00	471,837,687
Judicial - Indigent Defense	132,320,396	(10,917,126)	0	(10,917,126)	0.00	121,403,270
Justice	101,047,019	(9,702,443)	0	(9,702,443)	-57.00	91,344,576
Juvenile Justice & Delinquency Prevention	172,651,108	(29,163,127)	0	(29,163,127)	-208.00	143,487,981
Total Justice and Public Safety	**2,364,516,597**	**(163,867,863)**	**(7,289,272)**	**(171,157,135)**	**-719.75**	**2,193,359,462**

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Natural And Economic Resources:						
Agriculture and Consumer Services	65,638,839	(4,453,034)	0	(4,453,034)	-17.20	61,185,805
Commerce	46,028,986	(8,850,878)	0	(8,850,878)	-23.00	37,178,108
Commerce - State Aid	15,642,232	(337,559)	0	(337,559)	0.00	15,304,673
Environment and Natural Resources	214,924,435	(14,459,521)	0	(14,459,521)	-77.25	200,464,914
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	0	0	0.00	100,000,000
Labor	19,092,834	(1,364,669)	0	(1,364,669)	-8.00	17,728,165
NC Biotechnology Center	15,427,561	(308,551)	0	(308,551)	0.00	15,119,010
Rural Economic Development Center	24,059,581	(40,128)	0	(40,128)	0.00	24,019,453
Total Natural and Economic Resources	**500,814,468**	**(29,814,340)**	**0**	**(29,814,340)**	**-125.45**	**471,000,128**
General Government:						
Administration	78,362,881	(8,941,733)	(315,011)	(9,256,744)	-113.25	69,106,137
Auditor	14,405,383	(1,064,333)	(100,266)	(1,164,599)	-5.00	13,240,784
Cultural Resources	79,329,609	(7,039,804)	(370,444)	(7,410,248)	-17.25	71,919,361
Cultural Resources - Roanoke Island	2,095,402	(134,106)	0	(134,106)	0.00	1,961,296
General Assembly	64,056,544	(3,700,916)	(984,364)	(4,685,280)	0.00	59,371,264
Governor	6,622,879	(503,167)	0	(503,167)	0.00	6,119,712
Housing Finance Agency	14,608,417	0	0	0	0.00	14,608,417
Insurance	33,887,006	(1,883,772)	(296,197)	(2,179,969)	0.00	31,707,037
Insurance - Worker's Compensation Fund	4,500,000	0	(2,500,000)	(2,500,000)	0.00	2,000,000
Lieutenant Governor	966,706	(17,696)	(16,831)	(34,527)	0.00	932,179
Office of Administrative Hearings	4,279,242	(298,952)	0	(298,952)	0.00	3,980,290
Revenue	91,440,473	(6,426,907)	0	(6,426,907)	-31.00	85,013,566
Secretary of State	11,928,530	(490,201)	0	(490,201)	-2.00	11,438,329
State Board of Elections	6,630,894	(403,272)	(40,007)	(443,279)	0.00	6,187,615
State Budget and Management	7,147,928	(583,465)	0	(583,465)	-1.00	6,564,463
State Budget and Management -- Special	4,280,000	(7,000)	0	(7,000)	0.00	4,273,000
State Controller	24,568,908	(519,487)	(55,965)	(575,452)	-0.75	23,993,456
Treasurer - Operations	11,163,790	6,241,175	(119,053)	6,122,122	-2.00	17,285,912
Treasurer - Retirement / Benefits	10,804,671	0	0	0	0.00	10,804,671
Total General Government	**471,079,263**	**(25,773,636)**	**(4,798,138)**	**(30,571,774)**	**-172.25**	**440,507,489**

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Transportation	**0**	**0**	**0**	**0**	**0.00**	**0**
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	739,878,445	0	0	0	0.00	739,878,445
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	**741,494,825**	**0**	**0**	**0**	**0.00**	**741,494,825**
Statewide Reserves:						
Teachers and Administrators Salary Increases		56,765,776	0	56,765,776	0.00	56,765,776
Salary Adjustment Fund	4,500,000	(4,500,000)	0	(4,500,000)	0.00	0
Contingency and Emergency Fund	5,000,000			0	0.00	5,000,000
State Retirement System Contributions		21,000,000	0	21,000,000	0.00	21,000,000
Judicial Retirement System Contributions		1,300,000	0	1,300,000	0.00	1,300,000
State Health Plan		267,904,114	0	267,904,114	0.00	267,904,114
Information Technology Funds	14,821,416	0	(5,459,431)	(5,459,431)	0.00	9,361,985
Job Development Investment Grants (JDIG)	27,400,000	0	0	0	0.00	27,400,000
Reduce Debt Service Requirements		7,307,323	0	7,307,323	0.00	7,307,323
Statewide Administrative Support Reduction		(4,000,000)	0	(4,000,000)	(100.00)	(4,000,000)
Federal Economic Recovery Management		0	1,000,000	1,000,000	0.00	1,000,000
Eliminate Funds for BRIC - General Fund	45,000,000	0	(45,000,000)	(45,000,000)	0.00	0
Contingency Reserve for BRIC			100,000,000	100,000,000	0.00	100,000,000
Budget E-Procurement Receipts		(10,000,000)	0	(10,000,000)	0.00	(10,000,000)
Subtotal Statewide Reserves	**96,721,416**	**335,777,213**	**50,540,569**	**386,317,782**	**-100.00**	**483,039,198**
Total Reserves and Debt Service	**838,216,241**	**335,777,213**	**50,540,569**	**386,317,782**	**-100.00**	**1,224,534,023**
Total General Fund for Operations	**22,554,891,906**	**(689,137,688)**	**(592,720,550)**	**(1,281,858,238)**	**-2183.19**	**21,273,033,668**

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Capital Improvements						
Water Resources Development Projects	0	0	0	0		0
Total Capital Improvements	0	0	0	0		0
Total General Fund Budget	22,554,891,906	(689,137,688)	(592,720,550)	(1,281,858,238)	-2083.19	21,273,033,668

EDUCATION
Section F

Public Education

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$8,245,341,827**		**$8,358,798,223**	
Legislative Changes				
A. Technical Adjustments				
1 Civil Penalties Receipts Makes recurring adjustment to budgeted civil penalty revenues to account for actual FY 2007-08 receipts. Collected civil penalties revenues are required to be deposited in the State Public School Fund (SPSF) for allotment to LEAs on a per-ADM basis. Total realized FY 2007-08 receipts were $120.3 million. The nonrecurring adjustment reflects the transfer of $18 million in civil penalties held in escrow at University of North Carolina campuses to the Civil Penalty and Forfeiture Fund for appropriation.	($6,324,790) ($18,183,251)	R NR	($6,324,790)	R
2 Financing School Bus Replacement Adjusts the schedule for school bus financing from three to four years on a recurring basis. This adjustment does not cut or delay the number of buses scheduled to be replaced in FYs 2009-11.	($7,500,000)	R	($7,500,000)	R
3 Textbook Freight Eliminates funding for textbook freight. These costs will be covered through receipts from books purchased by the local education agencies (LEAs).	($217,837)	R	($217,837)	R
4 Eliminate Certain Continuation Budget Adjustments Eliminates funding increases provided in the FYs 2009-11 continuation budget for the following items: Miscellaneous Contractual Services ($395,109), Unemployment Compensation ($45,072), Short Term Disability ($3,617,512), Annual Leave ($259,162), Nat'l Board for Professional Teaching Standards Fees ($2,284,043), and Workers Compensation ($3,513,237).	($10,114,135)	R	($10,114,135)	R
B. State Public School Fund				
5 Information Highway Eliminates funding for a program that previously paid for LEAs to access distance learning. Funds are no longer needed as the School Connectivity Initiative (SCI) has replaced this program and provides increased service to the LEAs.	($1,200,000)	R	($1,200,000)	R

	FY 09-10		FY 10-11	
6 Adjust School Resource Officer (SRO) Allotment Revises the At-Risk Student Services allotment to reflect the FY 2008-09 actual salary and benefits expenditures for School Resource Officers (SROs). A portion of the current allotment provides each high school with $37,838 to support the salary and benefits for SROs.	($1,202,256)	R	($1,202,256)	R
7 School Technology Fund Reduces by 40% on a nonrecurring basis the General Fund support for the School Technology Fund, which provides support to LEAs on a per-ADM basis for the development and implementation of LEA technology plans. An additional $18 million for this Fund is annually provided from the Civil Penalty and Forfeiture Fund.	($4,000,000)	NR	($4,000,000)	NR
8 Textbooks Adjusts allotment to reflect one-year delay in the adoption of grades 6-12 mathematics textbooks. Sufficient funding is provided in the continuation budget to support the adoption of the mathematics textbooks in FY 2010-11.	($37,977,278)	NR		
9 NC Wise Owl Reduces funding by 38% for this online reference resource for teachers and students. This portion of the reference service is being provided at no cost by SAS Institute.	($500,000)	R	($500,000)	R
10 Central Office Administration Reduces dollar allotment to Local Education Agencies (LEAs) for salaries and benefits for central office staff which includes, but is not limited to, superintendents, associate and assistant superintendents, finance officers, athletic trainers, and transportation directors. The reduction reflects a 5.3% decrease from the FY 2009-10 continuation budget total of $120,855,235.	($6,470,262)	R	($6,470,262)	
11 More at Four Transfers funding for the More at Four program to the Department of Health and Human Services.	($86,000,000)	R	($86,000,000)	R
12 Local Education Agency Discretionary Reduction The State Board of Education shall distribute this local education agency discretionary reduction on the basis of ADM. A related provision, Section 7.8, will provide additional flexibility to the LEAs to manage this reduction.	($9,432,140)	R	($8,432,140)	R
13 Testing Eliminates funding for all State-administered tests not currently required by Federal law or as a condition of Federal grants. These tests include: Geometry End of Course (EOC), Algebra II EOC, Physical Science EOC, Chemistry EOC, Physics EOC, Reading Competency, Mathematics Competency, and Computer Skills. A related provision, section 7.20, will prohibit the North Carolina State Board of Education from requiring the public schools to administer any standardized tests except for those required by federal law or as a condition of a federal grant.	($3,636,594)	R	($3,636,594)	R

	FY 09-10		FY 10-11	
14 Focused Education Reform Provides a 10% reduction to funds appropriated to DPI in support of the pilot program known as The Collaborative Project. DPI funding for this program is currently $4,833,728. The Public School Forum receives an additional $2,342,705 to support and administer the pilot. This item would not reduce the Public School Forum component of overall funding for the Collaborative Project.	($483,373)	R	($483,373)	R
15 Staff Development Reduces funding by 50%, on a nonrecurring basis, for the staff development allotment.	($6,278,960)	NR	($6,278,960)	NR
16 Improving Student Accountability Eliminates funding for this allotment that supports activities designed to improve the performance of those students scoring at Level I or II on certain State tests. The Disadvantaged Student Supplemental Funding and At-Risk Student Services allotments support similar types of activities.	($38,339,798)	R	($38,339,798)	R
17 Critical Foreign Language Pilot Eliminates funding for this two-year old pilot program. Section 7.16 of this bill will enable the carryover of FY 2008-09 funding to complete the development of online Russian and Japanese language courses that is currently ongoing.	($500,000)	R	($500,000)	R
18 Increase Class Size by 2 Students in Every Grade Decreases funding for the Classroom Teachers allotment consistent with increasing the student to teacher funding allotment ratio currently set by the State Board of Education for each grade by 2. The related provision, section 7.23, increases the allowable maximum district-wide class size average and maximum individual class size by 2, and clarifies that the General Assembly's intent is to restore this cut as soon as State revenues make it fiscally responsible to do so.	($322,705,848)	R	($322,705,848)	R
19 Fund One LEA Per County Eliminates base funding for six allotments that are provided to all LEAs. The reduction is not taken until FY 2010-11 to allow the 15 affected LEAs one year to plan for absorbing the decrease in State support for these allotments.			($11,393,030)	R

	FY 09-10		FY 10-11	
C. Department of Public Instruction				
20 DPI Position Reduction Requires the State Board of Education (SBE) to identify and eliminate the following number and types of positions over the biennium: FY 2009-10 Eliminate a combination of 100 vacant, transferred and filled State-supported positions. 25 of these positions shall be transferred to the Department of Health and Human Services (DHHS) along with the Office of School Readiness and the More at Four program. The 25 positions are comprised of 23 receipt-supported positions and 2 Federally-supported Head Start positions. FY 2010-11 Eliminate 200 additional positions. At least 100 of these positions shall be State-supported.	($5,420,925) -100.00	R	($12,648,825) -300.00	R
21 Plan for Statewide Motor Coach Permit Directs the State Board of Education, in conjunction with the Division of Motor Vehicles, to develop a plan by January 1, 2010 for a statewide permit for motor coach companies seeking to contract with local school systems to transport students and other authorized personnel on school-sponsored trips.	$5,000	NR		
22 Membership Dues Eliminates the allowable inflation provided for membership dues in the FYs 2009-11 continuation budget.	($209,238)	R	($209,238)	
23 Legacy Funds Adjusts fund balance remaining from nonrecurring appropriations made for agency IT infrastructure. This reduction would eliminate the fund balance of $2,000,000.				
24 DPI Operating Funds Reduces DPI operating and purchased services budgeted expenditures consistent with actions taken to manage these expenditures in FY 2008-09.	($1,591,552)	R	($1,591,552)	R
25 Personal Financial Literacy Eliminates the recurring appropriation for this activity. Personal Financial Literacy has already been integrated into the curriculum and is available to students through the North Carolina Virtual Public Schools. DPI personnel shall continue to provide curricular materials, professional development, and technical assistance to teachers on this subject.	($500,000)	R	($500,000)	R

	FY 09-10		FY 10-11	
26 Governor's Schools				
Eliminates the inflation built into both years of the FY 2009-11 continuation budget and decreases the appropriation to support 400 student participants in FY 2010-11. Funding supports the Governor's Schools, which are held each summer for six weeks at two college campuses. Student selection is competitive. The current appropriation supports a total of 800 student participants.	($59,752)	NR	($789,409)	NR
D. Pass-Through Funds				
27 Tarheel ChalleNGe Academy				
Provides funding to the North Carolina's Tarheel ChalleNGe Academy, a quasi-military program for high school dropouts, or expellees. It is located in Sampson County and sponsored by the North Carolina National Guard. This program receives matching funds from the federal government equal to $60 for every $40 of State funds. Previously, the Tarheel ChalleNGe had been funded within the Department of Crime Control and Public Safety budget. The appropriation for this program was eliminated for FY 2008-09 pending the findings of a Continuation Review. The program will now receive recurring funding within the Education budget.	$1,293,000	NR	$1,293,000	NR
28 Appropriations to Non-Public School Organizations	($614,104)	R	($614,104)	R
Reduces recurring funding to the following organizations by 10% of their budgeted amount: Communities in Schools ($160,750), Schools Attuned ($82,091), ExplorNet ($30,000), Teacher Cadet ($40,000), NC Network ($31,263), Science Olympiad ($15,000), Teach for America ($95,000), and NC Math & Science ($10,000). Additionally, recurring funding for Literacy Coach training provided by the Teacher Academy shall be reduced by 10%, or $150,000. $1,350,000 would remain available to train 200 coaches.				
E. Expansion-State Public School Fund				
29 Learn and Earn Early College High Schools	$3,601,265 $120,000	R NR	$3,601,265	R
Provides funding for 12 additional Learn and Earn high schools that will be operational in FY 2009-10, bringing the total number of Learn and Earn "traditional" high schools to 68. the nonrecurring appropriation provides $10,000 per site to support start-up costs associated with the first year of implementation.				

	FY 09-10		FY 10-11	
30 Dropout Prevention Grants Provides two years of nonrecurring funding for additional dropout prevention grants. This program provides funding on a competitive basis to local school administrative units, schools, local agencies, or nonprofit organizations to support programs that address dropout prevention. The additional funding for this program can be used to provide continued funding to past grant recipients or to fund new recipients. The maximum grant size is $150,000.	$1,000,000	NR	$1,000,000	NR
31 North Carolina Virtual Public School (NCVPS) Provides additional funds to expand the NCVPS. These funds would provide additional resources to support the cost of teachers and instructional materials for students enrolled in NCVPS courses. These funds would be in addition to $2.7 million in other recurring NCVPS funding.	$2,000,000	R	$2,000,000	R
F. Expansion-Department of Public Instruction				
32 Leadership Academy Supports the creation of a Leadership Academy which will provide professional development to superintendents, enabling them to train principals to address critical areas such as student achievement and teacher working conditions.	$200,000	R	$200,000	R
33 District and School Transformation Initiative Expands the State Board of Education's District and School Transformation initiative. The District and School Transformation initiative is part of the State's redesigned framework for delivering technical assistance and other support to low performing districts and schools. The recommended appropriation supports the addition of 23 full-time positions to expand services to additional districts and schools. The recommended expansion includes nonrecurring costs for start-up costs and professional development to DPI staff to build local capacity.	$3,023,546 $342,000 23.00	R NR	$3,023,546 23.00	R
34 Diagnostic Assessment and Accountability Provides nonrecurring funds to support the development and implementation of a new Standard Course of Study for all content areas and grade levels. This appropriation will also support the State Board of Education's efforts to research, design, and implement a new comprehensive State testing system that will include formative, benchmark/interim, and summative tests. The ultimate goal of this initiative is to develop a new K-8 and K-12 accountability model.	$3,000,000	NR		
G. Other Reserves and Transfers				
35 Teaching Fellows Trust Fund Reduces the cash balance of the Teaching Fellows Trust Fund on a nonrecurring basis by $4,500,000. The current cash balance of the Fund is $6.76 million. This reduction will not negatively impact program participants or operations.				

	FY 09-10		FY 10-11	
36 Children's Trust Fund Eliminates the State appropriation for this program. Other annual receipts of approximately $365,000 generated from marriage license fees will continue to support this program that awards grants to entities that support child neglect and abuse prevention initiatives. Section 10.42 of this bill will move administration of this program to the Department of Health and Human Services.	($247,500)	R	($247,500)	R
37 Redirect Capital Funds to Support Public Schools through the General Fund Suspends the transfer of Corporate Income Tax funds in FY 2009-10 and FY 2010-11 to the Public School Building Capital Fund. Instead, funds will be transferred as a receipt to the State Public School Fund to temporarily offset the costs for public school operations. For FYs 2009-10 and 2010-11, General Fund appropriations will be reduced by the amount that was scheduled to be transferred to the capital accounts.	($60,500,000)	NR	($64,500,000)	NR
Total Legislative Changes	**($494,385,541)**	**R**	**($512,006,471)**	**R**
	($121,239,241)	**NR**	**($73,275,369)**	**NR**
Total Position Changes	-77.00		-277.00	
Revised Budget	**$7,629,717,045**		**$7,773,516,383**	

Community Colleges

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$1,072,571,152**		**$1,114,034,594**	
Legislative Changes				
A. Enrollment				
38 Fully Fund Enrollment Growth Provides funds to fully fund enrollment growth. Community college enrollment has increased by 15,259 full-time equivalents (or FTE), from 201,625 to 216,884, an increase of 7.6%. This enrollment growth requires a total appropriation of $58.1 million. The continuation budget included $47.7 million for this purpose. However, the data needed to accurately calculate enrollment growth requirements were not available at the time the continuation budget was developed. This appropriation provides the remaining $10.4 million needed.	$10,380,387	R	$10,380,387	R
39 Enrollment Growth Reserve Provides funds for an Enrollment Growth Reserve to assist colleges that experience enrollments that exceed 5% above budgeted levels.	$3,000,000	R	$3,000,000	R
B. Reductions - Community College System Office				
40 Eliminate Vacant Positions and Salary Reserves Eliminates 7 vacant positions in the Community College System Office, as well as $46,192 of unused salary reserves.	($523,128) -7.00	R	($523,128) -7.00	R
41 Eliminate Filled Positions Eliminates two filled positions in the Community College System Office. The duties of these positions shall be eliminated or absorbed by other System Office employees. The positions are: 1. Special Events Coordinator and 2. BioNetwork Grants Associate.	($124,040) -2.00	R	($124,040) -2.00	R
42 Move Positions to Receipt Support Reduces appropriations by shifting one Grants Administrator position to indirect cost receipts and one Education Consultant partially to proprietary school receipts. These positions oversee the activities that generate these receipts.	($85,454)	R	($85,454)	R

	FY 09-10		FY 10-11	
43 Reduce System Office Operating Budget Reduces the System Office operating budget in the following areas: - IT Contracts ($200,000), - Number of IT Training Days ($88,000), - ITS Project Management Services ($76,000), - Travel and Operating Funds for the Technology and Workforce Development Division ($71,245), - Funding for Professional Development Course ($7,500), and - Travel and Operating Funds for the Academic and Student Services Division ($19,680).	($462,425)	R	($462,425)	R
44 Reduce 2+2 E-Learning Initiative Reduces the budget of the 2+2 E-Learning Initiative by $140,000. This reduction leaves the 2+2 E-Learning Initiative with $860,000 in recurring funds to support innovative distance learning programs.	($140,000)	R	($140,000)	R
45 Eliminate Increase to Unemployment Compensation Eliminates OSBM increase to unemployment compensation in the continuation budget.	($6,500)	R	($6,500)	R
46 Management Flexibility Reduction Reduces the NC Community College System Office budget and provides flexibility for the System Office in implementing this reduction.	($489,823)	R	($489,823)	R
C. Reductions - Colleges - State Aid				
47 Eliminate Increases to State Aid Eliminates OSBM increase to State aid in the continuation budget.	($18,543,704)	R	($18,543,704)	R
D. Reductions - Categorical Programs				
48 Maintenance of Plant Supplement Eliminates supplemental funding currently allocated to colleges with an out-of-county student population over 50% of the total student population. Section 8.10 of this bill permits colleges currently receiving these funds to use noninstructional State funds allocated to them through the institutional support allotment for maintenance of plant for the biennium.	($787,877)	R	($787,877)	R
49 Botanical Laboratory at Fayetteville Technical Community College Eliminates funding for the botanical laboratory at Fayetteville Technical Community College.	($300,000)	R	($300,000)	R
50 Community Service Block Grant Eliminates funding for the community service block grant, requiring all community service programs to be offered on a self-supporting basis.	($1,066,603)	R	($1,066,603)	R

	FY 09-10		FY 10-11	
51 Baccalaureate Education Attainment Funds Eliminates baccalaureate education attainment funds available to community college faculty and staff to pursue and attain bachelor's degrees.	($112,751)	R	($112,751)	R
52 Faculty and Staff Development Funds Eliminates funds allocated by the State for professional development of community college faculty and staff.	($507,068)	R	($507,068)	R
53 Compensatory Education Administration Eliminates additional funds allotted to colleges for the administration of compensatory education programs. These programs provide assistance to developmentally-disabled, adult students by teaching them life-skills. Community colleges will continue to receive FTE funding for enrollment of these students.	($1,229,760)	R	($1,229,760)	R
54 Supplemental Multi-Campus Center Funds Reduces supplemental multi-campus center funds by 7%. With this reduction, a total of $13,776,921 will be available for multi-campus centers. Community colleges will continue to receive FTE funding for enrollment at multi-campus sites.	($1,036,973)	R	($1,036,973)	R
55 Off-Campus Center Funds Eliminates supplemental funding for off-campus centers. Community colleges will continue to receive FTE funding for the enrollment at off-campus centers.	($1,000,000)	R	($1,000,000)	R
56 Eliminate One Virtual Learning Community Development Center Eliminates one of the five State-supported Virtual Learning Community development centers. The State Board of Community Colleges will determine which center to eliminate.	($200,000)	R	($200,000)	R
57 Reduce Funding for Library Books and Materials to FY 2008-09 Level Eliminates increases in the continuation budget for library books and materials.	($476,250)	R	($793,067)	R
58 Reduce BioNetwork Grants and Marketing Funds Reduces funds for grants and marketing of the NCCCS BioNetwork. Of the total reduction, $1,056,808 will be reduced from grants to colleges and $383,866 will be reduced from System Office marketing funds.	($1,440,675)	R	($1,440,675)	R
59 Eliminate Supplemental Hearing Impaired Funding Eliminates funds allotted to Wilson, Central Piedmont, and Western Piedmont Community Colleges to support the additional costs of serving hearing impaired students. These colleges will continue to receive FTE funding for the enrollment of these students.	($190,000)	R	($190,000)	R
60 Eliminate Funds for Disadvantaged Nursing Students Eliminates funds for disadvantaged nursing students. These funds currently support tutoring, NCLEX review, and instructional software.	($80,000)	R	($80,000)	R

	FY 09-10		FY 10-11	
61 Regional Criminal Justice Coordinators Eliminates funds used for three regional coordinators to provide comprehensive education and training to law enforcement personnel.	($430,119)	R	($430,119)	R
62 Regional Fire Training Coordinators Eliminates funds used for eight regional coordinators to provide training to fire instructors, as well as curriculum development, guidance, and support to colleges' fire training programs.	($772,293)	R	($772,293)	R
63 Public Radio Station Pass-Through Funds Eliminates pass-through funds for three public radio stations located on community college campuses: - Gaston ($191,333), - Craven ($66,333), and - Isothermal ($201,255).	($458,921)	R	($458,921)	R
64 Reduce Child Care Grants to FY 2007-08 Actual Expenditures Reduces funding for child care grants to student parents who rely on child care to pursue their studies to actual FY 2007-08 expenditures ($1,838,215).	($84,801)	R	($84,801)	R
65 Specialized Center Regionalization Reorganizes the Textile Center of Gaston College, the Center for Emerging Manufacturing Solutions (or Hosiery Tech Center) of Catawba Valley CC, and the Haywood Regional High Tech Center of Haywood CC, and reduces funds by $1,023,133. The remaining $1,275,000 will be distributed as follows: - $525,000 to Gaston College to support East Campus in Belmont as a multi-campus center of the college, - $100,000 to Haywood CC for a high cost allocation for Haywood Regional High Tech Center, and - $650,000 to Catawba Valley CC for a regional Center for Emerging Manufacturing Solutions (CEMS) program. The regional CEMS program will be headquartered in Hickory. The funding will support the core program and employees at the current CEMS site. One position will remain at the current Textile Center location, and will be used to leverage equipment and resources at the two locations to conduct testing, development, and other services as directed.	($1,023,133)	R	($1,023,133)	R

	FY 09-10		FY 10-11	
E. Tuition and Fees				
66 Restructure Continuing Education Fee Rates Restructures continuing education fee rates. The new fee structure will consolidate the current structure from four tiers into three, based on the number of hours of class time, as follows: Classes 1-20 hours - $65, Classes 21-50 hours - $120, and Classes 50+ hours - $175. Continuing education fees have not been increased since the current sliding scale was adopted in 1999. Continuing education courses are non-credit courses and are taken by students not seeking a degree.	($9,426,885)	R	($9,426,885)	R
67 Eliminate Certain Tuition Waivers Eliminates tuition waivers for senior citizens ($1,316,192) and prisoners ($4,832,895).	($6,149,087)	R	($6,149,087)	R
F. Expansion				
68 Additional Nursing Faculty Provides funds for at least 65 additional nursing faculty positions to be distributed to the colleges based on the length of colleges' waiting lists of student applicants for nursing programs. These funds may be used to leverage funds from the Golden LEAF Foundation and the Health and Wellness Trust Fund for health care equipment and training.	$4,835,000	R	$6,242,300	R
69 Vocational and Technical Education Programs Provides funds to re-establish and place renewed emphasis on vocational and technical education programs. Funds may be used for faculty, equipment, or supplies in the following curriculum areas: Transportation, Engineering, Industrial, Military, Construction, and Green Technology Sectors. Funds shall be distributed to colleges based on the number of FTE students enrolled in these areas.	$4,500,000	R	$4,500,000	R
70 Equipment and Technology Provides funds for the purchase of instructional equipment and technology at all 58 colleges. These funds are in addition to the $31.3 million included in the base budget for this purpose. Funds shall be distributed in accordance with the existing equipment formula.	$10,000,000	R	$12,000,000	R
71 Restore Funding for the NC Military Business Center Restores funding to the NC Military Business Center at Fayetteville Technical Community College. The Center received non-recurring funds in FY 2008-09 while undergoing a continuation review. The Center works with communities and companies to develop and obtain federal business opportunities, including with the US military at NC military installations.	$1,250,000	R	$1,250,000	R

	FY 09-10		FY 10-11	
72 Customized Training Provides additional funding for the Customized Training Program to improve programming and develop stronger infrastructure for college-based instruction. The Customized Training Program offers programs and training services to assist new and existing business and industry to remain productive, profitable, and within the State.	$500,000	R	$500,000	R
Total Legislative Changes	**($12,682,883)**	R	**($9,592,400)**	R
Total Position Changes	-9.00		-9.00	
Revised Budget	**$1,059,888,269**		**$1,104,442,194**	

UNC System

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	$3,026,185,255		$3,100,871,575	
Legislative Changes				
A. Base Budget Adjustments				
73 Management Flexibility Reduction Mandates a management flexibility reduction for the UNC operating budget. The UNC President and UNC Board of Governors shall follow the "Guidelines for Implementing 2009-11 Budget Reductions" issued to UNC Chancellors in 2009 when making reductions.	($70,066,227) ($5,370,571)	R NR	($70,066,227)	R
74 Salary Related Reductions Removes OSBM increases for Overtime Pay, Premium Pay, Unemployment Compensation, Disability Benefits, and Workers Compensation.	($7,757,661)	R	($7,741,169)	R
75 Building Reserve Adjustments Adjusts the building reserves for operating new and renovated buildings due to changes in building completion dates.	($2,692,333)	NR	($2,256,597)	
76 Library Inflation Removal Removes an inflationary adjustment for library books and periodicals.	($14,129,584)	R	($18,411,905)	R
77 Fuel Oil Inflation Adjustment Reduces the inflationary increases for utility budgets at UNC-W, NCA&T, WCU, ECSU, and NCCU due to a decline in the price of residual fuel oil. Also restores a utility cut to UNC-GA made in error.	($1,302,965)	R	($1,061,665)	R
78 University Cancer Research Fund - Increased Tax Projections Lowers the General Fund appropriation to the University Cancer Research Fund due to an increase in the projected tax collections from the tax on tobacco products other than cigarettes. With this adjustment, the $50 million commitment to the Fund in FY 2009-10 will consist of $8 million Tobacco Trust Fund, $25 million General Fund, and $17 million tobacco tax proceeds.	($561,179)	R	($592,890)	R
79 Reserve for Distance Education Reduction Reduces the Reserve for Distance Education Capacity Enhancement by 10%. Created in 1996, the reserve is currently being used for UNC online efforts.	($112,936)	R	($112,936)	R

	FY 09-10		FY 10-11	
80 Reserve for Information Technology Reduction Reduces the Reserve for Information Technology Productivity and Efficiency by 10%. This reserve has been used to help 14 UNC campuses implement the Banner computer program for Finance, Human Resources, and Financial Aid.	($90,592)	R	($90,592)	R
81 Strategic Initiative Reserve Reduction Reduces the UNC President's $3.3 million Strategic Initiative Reserve for two years. The Reserve is used to encourage multi-campus initiatives, take advantage of promising opportunities, and address system-wide issues and concerns.	($1,000,000)	NR	($1,000,000)	NR
82 Legislators' Schools For Leadership Development Abolished Abolishes the Legislators' Schools for Leadership Development at ECU and WCU. These programs provide summer residential programs to enhance the leadership abilities of rising eighth through eleventh graders.	($500,000) -4.00	R	($500,000) -4.00	R
83 Bowles Center for Alcohol Studies - DWI Fee Change Reduces the General Fund appropriation for the Bowles Center for Alcohol Studies by directing that the $25 DWI driver's license restoration fee be used for the Center's operating support instead of the Center's endowment fund.	($500,000)	R	($500,000)	R
84 Focused Growth Reserve Eliminated Eliminates a UNC General Administration reserve for new degree programs on Focused Growth campuses. Enrollment growth funding can be used to initiate new academic programs. This reduction does not reduce the $29.2 million in Focused Growth funds allocated to the 7 designated campuses.	($1,343,002)	R	($1,343,002)	R
85 Tuition Waiver for NC Science and Math Graduates Phased Out Phases out the waiver of tuition at UNC institutions for graduates of the North Carolina School of Science and Math beginning in FY 2010-11. All UNC students currently receiving the tuition waiver and Science and Math students graduating in 2009 will receive the tuition waiver until college graduation.			($1,000,000)	R
86 Nurse Educators of Tomorrow - Fund Balance Reduced Reverts $1 million from the fund balance in the Nurse Educators of Tomorrow scholarship-loan program. A slow start-up in this program to increase the number of nursing faculty allowed a fund balance to accrue in this nonreverting account. The increased General Fund availability will be used to fund expansion budget items.				
87 Future Teachers Scholarship-Loan Program Reduced Reduces the appropriation for the Future Teachers of North Carolina Scholarship-Loan program due to low enrollment.	($1,000,000)	R	($1,000,000)	R
88 NCCU Salary Correction Deletes OSBM error in SPA salary line item for NC Central University.			($36,000)	R

	FY 09-10		FY 10-11	
B. Expansion				
89 UNC Need-Based Aid Increases the UNC Need-Based Student Financial Aid Program to accommodate growth in eligible students and to hold current recipients harmless from increases in cost of attendance. There is $116.4 million appropriated from the Escheats Fund for the program.	$23,397,311	R	$23,397,311	R
90 Distinguished Professors Endowment Fund Increases the Distinguished Professors Endowment Fund to match a grant from the C.D. Spangler Foundation to award professorships at each of the 16 UNC campuses and to address the backlog of 86 professorships awaiting State matching funds.	$6,800,000	R	$6,800,000	R
91 Campus Safety Continues the implementation of the UNC Campus Safety Task Force recommendations by increasing the number of university personnel in mental health services and campus police.	$5,000,000	R	$5,000,000	R
92 Veterinary Medicine Clinical Teaching and Research Fund Provides continued funding to the NC State University College of Veterinary Medicine for the Veterinary Medicine Clinical Teaching and Research Fund. This fund allows advanced diagnostic and treatment options for animals where a) owner financing of such options are limited, b) significant instructional value exists, or c) the diagnostic and treatment options have the potential of adding significantly to the core knowledge in the relevant clinical area.	$250,000	NR		
93 ECU Dental School Operations Provides funds to the School of Dentistry at East Carolina University to hire new faculty, to develop the curriculum in preparation of program accreditation, and to establish the location of dental service learning centers throughout the state where faculty and students will see patients.	$3,000,000	R	$3,000,000	R
94 ECU Indigent Care Reimburses a portion of the annual uncompensated patient care provided by the clinics of the East Carolina University Brody School of Medicine.	$2,000,000	R	$2,000,000	R
95 UNC Hospitals Indigent Care Increases UNC Hospitals' reimbursement for indigent patient care.	$2,000,000	R	$2,000,000	R
96 Medical Care Expansion Provides $1,310,000 to continue planning for the expansion of the UNC-Chapel Hill and East Carolina University medical schools and medical residency programs. Also provides $1,310,000 to the UNC Board of Governors and Mountain Area Health Education Center (MAHEC) for planning and programming for the Center for Health and Aging.	$2,620,000	NR		

	FY 09-10		FY 10-11	
97 Nursing Program Expansion Funds the establishment of an accelerated baccalaureate nursing program at North Carolina Central University ($500,000) that will produce highly skilled nursing personnel in a shorter time period and will have a specific focus on recruiting students from medically underserved populations within North Carolina. Also funds an increase of 80 students at the UNC-Chapel Hill School of Nursing ($335,000) with an emphasis on increasing the number of pre-licensure graduates and providing increased access to baccalaureate nursing education to college graduates.	$835,000 5.00	R	$835,000 5.00	R
98 ASU College of Health Sciences and Allied Professions Provides operating funds for Appalachian State University's newly consolidated College of Health Sciences and Allied Professions.	$250,000	R	$250,000	R
99 UNC-W College of Health and Human Services Funds supplemental instruction and additional operating support for UNC Wilmington's new College of Health and Human Services.	$400,000	R	$400,000	R
100 NC Research Campus at Kannapolis Provides funding to hire researchers and to provide equipment and supplies for University personnel working at the NC Research Campus in Kannapolis. Six UNC-system campuses are involved in collaborative research at the campus to break new ground in health and science discoveries and help attract new employers and jobs to the State. The UNC System's annual operating budget at the Research Campus will increase to $22.5 million with this appropriation.	$3,000,000	R	$3,000,000	R
101 Energy Production Infrastructure Center at UNCC Provides funds to hire 14 senior faculty and 24 research support staff to develop programs in the following targeted hiring areas: electrical power including alternative energy, power plant engineering, and power system infrastructure. This center will help meet the increasing demand for engineers in the energy field created by an aging workforce and industry growth.	$2,000,000 15.00	R	$5,000,000 38.00	R
102 NC A&T College of Engineering Provides the NC A&T State University College of Engineering with funding for post-doctoral and faculty positions, SPA staff support, laboratory supplies, and equipment upgrades and maintenance. A portion of these funds may be used to match NC A&T's portion of a $18.5 million five-year National Science Foundation Engineering Research Center grant, the first ERC grant awarded to a HBCU (Historically Black College and University).	$2,000,000	R	$2,000,000	R

	FY 09-10		FY 10-11	
103 NCSU College of Engineering Provides funds to the NC State University College of Engineering to add faculty in interdisciplinary areas that respond to State and national needs. A portion of the funds may be used to match external grants for Electric Vehicle Research in the NCSU Advanced Transportation Energy Center.	$5,000,000	R	$5,000,000	R
104 NC A&T/UNC-G Joint School of Nanoscience and Nanoengineering Continues the phase-in of faculty and staff for the NC A&T/UNC-G Joint School of Nanoscience and Nanotechnology located the Gateway University Research Park in Greensboro. When the new building housing the school is completed in 2012, scientists will be trained in areas such as drug design and delivery, nanobioengineering, and genetic screening.	$1,000,000	R	$1,000,000	R
105 WCU Rapid Product Realization Funds additional faculty and staff to enable Western Carolina's Center for Rapid Product Realization to link the academic programs of the School of Construction Management and Technology to regional businesses.	$200,000	R	$200,000	R
106 ECSU School of Aviation Provides additional operating funds for the newly established flight school at the Elizabeth City State University School of aviation. The flight school was established with an appropriation of $300,000 R and $300,000 NR in FY 2008-09.	$300,000	R	$300,000	R
107 Research Competitiveness Fund Continues the Research Competitiveness Fund that began in 2007. The Fund supports strategic research investments in areas that have high probabilities of economic success and are important to keeping the North Carolina economy competitive. This appropriation builds on last biennium's investment of $4 million which funded 24 research projects and led to grant proposals for non-state funds exceeding $35 million.	$3,000,000	R	$3,000,000	R
108 Graduate Student Recruitment and Retention Funds 162 new tuition remissions for graduate students in science, technology, and mathematics degree programs.	$2,000,000	R	$2,000,000	R
109 UNC-SA School of Filmmaking Funds additional faculty, staff, and equipment at the UNC School of the Arts School of Filmmaking. Nonrecurring funds will be used to upgrade the theatre at the School of Filmmaking's Sound Stage in High Point and the film archives building on the main campus.	$500,000 $500,000	R NR	$500,000 $500,000	R NR
110 Faculty Recruiting and Retention Fund Continues the Faculty Recruiting and Retention Fund that was initiated in FY 2006-07. The UNC President may use the fund to offer salary increases to recruit and retain faculty members in the 16 constituent universities.	$2,000,000	R	$2,000,000	R

	FY 09-10		FY 10-11	
111 NC School of Science and Math Online Initiative Extends a North Carolina School of Science and Math pilot program that offers online science and math courses to students across the state. In FY 2008-09, 70 juniors in 49 high schools enrolled in up to 2 of the 6 courses offered, such as AP Chemistry, AP Calculus, or Honors Genetics and Biotechnology.	$200,000	R	$200,000	R
112 Special Focus Universities Provides UNC-Asheville and UNC School of the Arts with $1 million each year for their operating budgets because the mission and limited size of these institutions makes it difficult for them to generate sufficient funds from the student credit hour enrollment model and other sources to provide needed student services.	$2,000,000	R	$2,000,000	R
113 FSU Military One-stop Center & BRAC Outreach Funds a one-stop academic counseling center for military and Department of Defense personnel and their dependents at Fayetteville State University. Also funds the development of two 18-month online master's degree programs in Business Administration and Criminal Justice.	$251,500	R	$251,500	R
114 UNC-P Academic Support Funds additional academic counselors, advisors, and other student support positions to help UNC Pembroke improve its retention and graduation rates.	$300,000	R	$300,000	R
115 WSSU Adult & Transfer Student Recruitment Funds a joint program between Winston-Salem State University and Forsyth Technical Community College that will add advising center staff focused on community college students and create a Gateway Program to assist working adults with the transition to college.	$475,700	R	$475,700	R
Total Legislative Changes	**($29,454,635)**	R	**($31,546,875)**	R
	($5,692,904)	NR	**($2,756,597)**	NR
Total Position Changes	16.00		39.00	
Revised Budget	**$2,991,037,716**		**$3,066,568,103**	

23515 DPI - IT Projects

Special Fund

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$20,995,456**	**$20,995,456**		**$20,995,456**
Legislative Changes				
Legacy Funds Adjusts fund balance remaining from nonrecurring appropriations made for agency IT infrastructure. This reduction would eliminate the fund balance of $2,000,000.	$2,000,000			
Total Legislative Changes	**$2,000,000**			
Net Change in Fund Balance	**($2,000,000)**			

63501 DPI - Trust Special

Trust Fund

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$14,583,376**	**$14,583,376**		**$14,583,376**
Legislative Changes				
Teaching Fellows Trust Fund Reduces the cash balance of the Teaching Fellows Trust Fund on a nonrecurring basis by $4,500,000. The current cash balance of the Fund is $6.76 million. This reduction will not negatively impact program participants or operations.	$4,500,000			
Total Legislative Changes	**$4,500,000**			
Net Change in Fund Balance	**($4,500,000)**			

HEALTH
&
HUMAN SERVICES
Section G

Health and Human Services

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$5,536,344,939**		**$5,806,560,945**	
Legislative Changes				
(1.0) Division of Child Development				
1 Eliminate Vacant Positions Eliminates vacant positions within the Division of Child Development.	($51,325) -2.00	R	($51,325) -2.00	R
2 Reduce Professional Development Contracts Eliminates funds to administer the testing-out of coursework allowed for lead child care teachers. As of July 2008, lead child care teachers may no longer test out of coursework; therefore, these funds are not needed.	($59,860)	R	($59,860)	R
3 Reduce Operating Expenses Reduces operating expenses within the central management of Division of Child Development.	($20,000)	R	($20,000)	R
4 Position Elimination Eliminates one Processing Assistant V position. This position has been vacant for over one year and duties have been reassigned to other staff.	($36,050) -1.00	R	($36,050) -1.00	R
5 Reduce Smart Start Funding Reduces funds for the North Carolina Partnership for Children.	($15,000,000)	NR		
6 Replace State Funds for Child Care Subsidy Replaces State funding for child care subsidy with one-time Temporary Assistance for Needy Families Block Grant (TANF) contingency funds for FY2009-10.	($12,452,484)	NR		
7 Replace State Funding for TEACH Program Replaces State funds for the TEACH Program with federal receipts for two years.	($3,800,000)	NR	($3,800,000)	NR
8 Plus Program Transfers funds from Department of Public Instruction's More At Four Program to Department of Health and Human Services, Division of Child Development for the creation of a high quality classroom subsidy program for four-year-old children. There will be 25 receipt-supported positions transferred from Department of Public Instruction to Division of Child Development.	$46,000,000	R	$46,000,000	R

	FY 09-10		FY 10-11	
9 Federal Recovery Funds for Child Care Subsidy Increases funds for child care subsidy and a targeted market rate increase by $16,759,163. Increases funds for quality enhancement activities by $11,519,144 as required by the Federal Recovery Act. Increases funds to local governments for the administration of the child care subsidy program by $2,030,661.				
10 Child Care Subsidy Plus Program Provides Federal Recovery Funds for a high quality classroom childcare subsidy program for four-year-old children. The program will be established within the Division of Child Development and reduces funds for the More At Four educational program.	($37,224,166)	NR		
11 Increase Fees for Child Care Centers and Charge a Fee for Child Care Homes Increases the existing child care licensure fees by 50% and reduces the State appropriations within the Division of Child Development. Imposes a new fee for child care homes equal to the amount that the smallest centers are required to pay.	($602,385)	R	($602,385)	R
(2.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services				
12 Various Reductions at Facilities Reduces various line items including vehicle replacements, golf carts, and furniture purchases at the facilities managed within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.	($705,659)	NR	($709,100)	
13 Eliminate Vacant Positions Eliminates vacant positions within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.	($12,912,934) -376.24	R	($12,912,934) -376.24	R
14 Close Bed Units at Broughton and Cherry Hospitals Eliminates funds for two 25 bed units at Broughton and Cherry Hospitals.	($6,027,471)	R	($6,027,471)	R
15 Federal Funds Payback for Broughton Hospital Reduces State funds due to a pay-back of federal funds expected from Centers for Medicare & Medicaid Services. An Administrative Law Judge ruled that Broughton Hospital should not have been decertified in August 2007 and that federal funding should not have been withheld. This payback of funds will replace State funds within the DMHDDSAS budget.	($8,000,000)	NR		
16 Reduce Operating Expenses Reduces funds within operating accounts within the division's central office by $250,000. Reduces funds at the maintenance facilities by $1,000,000.	($1,250,000)	R	($1,250,000)	R

	FY 09-10		FY 10-11	
17 Increase Patient Receipts at Alcohol, Drug Abuse Treatment Centers Reduces State funds at the ADATCs in anticipation of additional patient revenues collected. This is due to the increased bed capacity available at the ADATCs.	($662,867)	R	($1,127,895)	R
18 Close Wright and Whitaker Schools Eliminates funding for the Wright and Whitaker schools located in Durham and Butner, respectively. These schools provide residential based treatment and training for emotionally- and behaviorally-disturbed students. The schools collectively served fewer than 100 students.	($2,889,991) -98.00	R	($5,779,982) -98.00	R
19 Reduce Cherry Hospital Staffing Levels Reduces staff planned and budgeted at the Cherry Hospital based on revised capacity levels.	($810,049) -19.00	R	($4,195,178) -140.50	R
20 Reduce Funds for Psychiatric Hospitals' Electronic Health Records Reduces funds for psychiatric hospitals' electronic health record systems at Central and Cherry Hospitals. It is anticipated that federal recovery funds will be available to support the development of this technology.	($21,060,455) -3.00	NR	($31,662,312) -5.00	NR
21 Crisis Services Provides funds for local inpatient bed capacity located within community hospitals.	$12,000,000	R	$12,000,000	R
22 Dorothea Dix Overflow Unit Provides funds and time-limited positions for the Dorothea Dix Overflow Unit. The unit will operate 36 beds available to patients statewide. Additionally, Wake County will contract with the State to operate 24 inpatient beds to serve county residents.	$3,000,000 174.75	NR		
23 Training and Workforce Development Initiatives Provides funds for training to improve the quality of care provided to clients in the division's residential facilities.	$325,000	R	$325,000	R
24 Fund Mental Health Leadership Academy Assists Local Management Entities (LMEs) with improving the delivery of services. Provides funds to LMEs to pay for staff participation in the Mental Health Leadership Academy at University of North Carolina Kenan-Flagler Business School.	$500,000	NR	$500,000	NR
25 Expand Cross Area Service Programs Provides funds to support Cross Area Service Programs and other substance abuse treatment and prevention initiatives.	$2,500,000	NR	$2,500,000	NR
26 Workforce Development Specialist Provides funds to create a Workforce Development Specialist position within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.	$50,000 1.00	R	$50,000 1.00	R

	FY 09-10		FY 10-11	
27 Substance Abuse Planning and Services Provides funds for the development of a substance abuse comprehensive prevention plan targeting young people and establishing a continuum of care for chronic diseases.	$1,000,000	R	$1,000,000	R
(3.0) Division of Public Health				
28 Eliminate Vacant Positions Eliminates vacant positions within the Division of Public Health.	($1,805,121) -46.00	R	($1,805,121) -46.00	R
29 Reduce Operating Budgets Reduces operating budgets within three branches of the Division of Public Health.	($348,363)	R	($348,363)	R
30 Reduce AIDS Drug Assistance Program Reduces State funds used to purchase pharmaceuticals. Pharmaceuticals from the "drug reserve" inventory will be used.	($3,074,119)	NR	($3,074,119)	NR
31 Vital Records Fee Increase Reduces State funds by allowing Vital Records operation become partially receipt-supported. Fee charged for copy of vital records increased from $15 to $20 per copy. Fee charged for expedited out-of-state service increased by $5.	($750,000)	R	($750,000)	R
32 Reduce Funds for Public Health Incubator Program Reduces State funds for Local Health Services Incubator Grant program.	($950,000)	R	($950,000)	
33 Shift Positions to Receipt Support Replaces State appropriation with federal WIC funds for public health and regional consultants.	($70,541)	R	($70,541)	R
34 Reduces Community Focused Eliminating Health Disparities Initiative Reduces funds for Community Focused Eliminating Health Disparities Initiative.	($50,000)	R	($50,000)	R
35 Eliminate Positions and Reduce Contracts in Early Intervention Program Eliminates nine vacant positions and reduces contract funding for four Children's Developmental Service Agencies (CDSAs).	($660,054) -9.00	R	($660,054) -9.00	R
36 Replace State Funds with Federal Receipts Replaces State appropriations with Maternal Child Health Block Grant and Medicaid administration funds for several maternal, infant, and child programs.	($1,191,155)	R	($1,191,155)	R
37 Eliminate Statewide Contracts Eliminates funds that support the collection and analysis of hospital, family and community data concerning infants and children.	($457,967)	R	($457,967)	R

	FY 09-10		FY 10-11	
38 Reduce Contract Funding for Children and Youth Reduces contract funds for three contracts that historically have unobligated funds.	($903,965)	R	($903,965)	R
39 Remove Inflationary Increases and Vehicle and Equipment Replacement Reduces State funds by removing inflationary increases for utilities, water, sewer, and pharmaceuticals from the continuation budget. Reduces State funds for vehicle and equipment replacement.	($3,707,263)	R	($4,847,394)	R
40 Reduce Funding for Accreditation of Local Health Departments Suspends for one year the Division of Public Health's evaluation and accreditation of Local Health Departments (LHDs).	($750,000)	NR		
41 Eliminate Funding for Lyme Disease Study Eliminates the Division of Public Health's funding for the collaborative study with the Division of Environmental and Natural Resources.	($139,802)	R	($139,802)	R
42 Eliminate Kidney Disease Purchase of Medical Care Program Eliminates the Kidney Disease Purchase of Medical Care Program that provides up to $300 for persons with annual incomes up to 100% FPL. Persons with End-Stage Renal Disease are eligible for health care services through Medicare. The program was suspended in January 2009.	($160,000)	R	($160,000)	R
43 Eliminate Epilepsy Purchase of Medical Care Program Eliminates the Epilepsy Purchase of Medical Care Program that serves a minimum number of persons who have annual incomes up to 100% FPL. The program was suspended in January 2009.	($202,000)	R	($202,000)	R
44 Eliminate Adult Cystic Fibrosis Program Eliminates the Adult Cystic Fibrosis Purchase of Medical Care program which serves a minimum number of persons. The program was suspended in January 2009.	($175,000)	R	($175,000)	R
45 Eliminate Funding for the Early Hearing Program Eliminates the Early Hearing Purchase of Medical Care Program that provides hearing devices for infants prior to their being found eligible for the Early Intervention Program. The program was suspended in January 2009.	($30,000)	R	($30,000)	R
46 Eliminate Health Education for Children Contract Eliminates the contract with the Alice P. Aycock Center to plan, develop, and provide health education programs to children.	($150,000)	R	($150,000)	R
47 Eliminate Media Contract Eliminates the media contract through the National Alliance for Tobacco Cessation.	($106,746)	R	($106,746)	R

	FY 09-10		FY 10-11	
48 Eliminate Funds for Tobacco Quit Line Eliminates funding for Tobacco Quit Line. The Quit Line will continue to receive funding from the Health and Wellness Trust Fund.	($500,000)	R	($500,000)	R
49 Eliminate Professional and Public Education Contract Eliminates contract with the Southern Atlantic American Cancer Society to conduct training on best practices to physicians and local health departments.	($371,250)	R	($371,250)	R
50 Replaces Funding for Medically Fragile Children Program Replaces State funds with federal TANF Block Grant and Social Services Block Grant funds for the daycare program for medically fragile children in Wake County. TANF and SSBG provide $360,000 in funding for this program.	($70,000)	R	($70,000)	R
51 Federal Recovery Funds for Immunization Provides $5,689,500 for two years from the American Recovery and Reinvestment Act for the purchase of vaccines for children and adults, especially adults age 49 and older who are susceptible to common diseases such as seasonal influenza.				
52 Improve Birth Outcomes and Reduce Infant Mortality Provides funding to educate women on the benefits of 17-p Progesterone, to purchase medication for eligible women at risk for a pre-term births, and for the continued development and implementation of the safe sleep public awareness campaign.	$247,000	R	$247,000	R
53 Prevent Neural Tube Birth Defects Provides funds for the purchase of multi-vitamins with folic acid to be distributed to low-income women through Local Health Departments and Safety Net Clinics.	$480,000	R	$480,000	R
54 Adolescent Pregnancy Prevention Initiative Provides funding for a grant-in-aid to the Adolescent Pregnancy Prevention Campaign of North Carolina.	$250,000	NR		
55 Teen Pregnancy Prevention Initiative Provide funding for the adolescent pregnancy prevention, teen parenting, and school dropout prevention program.	$400,000	NR		
56 School Health Nurses Provides funds to hire 20 additional school nurses to bring the total number of school health nurses supported by Division of Public Health to 232.	$1,000,000	R	$1,000,000	R
57 Stroke Prevention Provides funding for Operation of the Stroke Advisory Council, the continued implementation of public awareness campaign, and identification of stroke rehabilitation services throughout the State.	$450,000	NR		

	FY 09-10		FY 10-11	
58 Prevent Blindness Provides funding for a grant-in-aid to Prevent Blindness North Carolina to expand the pre-kindergarten screening program.	$150,000	NR		
59 North Carolina Arthritis Patient Services Provides a grant-in-aid to North Carolina Arthritis Patient Services to support activities.	$50,000	NR		
60 Dental Service for Special Care Populations Provides funding for a mobile dental unit to serve special care populations in underserved areas.	$200,000	NR		
61 Medical Examiner Equipment Provides funds to support the Medical Examiner System.	$250,000	R	$250,000	R
(4.0) NC Health Choice				
62 Reduce Operating Expense Reduces various operating accounts that historically have unobligated funds.	($23,645)	R	($23,645)	R
63 Establish/Increase Emergency Room Co-payment for Non-emergency Visits Reduces State funding by establishing a $25 co-payment for non-emergency visits for families with children at 100% to 150% federal poverty level (FPL), and the current co-payment of $20, be increased to $25 for families with children between 150% and 200% FPL.	($217,665)	R	($317,728)	R
64 Increase Co-Payments for Prescription Drugs Reduces State funding by increasing co-payments for prescription drugs: $2 for Generic Drugs; $2 for Brand Name Drugs without Generic Equivalent; $5 for Brand Name Drugs for families at or below 150% federal poverty level (FPL); and $10 for families above 151% FPL.	($450,000)	R	($450,000)	R
65 Shift funds from NC Kids Care to Health Choice Moves funds for NC Kids Care to Health Choice for SFY 2009-10 and SFY 2010-11 to fund Health Choice, but allows for $7,000,000 to be available in SFY 2011-12 for NC Kids Care.	$7,000,000	NR	$7,000,000	NR
66 Health Choice Enrollment Growth Provides funds to increase enrollment in Health Choice by 15,583 children in SFY 2009-10 and maintain this level of enrollment through SFY 2010-11.	$7,829,934	R	$7,829,934	R
(5.0) Division of Central Management and Support				
67 Reduce Physician Loan Repayment Program Reduces program funding by 7% on a non-recurring basis and the number of contracts awarded by approximately four.	($105,000)	NR		

	FY 09-10		FY 10-11	
68 Reduce Psychiatric Loan Repayment Program Reduces program funding by 7% on a non-recurring basis, leaving sufficient funds to expand the number of contract awards over the prior year.	($70,000)	NR		
69 Reduce Loan Repayment Incentives at State Facilities Reduces program funding on a non-recurring basis. The General Assembly appropriated $868,519 during the 2008 Session to recruit medical doctors to the State's mental health hospitals. To date, these funds have not been awarded. This one-time reduction permits continuance of the program in FY 2009-10 and full implementation in FY 2010-11.	($400,000)	NR		
70 Reduce Community Health Grants Reduces funding for the Community Health Grant program by 7%, leaving $1,860,000 recurring. This reduction decreases the number of grants awarded annually by approximately two.	($140,000)	R	($140,000)	R
71 Medication Access Program Provides $2,745,000 in SFY 2009-10 and $3,000,000 in SFY 2010-11 from the Health and Wellness Trust Fund (HWTF) to support the Medication Access Program. The program assists indigent residents in need of prescription drugs accessing pharmaceutical manufacturers' free drug programs.				
72 Health Net Appropriates funds to expand access to comprehensive health services for uninsured individuals.	$2,000,000	R	$2,000,000	R
73 Rural Hospitals Operation and Maintenance Provides funding for small rural hospitals for assistance with operations and infrastructure maintenance.	$2,000,000	NR	$2,000,000	NR
74 Aid to Safety Net Community Health Centers Provides funding on a competitive grant basis to increase the capacity of rural health centers, local health departments, free clinics, school-based health centers, and other entities to provide health care to low-income and uninsured persons.	$6,000,000	R	$6,000,000	R
75 Management Flexibility Reserve Reduces funds for the Department of Health and Human Services. The reduction will be across all agencies within DHHS and will be at the discretion of the Secretary.	($22,962,170)	R	($22,962,170)	R
76 Eliminate Vacant Positions Eliminates vacant positions within the Division of Central Management.	($1,405,456) -25.00	R	($1,405,456) -25.00	R
77 Eliminate Vacant MMIS Positions Eliminates vacant positions within the Division of Central Management, Office of Medicaid Management and Information System (MMIS) Services.	($229,570) -28.00	R	($229,570) -28.00	R

	FY 09-10		FY 10-11	
78 Reduce Operating Budgets Reduces operating budgets within Central Management and Support divisions and offices, including the Secretary's Office, the Administrative Support section, the Controller's Office, and the Office of Rural Health and Community Care.	($349,235)	R	($349,235)	R
79 Reduce Non-Profit Appropriations Reduces appropriations by 7% for each of the non-profits receiving funds through the Central Management and Support budget. Affected non-profits include the Institute of Medicine, Food Runners, Special Olympics, ALS Association, and Action for Children.	($89,250)	R	($89,250)	R
80 Reduce Rental Subsidy Reduces funds for transfer to the Housing Finance Agency to operate the Key Program. Approximately 310 rental units will not be ready for occupancy in FY 2009-10. This reduction does not affect service levels.	($930,000)	NR		
81 Medicaid Management Information System (MMIS) Replacement Appropriates prior-year earned revenue of $11,071,502 for FY 2009-10 and $9,820,689 for FY 2010-11 to match federal funds for the MMIS Replacement project. Total receipts of $55,357,510 for FY 2009-10 and $49,103,445 for FY 2010-11 offset anticipated requirements.				
82 Federal Recovery Funds for Weatherization Assistance Appropriates Federal Recovery funds for weatherization assistance to low-income North Carolinians. The Department will implement this program pursuant to instructions from the North Carolina General Assembly.				
83 Additional Community Services Block Grant from Federal Recovery Act Appropriates Community Services Block Grant (CSBG) funds, $21,870,834 in FY 2009-10 and $4,374,166 in FY 2010-11, available through the American Recovery and Reinvestment Act. Federal Recovery funds will increase access to employment supports, food, housing, and health care through services provided by community action and limited purpose agencies. Approximately one percent is set aside for benefit enrollment and coordination.				
(6.0) Division of Social Services				
84 Eliminate Vacant Positions Eliminates vacant positions within the Division of Social Services.	($694,570) -30.00	R	($694,570) -30.00	R
85 Reduce Operating and Contracts Budgets Reduces operating budgets within the Division's Central Office, Economic Services section, and Child Support Enforcement (CSE) program. Also reduces the contract budget for CSE.	($711,364)	R	($711,364)	R

	FY 09-10		FY 10-11	
86 Work First Cash Assistance Funding Replaces State funds for Work First cash assistance payments with federal TANF Block Grant funds.	($7,178,459)	R	($7,178,459)	R
87 Electing Counties Work First State Funds Replaces State funds with federal TANF Contingency funds for Work First cash assistance payments and Work First county block grants for Electing Counties.	($2,378,213)	NR		
88 Reduce Funds for Child Advocacy Centers Reduces funding for the 21 accredited child advocacy centers statewide, which provide services to abused and neglected children. During its 2008 Session, the General Assembly increased State appropriations by $350,000 on a recurring basis. This reduction leaves $375,000 in total funding.	($200,000)	R	($200,000)	R
89 Replace State Funds for Maternity Home Services Replaces State funding for Maternity Home Services with federal TANF Block Grant and Social Services Block Grant funds - $943,002 is provided in federal block grant funding for provider reimbursements. There are fifteen maternity homes in nine counties providing services to approximately 190 women.	($105,002)	R	($105,002)	R
90 Reduce Funds for NC Reach Suspends State appropriations in FY 2009-10 for the NC Reach post-secondary scholarship program for adopted children and those aging out of foster care. $3,168,250 is appropriated from the Escheat Fund in FY 2009-10 to continue support for the program. Recurring State appropriations then replace funding from the Escheat Fund in FY 2010-11, totaling $3,168,250.	($3,168,250)	NR	$3,168,250	R
91 Replace Funds for the Child Welfare Collaborative Replaces State funds with federal TANF funds to continue support for the Child Welfare Collaborative, which provides financial, educational, and employment support for selected social work students who commit to working in county social services departments.	($261,028)	R	($261,028)	R
92 Federal Recovery Funds for Foster Care and Adoption Assistance Reduces State appropriations to represent State savings due to enhanced federal participation for Title IV-E payments for foster care and adoption services. The American Recovery and Reinvestment Act provides enhanced federal participation from October 1, 2008 through September 30, 2010. County costs will be offset by an equal amount of federal recovery funds.	($2,840,410)	NR	($726,309)	NR
93 Federal Recovery Funds for Child Support Enforcement Reduces State appropriations and budgets federal funds to reflect the American Recovery and Reinvestment Act's temporary restoration of the child support incentive match, which was repealed by the Deficit Reduction Act of 2005.	($2,214,542)	NR	($330,000)	NR

	FY 09-10		FY 10-11	
94 Replace State Funds for State Aid to Counties Reduces State aid to counties to support costs associated with county administration of public assistance programs. Federal recovery funds will offset this reduction.	($5,473,985)	NR	($5,473,985)	NR
95 Food Banks Provides funding to be equally distributed to the six regional food banks within North Carolina. Up to $500,000 of this funding may be used to offset increased costs for fuel consumption related to transporting food.	$1,500,000	NR	$1,500,000	NR
(7.0) Office of Education Services				
96 Reduce Operating Budget Reduces operating budgets office-wide, including accounts for administrative and operating supplies, and equipment. These reductions do not impact the Office's ability to carry out programs and services.	($703,191)	R	($703,191)	R
97 Reduce Contract Funds Reduces funding for contracted services across all OES programs, not impacting services required by a child's Individualized Education Plan (IEP).	($254,931)	R	($254,931)	R
98 Eliminate Vacant Positions Eliminates twenty (20) positions that have been vacant for more than a year. Three (3) of these positions are at Western North Carolina School for the Deaf; seven (7) at Eastern North Carolina School for the Deaf; eight (8) at Governor Morehead School for the Blind; and two (2) at the Governor Morehead Preschool.	($890,530) -20.00	R	($890,530) -20.00	R
99 Suspend Governor Morehead School Short Term Outreach Program Temporarily suspends the Short Term Outreach program for the biennium. The program annually provides weekly camps for approximately 70 children from across the State to develop skills such as orientation and mobility, and money handling.	($151,679) -3.00	NR	($151,679) -3.00	NR
100 Reduce Funding for Schools for the Deaf Reduces funding in support of the Western and Eastern North Carolina Schools for the Deaf. This reduction leaves $15,587,315 in recurring funds for the schools in FY 2010-11. The Schools currently serve 206 students.			($5,000,000)	R
(8.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing				
101 Eliminate Vacant Positions Eliminates vacant positions within the Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing.	($130,777) -5.00	R	($130,777) -5.00	R

	FY 09-10		FY 10-11	
102 Reduce Operating Budget Reduces operating budgets for the Deaf and Hard of Hearing Regional Centers by 8%. This operating reduction does not impact the Division's ability to carry out programs and services.	($32,431)	R	($32,431)	R
103 Replace State Funds with Federal Receipts Budgets additional funds from the Basic Support Vocational Rehabilitation Grant, and reduces State funds.	($150,000)	R	($150,000)	R
104 Remove Inflationary Increases Removes allowable inflationary increases within the continuation budget for the Medical Eye Care and Rehabilitation Services Programs.	($112,019)	R	($170,960)	R
105 Transfer from Telecommunications Relay Trust Fund Reduces the Telecommunications Relay Trust Fund by $5,000,000 to support State appropriations for FY 2009-10.				
106 Federal Recovery Funds for Division of Services for the Blind Budgets federal funds available through the American Recovery and Reinvestment Act in the amount of $2,974,779 for Vocational Rehabilitation Services and $1,042,383 for the Independent Living Program (Older Blind Individuals). Funding availability dates are undetermined. A total of $2,008,581 is budgeted for each year of the biennium.				
107 Accessible Electronic Information for Blind and Disabled Persons Continues funding for contracted accessible electronic information services, which allow individuals with vision loss to access print media through telephone systems.	$75,000	NR		
(9.0) Division of Vocational Rehabilitation				
108 Eliminate Vacant Positions Eliminates vacant positions within the Division of Vocational Rehabilitation.	($329,456) -5.00	R	($329,456) -5.00	R
109 Reduce Basic Support Case Services Reduces State appropriations for non-medical consumer purchases.	($3,612,025)	R	($3,612,025)	R
110 Remove Inflationary Increases Removes inflationary increases within the continuation budget for items such as electrical, natural gas, water and sewer, and medical and non-medical services.	($711,283)	R	($1,042,189)	R

	FY 09-10		FY 10-11	
111 Federal Recovery Funds for Vocational Rehabilitation Services Budgets federal funds available through the American Reinvestment and Recovery Act to support the Vocational Rehabilitation Services program in the amount of $15,054,221 through September 30, 2010. An estimated amount of $402,340 will be available for the Independent Living Program, which will be shared between DVRS and the Division of Services for the Blind. $7,728,281 is budgeted for each year of the biennium.				
(10.0) Division of Aging and Adult Services				
112 Eliminate Vacant Positions Eliminates vacant positions within the Division of Aging and Adult Services.	($16,025) -1.00	R	($16,025) -1.00	R
113 Eliminate Quality Improvement Consultation Program Eliminates a contract and position that supported a Quality Improvement Program pilot for Adult Care Homes.	($190,204) -1.00	R	($190,204) -1.00	R
114 Eliminate Senior Center Outreach Program Eliminates funding for the Senior Center Outreach Program, previously allocated to the 17 Area Agencies on Aging to promote the use of services available through senior centers.	($100,000)	R	($100,000)	R
115 Operating Reductions Continues Governor's reduction on travel, supplies, printing, and other operating expenses.	($90,466)	R	($90,466)	R
116 Replace Home and Community Care Block Grant Funds Replace funding for the Home and Community Care Block Grant, which provides funding for in-home and community-based services for seniors. The $2,768,783 reduction in State appropriations will be offset by federal recovery funds for senior nutrition services.	($2,768,783)	NR		
117 Home and Community Care Block Grant Provides funding for the Home and Community Care Block Grant to support services designed to help frail elderly stay in their homes.	$1,000,000	R	$1,000,000	R
118 Senior Community Service Employment The Senior Community Service Employment Program (SCSEP) places economically disadvantaged individuals 55 years of age and older with an income at or below 125% of the federal poverty level into part-time community service programs while transitioning clients into unsubsidized employment. Currently, five Area Agencies on Aging provide employment services in 25 counties. $621,560 in federal recovery funds will be available to support the program. Twenty percent of funds must be spent in the current year. The remaining funds ($497,248) and the required local match ($55,250) are budgeted as receipt-supported activities.				

Senate Subcommittee on Health and Human Services	FY 09-10		FY 10-11	
119 Project CARE Provides funding for Project C.A.R.E. (Caregiver Alternatives to Running on Empty), a respite care program for caregivers of persons with Alzheimer's and dementia.	$500,000	R	$500,000	R
(11.0) Division of Medical Assistance				
120 Eliminate Vacant Positions Eliminates vacant positions within the Division of Medical Assistance.	($559,031) -15.00	R	($559,031) -15.00	R
121 Reduce Prescription Drug Costs Reduces prescription drug expenditures by employing the following actions: enhancing utilization management of the Prescription Advantage List (PAL), increasing utilization of generic drugs in place of brand name drugs, and increasing rebate collections on generic drugs. If sufficient savings are not realized by these actions, the department shall implement a preferred drug list for all drug classes in the Medicaid program. Generic drugs and brandname drugs that offer supplemental rebates will be included.	($25,791,264)	R	($30,214,013)	R
122 Freeze Provider Inflationary Increases in FY 2009-10 Freezes provider inflationary increases in FY 2009-10. The freeze applies to all public and private providers except for federally qualified health centers, rural health centers, school-based and school-linked health centers, State institutions, hospital outpatient, pharmacy, and the non-inflationary components of the case-mix reimbursement system for skilled nursing facilities.	($73,752,358)	R	($77,641,997)	R
123 Continue Provider Inflationary Rate Freeze from FY 2008-09 Continues the additional inflationary rate freeze from FY 2008-09 to maintain rates at current levels. The NCGA reduced provider inflationary rates by 67% during the 2008 Session. The division, through a budget flexibility special provision, reduced the rates by an additional 33%.	($27,676,137)	R	($30,014,082)	R
124 Modify Private Duty Nursing Reduces private duty nursing budget based on medical policy changes that would limit the number of hours adults would receive to 16 per day.	($2,065,924)	R	($2,729,287)	R
125 Change PT, OT, and ST benefits Reduces budget for physical therapy (PT), occupational therapy (OT), and speech therapy (ST) to ensure appropriate utilization of services. Adult visits would be limited to 30 visits per year. Savings are estimated to be 14% of projected expenditures. Effective October 1, 2009.	($2,453,119)	R	($3,443,360)	R
126 Enhance Third Party Liability Recoveries and Cost Avoidance Reduces medical assistance payments by increasing payment by third parties and increasing cost avoidance through better utilization of technology and other Medicaid cost-containment activities.	($20,000,000)	R	($20,000,000)	R

	FY 09-10		FY 10-11	
127 Implement False Claims Act Increases the amount North Caroilna can retain from fraud and abuse recoveries by implementing provisions that meet federal False Claims Act standards. The 10% bonus is expected to generate about $2.4 million annually. Of the amount collected, $176,068 will be used to support 5 positions at the Attorney General's Office to implement the act. Net collections will be offset by a reduction to State appropriations.			($2,229,757)	R
128 Shift from NC Kids Care to Health Choice Shifts the reserve for the NC Kids Care program to Health Choice on a one-time, non-recurring basis for the biennium to expand Health Choice to more than 15,583 children each year.	($7,000,000)	NR	($7,000,000)	NR
129 Modify Personal Care Services Benefits Reduces personal care services benefits to reduce overutilization of services. Effective October 1, 2009.	($54,855,000)	R	($54,855,000)	R
130 Reduce Funding for Community Support Reduces funding for the Community Support program for adults by limiting the hours for Community Support Group services to 8 hours per week.	($15,000,000)	R	($15,000,000)	R
131 Eliminate Administrative Expenditure Increases Eliminates increases on administrative expenditures in fund code 1101 temporarily for each year of the biennium.	($1,200,000)	NR	($1,200,000)	NR
132 Eliminate HIV Case Management Eliminates funds for HIV case management services.	($1,668,027)	R	($1,668,027)	R
133 Eliminates Funding for CCNC-Health Choice Eliminates the per member/per month payment to the Community Care of North Carolina networks associated with Health Choice enrollees.	($900,000)	R	($900,000)	R
134 Reduction in Medical Assistance Payments Reduces Medical Assistance payments to be offset by federal recovery funds.	($920,377,105)	NR	($514,514,239)	NR
135 Legal Positions in the Attorney General's Office Provides nonrecurring funds for four time-limited attorney II positions at the Attorney General's office to continue to help with the backlog of Community Support appeals cases at the Office of Administrative Hearings (OAH).	$165,566	NR		
136 Medicaid Appeals Process Provides nonrecurring funding to continue to the employment of temporary hearing officers in the Division of Medical Assistance to help with the backlog of Community Support appeals cases.	$238,140	NR		

	FY 09-10		FY 10-11	
(12.0) Division of Health Service Regulation				
137 Eliminate Vacant Positions Eliminates vacant positions within the Division of Health Service Regulation.	($444,518) -7.00	R	($444,518) -7.00	R
138 Operating Freeze Continues freeze on operating expenses from the FY 2008-09 budget (Other Operating - 2xxx-5xxx, Fund 1311 Rent/Lease-Bldg/Office).	($466,688)	R	($466,688)	R
139 Increase Fees for License Renewals Increases licensing fees to health care facilities regulated by the division and reduces State appropriation in a similar amount. The cost of administering the licensure program is shared with facilities.				
140 Eliminate Two Vacant Positions in Medical Facilities Construction Eliminates two vacant positions in the Medical Facilities Construction Section, which review construction plans, make on-site inspections, and provide consultation to ensure compliance with federal and State standards. The reduction will reduce the number of section staff to 63 FTEs.	($164,640) -2.00	R	($164,640) -2.00	R
141 Charge Fee for Initial Facility License Reduces State appropriations by amount generated by initial facility license fees for new facilities. Fees would apply to adult care homes, hospitals, home care, nursing homes, and mental health facilities.				
Total Legislative Changes	**($227,577,683)** **($1,032,666,144)**	R NR	**($252,313,316)** **($555,141,743)**	R NR
Total Position Changes	-520.49		-818.74	
Revised Budget	**$4,276,101,112**		**$4,999,105,886**	

67425 DHHS - Deaf/Hard of Hearing - Trust Telecomm

Trust

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$10,421,357**	**$10,421,357**	**$10,421,357**	**$10,421,357**
Legislative Changes				
Transfer from Deaf/Hard of Hearing Trust Fund Transfers funds available in the cash balance of the Deaf/Hard of Hearing Trust Fund (Telecommunications Relay Service) to support General Fund appropriations ($5,000,000) for FY 2009-10; and, appropriates additional funds to Budget Code 24410 for the Data Collection and Case Management Systems initiative ($1,500,000).	$6,500,000			
Total Legislative Changes	**$6,500,000**			
Net Change in Fund Balance	**($6,500,000)**			

NATURAL & ECONOMIC RESOURCES

Section H

Agriculture and Consumer Services

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$65,402,492**		**$65,638,839**	
Legislative Changes				
A. Department-Wide				
1 Management Flexibility Reserve Provides the Department with flexibility to manage the reduction per Section 6.6.	($2,005,780)	R	($2,005,780)	R
2 Fund Shift Positions to Receipt Support Shifts 10.7 positions to receipt support. These receipts come from various enterprise funds, grants, and other revenue sources.	($467,047) -10.70	R	($467,047) -10.70	R
3 Vacant Positions Eliminates 6.5 positions vacant on July 1, 2008.	($339,079) -6.50	R	($339,079) -6.50	R
Agricultural Program Specialist $55,880 Medical Laboratory Technician II $54,851 Meat and Poultry Inspector II $19,159 Chemistry Supervisor III $63,140 Administrative Officer II $48,359 Agricultural Programs Administrator $99,322 Executive Assistant I $58,368				
4 Worker's Compensation Reduces funding for worker's compensation due to a recent decrease in premiums for the Department.	($75,000)	R	($75,000)	R
B. Administrative Services				
5 Continuation Budget Increase Eliminates the Governor's continuation budget increases.	($352,825)	R	($352,825)	R
D. Agronomic Services				
6 Fertilizer Assessment Replaces the General Fund appropriation with an increase in the fertilizer assessment. The fertilizer assessment will be increased from $0.25 per ton of fertilizer to $0.50 per ton, bringing North Carolina's assessment in line with surrounding states. All receipts from the increase will be used to support Agronomic Services.	($375,000)	R	($375,000)	R

	FY 09-10		FY 10-11	
E. Marketing				
7 Got to Be NC Provides nonrecurring funding for Got to Be NC marketing. This program promotes North Carolina's farmers by helping to develop markets for North Carolina produce and products in grocery stores, restaurants, farmer's markets, and other establishments. Participation in Got to Be NC by North Carolina Farmers continues to grow, and farmers report sales increases of 10 to 40 percent upon joining the Got to Be NC promotion.	$600,000	NR		
E. Markets				
8 Marketing Funds Provides funding for the promotion of agriculture festivals in small towns with populations less than 5,000. The amount per festival shall not exceed $5,000.	$50,000	NR		
F. Pesticides				
9 Pesticide Registration Fee Increases the current annual pesticide registration fee from $100 to $150 for each brand or grade of pesticide registered and reduces General Fund appropriations to the Pesticide Division.	($500,000)	R	($500,000)	R
G. Plant Industry				
10 Plant Inspection Fees Increases nursery certification and registration fees and reduces the General Fund appropriation to the Plant Industry Division. The certification fee will increase from $10 to $100 for the initial acre and from $2 to $3 for additional acres. The registration fee for nurseries will increase from $6 to $20.	($58,303)	R	($58,303)	R
H. Standards				
11 Calibration Inspection Over-realized Receipts Budgets over-realized receipts for calibration inspections services.	($20,000)	R	($20,000)	R
12 Petroleum Device Technician License Fee Creates a registration fee for petroleum device technician licenses for those who service LP-Gas meters.	($10,000)	R	($10,000)	R
I. Veterinary Services				
13 Animal Diagnostic Fees Replaces the General Fund appropriation for veterinary services with increased fees for certain animal diagnostic tests.	($250,000)	R	($250,000)	R

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
Total Legislative Changes	**($4,453,034)**	**R**	**($4,453,034)**	**R**
	$650,000	**NR**		
Total Position Changes	-17.20		-17.20	
Revised Budget	**$61,599,458**		**$61,185,805**	

Labor

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$19,064,773**		**$19,092,834**	
Legislative Changes				
Department-Wide				
14 Vacant Positions Eliminates eight positions vacant on July 1, 2008.	($431,371) -8.00	R	($431,371) -8.00	R
15 Management Flexibility Reserve Provides the Department with flexibility to manage the reduction per Section 6.6.	($135,406)	R	($135,406)	R
Administration				
16 Administration Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($86,413)	R	($86,413)	R
Occupational Safety and Health				
17 OSH Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($91,721)	R	($91,721)	R
18 Publication Fees Directs OSH to raise publication fees to adjust for inflation and to take a corresponding General Fund reduction. Fees were last raised February 1, 2001.	($21,325)	R	($21,325)	R
Standards and Inspections				
19 Standards and Inspections Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($125,051)	R	($125,051)	R
20 Apprenticeship Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($23,382)	R	($23,382)	R
21 Apprenticeship Program Directs the Apprenticeship Program to create new fees to generate enough revenue so that the program can take a 25% reduction to General Fund support.	($450,000)	R	($450,000)	R

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
Total Legislative Changes	**($1,364,669)**	**R**	**($1,364,669)**	**R**
Total Position Changes	-8.00		-8.00	
Revised Budget	**$17,700,104**		**$17,728,165**	

Environment & Natural Resources

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$212,524,097**		**$214,924,435**	
Legislative Changes				
(1.0) Department-Wide				
22 Vacant Positions	($1,580,786)	R	($1,580,786)	R
Eliminates 32.25 positions throughout the Department vacant on July 1, 2008.	-32.25		-32.25	
23 Management Flexibility Reserve	($4,431,041)	R	($4,431,041)	R
Provides the Department with flexibility to manage the reduction per Section 6.6.				
(2.0) Administration				
24 Continuation Budget Increase	($1,437,364)	R	($1,437,364)	R
Eliminates the Governor's Continuation Budget increase.				
(2.0) Office of Environmental Education				
25 Environmental Education	($551,681)	R	($551,681)	R
Reorganizes the Office of Environmental Education. Transfers curriculum development functions to the Department of Public Instruction, Community Colleges, and the University system; technical materials to the State Library; and the clearinghouse function and the Program Development Coordinator to the Office of Public Affairs.	-7.00		-7.00	
(2.0) Office of Public Affairs				
26 Environmental Education	$150,000	R	$150,000	R
Reorganizes the Office of Environmental Education, transferring the Program Development Coordinator and associated operating expenses to the Office of Public Affairs.	1.00		1.00	
(3.0) Center for Geographic Information Analysis				
27 Center for Geographic Information Analysis Transfer				
Transfers the Center for Geographic Information Analysis from the Department to the Office of the State Chief Information Officer.				
(3.0) Coastal Management				
28 General Fund Position to Receipt Support	($81,492)	R	($81,492)	R
Shifts funding of one Environmental Supervisor II to a grant from the National Oceanic and Atmospheric Administration.	-1.00		-1.00	

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
(3.0) Environmental Health				
29 General Fund Support to Receipt Support Shifts funding for rent for the Division's main office to a federal grant.	($61,724)	R	($61,724)	R
30 Food and Lodging Inspection Fee Adjusts the food/lodging inspection fee for inflation. Fees are currently either $50 or $200 and will be increased to $60 and $235 respectively. Fees were last increased October 1, 2002. New fee revenue will be distributed in accordance with G.S.130A-248. Fee revenue credited to the Department will be used to support operations of the Division and will allow the Division to take a corresponding General Fund reduction.	($87,680)	R	($87,680)	R
31 General Fund Position to Receipt Support Shifts funding of one Processing Assistant IV from General Fund support to food and lodging inspection fee receipts.	($38,272) -1.00	R	($38,272) -1.00	R
32 Radiation Protection Section Requires that the radiation protection section become entirely receipt supported by 2010-11. Reduces General Fund support by 50% in FY 2009-10 and eliminates all General Fund support in FY 2010-11. Moves 12.0 positions from the General Fund to receipt support in FY 2010-11.	($416,282)	R	($833,337) -12.00	R
(3.0) Land Resources				
33 County Boundary Program Eliminates funding for the County Boundary Program.	($106,479) -1.00	R	($106,479) -1.00	R
(3.0) Pollution Prevention & Enviro. Assistance				
34 Solid Waste Management Trust Fund Receipts Directs the Division to shift operating expenses to the Solid Waste Management Trust Fund (SWMTF). SWMTF began receiving new revenue in FY 2008-09 from the solid waste disposal tax, a portion of which was authorized to be used for operating expenses.	($225,000)	R	($225,000)	R
(3.0) Waste Management				
35 Inactive Hazardous Sites Cleanup Fund Receipts Directs the Division to shift operating expenses to the Inactive Hazardous Sites Cleanup Fund. The Inactive Hazardous Sites Cleanup Fund began receiving new revenue in FY 2008-09 from the solid waste disposal tax, a portion of which was authorized to be used for operating expenses.	($300,000)	R	($300,000)	R
(4.0) Forest Resources				
36 Forestry Equipment Reduces the Division of Forest Resources' equipment budget.	($500,000)	R	($500,000)	R

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
37 Continuation Budget Increase for Operating Reserves Reduces the continuation budget increase for operating reserves due to expected construction delays.	($45,197)	NR		
38 Continuation Budget Increase for Over-time Pay Reduces the continuation budget increase for over-time pay by 50%.	($450,000)	R	($450,000)	R
(4.0) Marine Fisheries				
39 Equipment Increase Eliminates the continuation budget increase for equipment.	($1,458,154)	R	($1,409,154)	R
40 Sea Grant Transfer Reduces the Sea Grant transfer to NCSU to $600,000.	($253,688)	R	($253,688)	R
(4.0) Museum of Natural Sciences				
41 Continuation Budget Increase for Nature Research Center Reduces the continuation budget increase for operating reserves for the Nature Research Center. The center is scheduled to open October 2011. This reduction leaves approximately $500,000 in FY 2010-11 for program start-up prior to building completion.	($499,715) -5.00	R	($1,433,479) -24.00	R
(4.0) Parks & Recreation				
42 Aid & Public Assistance Reduces aid and public assistance by 10%.	($399,372)	R	($399,372)	R
(5.0) Reserves & Transfers				
43 Beaver Management Assistance Program Reduces the transfer to the Wildlife Resources Commission (WRC) for the Beaver Management Assistance Program. WRC will continue to operate the program using $349,000 in WRC revenue from the sales tax transfer.	($349,000)	R	($349,000)	R
44 Grassroots Science Museums Reduces the funding for Grassroots Science Museums by 2%.	($69,627)	R	($69,627)	R
45 Partnership for the Sounds Reduces General Fund support for the Partnership for the Sounds by 2%.	($10,345)	R	($10,345)	R
46 Clean Water State Revolving Fund Match Provides funds to meet the 20% State match required to draw down maximum federal funds for the Clean Water State Revolving Fund.	$2,481,000	NR		

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
47 Drinking Water State Revolving Fund Provides funds to meet the 20% State match required to draw down maximum federal funds for the Clean Water State Revolving Fund.	$5,482,800	NR		
Total Legislative Changes	**($13,157,702)**	**R**	**($14,459,521)**	**R**
	$7,918,603	**NR**		
Total Position Changes	-46.25		-77.25	
Revised Budget	**$207,284,998**		**$200,464,914**	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 09-10		FY 10-11
Adjusted Continuation Budget	**$100,000,000**		**$100,000,000**
Legislative Changes			
Clean Water Management Trust Fund			
48 Reduce Appropriation			
Reduce appropriation to the Clean Water Management Trust Fund by 5% in FY 2009-10.	($5,000,000)	NR	
Total Legislative Changes	**($5,000,000)**	**NR**	
Total Position Changes			
Revised Budget	**$95,000,000**		**$100,000,000**

Commerce

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$46,019,823**		**$46,028,986**	
Legislative Changes				
A. Department-Wide				
49 Management Flexibility Reserve Provides the Department with flexibility to manage the reduction per Section 6.6.	($623,108)	R	($623,108)	R
50 Vacant Positions Eliminates three positions vacant on July 1, 2008.	($158,114)	R	($158,114)	R
	-3.00		-3.00	
B. Administrative Services				
51 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($39,760)	R	($39,760)	R
52 Vacant Position Eliminates the General Counsel position in the Secretary's Office. This position has been vacant since September 2007.	($148,201)	R	($148,201)	R
	-1.00		-1.00	
C. Executive Aircraft				
53 Replacement Plane Eliminates funding for lease payments for a replacement aircraft for the King Air B-200. The order for the new plane has been cancelled.	($1,326,428)	R	($1,326,428)	R
D. MIS				
54 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($23,133)	R	($23,133)	R
55 Transferred Positions Eliminates the salaries, benefits, and operating support for three positions that were transferred to ITS in November 2008.	($250,000)	R	($250,000)	R
E. Policy and Research				
56 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($52,357)	R	($52,357)	R

	FY 09-10		FY 10-11	
F. Marketing				
57 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($46,987)	R	($46,987)	R
58 Business Destination Marketing Provides funds to market the State as a business destination. Section 14.2(a) allocates an additional $1 million from the One North Carolina Fund cash balance for this purpose, bringing the total additional funds appropriated for marketing the State as a business destination to $1.5 million for FY 2009-10.	$500,000	NR		
G. Business and Industry				
59 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($27,930)	R	($27,930)	R
60 Continuation Budget Funds for China Office Moves funds appropriated for the new China Trade Office from the International Trade Division to the Business and Industry Division. These two divisions each fund one position in the trade offices. Funds for the International Trade position were appropriated in FY 2008-09. The Continuation Budget included an adjustment to provide the Business and Industry position, but the funds were appropriated to the wrong fund. This item corrects that.	$175,000	R	$175,000	R
H. International Trade				
61 Continuation Budget Funds for China Office Moves funds appropriated for the new China Trade Office from the International Trade Division to the Business and Industry Division. These two division each fund one position in the trade offices. Funds for the International Trade position were appropriated in FY 2008-09. The Continuation Budget included an adjustment to provide the Business and Industry position, but the funds were appropriated to the wrong fund. This item corrects that.	($175,000)	R	($175,000)	R
62 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($27,979)	R	($27,979)	R
63 Korean Trade Office Eliminates the General Fund appropriation for the Korean Trade Office. This office is shared with the NC Ports Authority, and can be fully supported by the Ports.	($24,000)	R	($24,000)	R
I. Tourism, Film, and Sports Development				
64 Continuation Budget Increase Eliminates the Governor's Continuation Budget increase.	($9,373)	R	($9,373)	

	FY 09-10		FY 10-11	
65 Tourist Destination Marketing				
Provides funds to promote the State as a tourist destination. The Department of Commerce shall promote Historically Underutilized Businesses and supplier diversity when marketing the State of North Carolina. Such promotion may include advertising with minority media outlets and advertising with minorities in the motorsports industry. The Department and firms that contract with the Department to promote Historically Underutilized Businesses and supplier diversity shall make a good faith effort to achieve diversity in the bidding and awarding of marketing and advertising contracts.	$259,165	NR		
J. Welcome Centers				
66 Continuation Budget Increase	($19,774)	R	($19,774)	R
Eliminates the Governor's Continuation Budget increase.				
K. Wanchese Seafood Industrial Park				
67 Continuation Budget Increase	($12,237)	R	($12,237)	R
Eliminates the Governor's Continuation Budget increase.				
L. Commerce Finance				
68 Continuation Budget for JMAC	($5,000,000)	R	($5,000,000)	R
Corrects the Continuation Budget for the Job Maintenance and Capital Development Fund (JMAC). Funds were appropriated for FY 2008-09 on a nonrecurring basis but were included in the Continuation Budget on a recurring basis. JMAC has a cash balance of $5 million and does not need an appropriation for FY 2009-10.				
69 Small Business Assistance Fund				
Creates a new fund within the Department to assist small businesses with 100 or fewer employees and less than $1 million in annual receipts. The Fund will provide loans to qualifying businesses for any of the following purposes: -To guarantee a commercial loan; -To finance bonds to allow small businesses to better leverage federal stimulus dollars; -To provide emergency bridge loans; and, -For any other purpose related to small business job preservation.	$3,000,000	NR		
70 One NC Small Business Funds				
Section 14.2(b) transfers $2 million from the One NC Fund cash balance to the One NC Small Business Fund for FY 2009-10. One NC Small Business provides matching grants to businesses that qualify for federal SBIR/STTR Incentive funds.				

	FY 09-10		FY 10-11	
71 Green Business Fund				
Section 20A.1 allocates $5 million of the funds received by the State under the American Recovery and Reinvestment Act and appropriated to the State Energy Office to the Green Business Fund. The Green Business Fund provides grants to private businesses with less than 100 employees, non-profit organizations, and State agencies to encourage the growth of a green economy in North Carolina.				
M. Community Assistance				
72 Continuation Budget Increase	($16,081)	R	($16,081)	R
Eliminates the Governor's Continuation Budget increase.				
73 Office of Rural Development Programs	($91,032)	R	($91,032)	R
Eliminates a new office created by the Department of Commerce in November 2008. This office is unnecessary, as the General Assembly provides $24 million to the Rural Economic Development Center to serve rural areas of the State.	-1.00		-1.00	
74 General Fund Positions to Receipt Support	($262,842)	R	($262,842)	R
Eliminates 7 vacant receipt supported positions and transfers 5 General Fund positions to receipt support. Several of these receipt-supported positions have been vacant since before 2007.	-5.00		-5.00	
75 Main Street Solutions				
Creates the Main Street Solutions Fund. This program will provide grants to micropolitan cities in Tier Two and Three counties to assist with economic development projects designed to foster job creation and entrepreneurship in the State's smaller cities.	$3,000,000	NR		
N. Industrial Commission				
76 Continuation Budget Increase	($257,826)	R	($257,826)	R
Eliminates the Governor's Continuation Budget increase.				
77 Legal Specialists to Receipt Support	($167,987)	R	($167,987)	R
Transfers support for three legal specialists in the Commissioners' Office from General Fund to receipts.	-3.00		-3.00	
78 Deputy Commissioners to Receipt Support	($203,760)	R	($203,760)	R
Transfers support for two Deputy Commissioners from General Fund to receipts.	-2.00		-2.00	
79 Program Assistants to Receipt Support	($266,530)	R	($266,530)	R
Transfers support for eight Program Assistants from General Fund to receipts.	-8.00		-8.00	

Senate Subcommittee on Natural and Economic Resources	FY 09-10		FY 10-11	
80 Safety Education Section Continuation Review Provides funding for the Safety Education Section for one year. Beginning in FY 2010-11, this program will be wholly receipt supported. Also restores recurring funds that were inadvertently eliminated as part of this Continuation Review.	$204,561 $467,104	R NR	$204,561	R
Total Legislative Changes	**($8,850,878)** **$7,226,269**	R NR	**($8,850,878)**	R
Total Position Changes	-23.00		-23.00	
Revised Budget	**$44,395,214**		**$37,178,108**	

Commerce - State Aid

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$15,642,232**		**$15,642,232**	
Legislative Changes				
81 Non-profit Operating Efficiencies Reduces the recurring pass-through appropriations to each non-profit by two percent.	($337,559)	R	($337,559)	R
82 Regional Economic Development Commissions Provides funding for the seven Regional Economic Development Commissions. Funds will be allotted to the Commissions in accordance with the formula set out in Section 14.13.	$3,000,000	NR		
83 Minority Support Center Funds Section 14.2(c) directs the Department of Commerce to allocate $1 million from the One NC Fund cash balance to the Minority Support Center. These funds shall be used to further community economic development lending and support in low-wealth communities and to make capital accessible to small businesses in a way that will have an economic stimulus impact.				
84 Defense and Security Technology Accelerator Provides funds for the Partnership for defense Innovation to support the Defense and Security Technology Accelerator, a business incubator focusing on economic development opportunities in industries relating to homeland security and national defense.	$500,000	NR		
85 Biofuels Center of North Carolina Section 20A.2 allocates $3 million of the funds received by the State under the American Recovery and Reinvestment Act and appropriated to the State Energy Office to the Biofuels Center of NC. Funds will be used for costs related to implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.				
Total Legislative Changes	**($337,559)** **$3,500,000**	**R** **NR**	**($337,559)**	**R**
Total Position Changes				
Revised Budget	**$18,804,673**		**$15,304,673**	

N.C. Biotechnology Center

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$15,427,561**		**$15,427,561**	
Legislative Changes				
86 Operating Efficiencies Reduces the budget for the Biotech Center by two percent.	($308,551)	R	($308,551)	R
Total Legislative Changes	**($308,551)**	**R**	**($308,551)**	**R**
Total Position Changes				
Revised Budget	**$15,119,010**		**$15,119,010**	

Rural Economic Development Center

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$24,059,581**		**$24,059,581**	
Legislative Changes				
87 Operating Efficiencies Reduces the administrative appropriation to the Rural Center by two percent.	($40,128)	R	($40,128)	R
Total Legislative Changes	**($40,128)**	**R**	**($40,128)**	**R**
Total Position Changes				
Revised Budget	**$24,019,453**		**$24,019,453**	

24600 Commerce - Special

Special

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$182,777,229**	**$146,564,544**	**$182,777,229**	**$146,564,544**
Legislative Changes				
Marketing Funds Directs the Department of Commerce to use $1 million from the One NC Fund cash balance for marketing the State as a business destination.	$1,000,000			
One NC Small Business Transfers $2 million in FY 2009-10 from the One NC Fund cash balance to the One NC Small Business Fund.	$2,000,000			
NC Minority Support Center Transfers $1 million from the One NC Fund cash balance to the NC Minority Support Center.	$1,000,000			
Total Legislative Changes	**$4,000,000**			
Net Change in Fund Balance	**($4,000,000)**			

24350 Wildlife Resources - Operating

Special

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$65,680,466**	**$65,680,466**	**$65,362,400**	**$65,362,400**
Legislative Changes				
Beaver Management Assistance Program Directs the Wildlife Resources Commission to continue funding the Beaver Management Assistance Program at $349,000 using existing revenue.	$349,000			
Total Legislative Changes	**$349,000**			
Net Change in Fund Balance	**($349,000)**			

JUSTICE
&
PUBLIC SAFETY
Section I

Senate Subcommittee on Justice and Public Safety

Judicial

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$497,649,235**		**$507,638,940**	

Legislative Changes

Administration

1 Reduce Information Technology Funding ($977,499) R ($977,499) R

Adjust continuation budget increases for information and other technology services.

2 Eliminate Vacant AOC Administrative Positions ($621,720) R ($621,720) R

Eight (8) vacant positions in AOC's Raleigh office are eliminated: -8.00 -8.00

Pos.#	Position	Salary
60004908	Sr. Accountant	36,598
60094875	Wan Engineer III	70,506
60094888	App. Analyst Prog. III	80,145
60055085	Sr. Java Developer	78,000
60004852	Management Asst	43,507
60095893	Instructional Designer	54,080

Department-Wide

3 Reduce Various Operating Accounts ($950,000) R ($950,000) R

Governor's recommendation: reduce various operating accounts on a recurring basis:

Supplies: ($150,000)
Employee Educational Assistance: ($50,000)
Registration Fees: ($100,000)
Travel: ($150,000)
Equipment: ($500;000)

4 Reduce Employee Travel Budget ($830,000) R ($830,000) R

Reduce the amount in the continuation budget for employee transportation, lodging, and meals by restricting the number of trips and reducing the mileage reimbursement rate for the use of personal vehicles.

5 Eliminate Telephone System Line Items ($4,613,429) R ($4,613,429) R

SL 2007-108 authorized a new fee to pay for judicial and county courthouse telephone systems. Therefore, the continuation budget line items for telephone upgrades, maintenance, and operations are eliminated.

6 Reduce Academic Services Budget ($307,692) R ($345,312) R

The continuation budget increases for academic services are eliminated.

	FY 09-10		FY 10-11	
7 Adjust Continuation Budget Line Items The continuation budget is adjusted to remove increases for the maintenance agreements, legal services, and miscellaneous contractual services.	($5,939,522)	R	($10,454,317)	R
8 Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the Administrative Office of the Courts with the flexibility to manage additional reductions totaling $7,266,832.	($7,266,832)	R	($7,266,832)	R
District Attorneys				
9 Eliminate DA Conference Funding The continuation budget for the NC Conference of District Attorneys is eliminated.	($401,289) -5.00	R	($401,289) -5.00	R
10 Eliminate Vacant DA Investigator Positions Eight vacant District Attorney investigators positions are eliminated.	($403,214) -8.00	R	($403,214) -8.00	R
Equipment and Other Reserves				
11 Freeze Step Increases for Magistrates and Clerks Freeze the step increase for the salaries of Magistrates and Clerks for FY 2009-11.	($2,324,864)	NR	($6,390,013)	NR
12 Evaluation & Training to Improve Court Operations Governor's recommendation:$750,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for evaluation of court processes and procedures and developing best practices for effective programs. In addition, this funding will support continuing education and basic systems training for court professionals and those who interface with court systems. Training is especially critical to ensure the timely implementation of NCAWARE, a statewide warrant repository. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the State administrator of the Byrne/JAG Formula Program.				
Trial Courts				
13 Dispute Resolution Centers Funding Eliminate the pass-through funds for local dispute resolution centers and the Mediation Network of North Carolina. The Dispute Resolution Commission may propose fee increases to offset the loss of General Fund support.	($159,932)	R	($159,932)	R
14 Reduce Pass-Through Funding to the NC State Bar Reduce the continuation budget pass-through funding to the NC State Bar as follows: Civil Justice Act: ($100,000) Financial Protection Law Center: ($10,000) Land loss Protection Center: ($100,000)	($210,000)	R	($210,000)	R

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
15 Eliminate Clerks' Conference Funds The continuation budget for the Conference of Clerks of Superior Court is eliminated.	($121,401) -2.00	R	($121,401) -2.00	R
16 Eliminate Vacant GAL Supervisory Positions Two vacant GAL Program Supervisor positions are eliminated.	($103,866) -2.00	R	($103,866) -2.00	R
17 Eliminate Superior Court Judge Travel Allowance Funding for the $7,000 annual travel allowance for each Superior Court Judge is eliminated from the continuation budget. Superior Court Judges' travel expenses shall be paid on a reimbursement basis from the Trial Court Division's travel budget.	($672,000)	R	($672,000)	R
18 Eliminate Vacant Court Positions The continuation budget is reduced to eliminate vacant Victim/Witness Legal Assistants and Assistant District Attorney positions. Asst District Attorney (2.0) Victim Witness Legal Asst (23.0)	($1,280,429) -25.00	R	($1,280,429) -25.00	R
Total Legislative Changes	**($24,858,825)**	R	**($29,411,240)**	R
	($2,324,864)	NR	**($6,390,013)**	NR
Total Position Changes	-50.00		-50.00	
Revised Budget	**$470,465,546**		**$471,837,687**	

Senate Subcommittee on JPS

22006 Court Information Technology Fund

Special Revenue Account

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	$8,149,239	$8,149,239	$8,149,239	$8,149,239
Legislative Changes				
Court Information Technology Fund Increase the Court Information Technology Fund telephone/facility fee (G.S.7A-304; G.S. 7A-307) from $1 to $3 effective July 1, 2009 and from $3 to $4 effective July 1, 2010		$2,691,112		$4,036,668
Total Legislative Changes		**$2,691,112**		**$4,036,668**
Net Change in Fund Balance				

Judicial - Indigent Defense

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$133,881,190**		**$132,320,396**	
Legislative Changes				
Department-Wide				
19 Reduce Various Operating Accounts Governor's recommendation: reduce various operating accounts including Travel ($309,637)R, Registration Fees ($17,000)R, Academic Services ($17,500)R, Library & Learning Resources ($13,251)R, and PC/Printer Equipment ($30,000)NR.	($357,388) ($30,000)	R NR	($357,388)	R
20 Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the Office of Indigent Defense Services with the flexibility to manage additional reductions totaling $1,593,302.	($1,593,302)	R	($1,593,302)	R
Indigent Defense Services				
21 Reduce Aid to Center of Death Penalty Litigation The pass-through funding to the Center for Death Penalty Litigation is reduced by 10 percent.	($59,000)	R	($59,000)	R
22 Reduce Prisoner Legal Services Funds Funding provided for the Prisoner Legal Services contract is reduced by 10 percent.	($124,407)	R	($124,407)	R
Indigent Person Attorney				
23 Adjust the PAC Continuation Budget The continuation budget for the Private Attorney Fund includes increases of $16.1 million in FY 2009-10 and $14.3 million in FY 2010-11. The recurring continuation increases are reduced. Non-recurring funds are provided to address the backlog of unpaid claims carried over from FY2008-09.	($3,500,000) $7,000,000	R NR	($8,500,000)	R
Sentencing Services				
24 Reduce Sentencing Services Budget Reduce the continuation budget for the Sentencing Services Program by 10 percent.	($283,029)	R	($283,029)	R

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
Total Legislative Changes	**($5,917,126)**	**R**	**($10,917,126)**	**R**
	$6,970,000	**NR**		
Total Position Changes				
Revised Budget	**$134,934,064**		**$121,403,270**	

Justice

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$100,441,147**		**$101,047,019**	
Legislative Changes				
Administration				
25 Shift Position to Receipt Support Governor's recommendation that an appropriated administrative position be shifted to receipt support. This position will now be funded by receipts generated through administrative charges from grants, cost of collection for DPI school penalties, Private Protective Services operating receipts, and Justice Academy Bookstore receipts	($44,215) -1.00	R	($44,215) -1.00	R
Criminal Justice Training and Standards - CJTS				
26 Reduce CJTS Operating Funds Reduction in operating funds for the Criminal Justice Training and Standards Division. This reduction will be offset by receipts from a new $2.00 fee to support the division.	($1,000,000)	R	($2,000,000)	R
Department-Wide				
27 Reduce Various Operating Accounts Governor's recommendation that funding for various operating accounts be reduced across the agency.	($215,000)	R	($215,000)	R
28 Eliminate 27 vacant positions Elimination of 27 positions that have been vacant for six months or more.	($1,221,703) -27.00	R	($1,221,703) -27.00	R
29 Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the Department of Justice with the flexibility to manage additional reductions totaling $2,692,365.	($2,692,365)	R	($2,692,365)	R
Legal Services				
30 Shift Consumer Protection Positions Conversion of 21 staff positions in the Consumer Protection Program from General Fund appropriation to receipt support. Receipts associated with court orders and legal consumer settlements will be used to fund these positions.	($1,400,000) -21.00	R	($1,400,000) -21.00	R
31 Eliminate 6 Vacant Positions Governor's recommendation that six vacant positions be eliminated. The positions include two attorneys, three SBI support positions, and one academy training coordinator.	($367,641) -6.00	R	($367,641) -6.00	R

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
32 Reduction in NC LEAF funding 10 percent reduction in funding for the North Carolina Legal Education Assistance Foundation (NC LEAF)	($50,000)	R	($50,000)	R
33 Maximization of Medicaid Fraud Recovery Efforts Reduction in the General Fund appropriation for the Medicaid Fraud Unit. This reduction will be offset by the program's efforts to maximize recovery fees and related administrative receipts.	($168,566)	R	($337,132)	R
State Bureau of Investigation - SBI				
34 Reduce Vehicle Replacement Budget Reduction in the SBIvehicle replacement budget.	($342,303)	R	($342,303)	R
35 Reduce Telecommunication Service Charges Governor's recommendation that telecommunication service charges be reduced by providing all connections to criminal databases through secure internet connections.	($459,599)	R	($459,599)	R
36 Eliminate the Fingerprint Card Program Governor's recommendation that the fingerprint card program be eliminated now that all 100 counties have access to the Statewide fingerprint Identification System (SAFIS), which utilizes live scan devices.	($15,696)	R	($15,696)	R
37 Shift Positions to Receipt Support Governor's recommendation that two appropriated Information Technology positions be shifted to receipt support. These positions will now be funded through user fees associated with criminal databases that these positions support.	($165,905) -2.00	R	($165,905) -2.00	R
38 Increase SBI Crime Lab Fee Governor's recommendation that the fee assessed on convicted criminals to recover the cost of SBI Crime Lab analysis be increased from $300 to $600. DWI cases make up a large percentage of the total revenue generated from this fee.	($195,442)	R	($390,884)	R
39 Expand GangNet Governor's report on the use of funding of up to $1.8 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for an expansion of the GangNet intelligence information database. The database will be expanded to include probation officers, the State Bureau of Investigation, the State's Homeland Security Intelligence Network and the NC Justice Xchange, which facilitates criminal integration by allowing the exchange of information throughout the criminal justice community. These efforts will be coordinated with Durham County and Charlotte-Mecklenburg, which administer the GangNet eastern and western nodes, respectively. The allocation of this funding will be made under the authority of the Governor Crime Commission, the state administrator of the Byrne/JAG Formula Program.				

	FY 09-10		FY 10-11	
40 Federal Funds to Expedite Criminal and Drug Cases Governor's report on the use of funding of up to $1.8 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) to support overtime expenditures required to expedite methamphetamine and violent crime investigations. This funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Program.				
Total Legislative Changes	**($8,338,435)**	**R**	**($9,702,443)**	**R**
Total Position Changes	-57.00		-57.00	
Revised Budget	**$92,102,712**		**$91,344,576**	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$172,484,415**		**$172,651,108**	
Legislative Changes				
41 Establish a Management Flexibility Reserve It is recommended that a management flexibility reserve be established to provide the Department Juvenile Justice & Delinquency Prevention with the flexibility to manage additional reductions totaling $3,502,899.	($3,502,899)	R	($3,502,899)	R
Administrative Services				
42 Eliminate Seven Central Office Positions The Governor recommends eliminating seven central office positions, including one human resources position, one webmaster position, one administrative secretary, one information technology project manager, and three facility investigators. These eliminations will be a combination of filled and vacant positions	($426,955) -7.00	R	($426,955) -7.00	R
43 Reduce Appropriation for Furniture The Governor recommends funding for furniture be reduced on a nonrecurring basis.	($218,393)	NR		
44 Reduce Legal Services Eliminate the continuation budget increase for Legal Services.	($130,781)	R	($130,781)	R
Center for the Prevention of School Violence				
45 Eliminate the CPSV Eliminate funding for the Center for the Prevention of School Violence (CPSV). According to the Department, this division serves as a resource center and "think tank" for schools. These functions are not part of the core mission of the Department.	($474,923) -6.00	R	($474,923) -6.00	R
Department wide				
46 Gang Prevention and Intervention Pilot Program The Governor recommends using $6 million from the American Reinvestment and Recovery Act for the implementation of a two-year Gang Prevention and Intervention Pilot Program. This program will focus on youth at-risk for gang involvement and those who are already associated with gangs and gang activity. The pilot program will serve Cabarrus, Mecklenburg, Nash, Edgecombe, Wilson, and Halifax Counties.				

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
47 Eliminate Overtime budget increase Eliminate the continuation budget increase in the Overtime pay line item.	($1,805,207)	R	($1,805,207)	R
48 Eliminate the increase for temporary services Eliminate the continuation budget increase used to pay for temporary services.	($333,906)	R	($333,906)	R
49 Eliminate vacant positions Eliminate 25 positions that have been vacant for a year or longer.	($974,956) -25.00	R	($974,956) -25.00	R
Intervention/Prevention				
50 Eliminate Alternative to Detention Contract The Governor recommends eliminating the Alternative to Detention Contract, which provides short-term emergency placement of juveniles through a local provider in District 23 and District 28.	($43,885)	R	($43,885)	R
51 Eliminate Pass-Through Funding-Boys & Girls Club Eliminate pass-through funding to eight Boys & Girls Clubs that received a special appropriation of $50,000 each that was used as part of a match for grant funds that the clubs no longer receive.	($400,000)	R	($400,000)	R
52 Reduce Pass-Through Funding- Project Challenge Reduces administrative funding for Project Challenge by 10%. This reduction does not affect the direct services Project Challenge provides in the 33 counties it operates.	($16,000)	R	($16,000)	R
53 Additional Juvenile Court Counselors The Governor recommends using $1.5 million from the American Reinvestment and Recovery Act to fund 12 new court counselors and 2 new supervisors. These positions will be time limited.				
54 Expand JCPC Allocation Provide additional funding to the Juvenile Crime Prevention Council (JCPC) county allocation to offset the effects of eliminating the Governor's One on One program and the Support Our Students program. JCPCs are encouraged to use these additional funds to provide services for juveniles that are court involved.	$6,627,532	R	$6,627,532	R
Special Initiatives				
55 Close the Alamance Multi-Purpose Home The Governor recommends closing the Alamance Multi-Purpose Home because of low capacity and low utilization.	($600,000)	R	($600,000)	R
56 Eliminate Pass-Through Funding-Governor's 1 on 1 Eliminate funding for the Governor's One on One mentoring program. This program serves lower risk youth in 46 counties and these programs would be eligible for JCPC funds.	($1,645,545)	R	($1,645,545)	R

	FY 09-10		FY 10-11	
57 Reduce Pass-Through-Juvenile Assessment Center Reduce pass-through funding for the Juvenile Assessment Center by 10%. The Juvenile Assessment Center also receives funding from the county JCPC.	($16,543)	R	($16,543)	R
58 Reduce Eckerd Wilderness Camp Rate The Governor recommends reducing the daily contract rate from $134.95 to $123.58. To achieve this reduction, one camp serving 45 NC youth will be closed, service will be discontinued to out-of-state youth currently helping subsidize the cost of NC youth, and the length of stay for some youth will decrease.	($1,435,000)	R	($1,435,000)	R
Support Our Students				
59 Eliminate the Support Our Students program The Governor recommends eliminating funding for the SOS program, including the elimination of three filled positions. The subcommittee recommends taking the SOS General Funding and providing it to the JCPC county allocation to provide additional prevention services.	($6,627,532) -3.00	R	($6,627,532) -3.00	R
Youth Development Centers				
60 Eliminate Youth Development Center positions The Governor recommends eliminating 19 Youth Development Center positions, including a combination of filled and vacant positions. The positions are located at Dillon, Cabarrus, Edgecombe, and Chatham Youth Development Centers.	($948,994) -19.00	R	($948,994) -19.00	R
61 Eliminate Security Service Agreement Eliminate the Security Service Agreement line item, which was used to provide temporary security at the Cabarrus YDC while a fence was under repair.	($110,717)	R	($110,717)	R
62 Eliminate the Treatment Training Reserve Eliminate the treatment training reserve in the continuation budget, which was established to aid the Department in its efforts to train staff in their therapeutic treatment model.	($250,000)	R	($250,000)	R
63 Close the Samarkand YDC Close the Samarkand YDC, which houses committed girls. In 2008,the Department opened four newly constructed replacement YDCs and Samarkand has the highest daily cost of any The Department has built a replacement facility for girls in Chatham County, effective September 1, 2009.	($5,048,253) -63.00	R	($6,731,004) -63.00	R
64 Close Dobbs YDC Close the Dobbs YDC. In 2008,the Department opened four replacement YDCs, including one directly across from Dobbs, effective September 1, 2009.	($6,986,859) -85.00	R	($9,315,812) -85.00	R

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
Total Legislative Changes	**($25,151,423)**	**R**	**($29,163,127)**	**R**
	($218,393)	**NR**		
Total Position Changes	-208.00		-208.00	
Revised Budget	**$147,114,599**		**$143,487,981**	

Correction

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$1,384,910,571**		**$1,406,791,264**	
Legislative Changes				
65 Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the Department of Correction with the flexibility to manage additional reductions totaling $54,478,651	($54,478,651)	R	($54,478,651)	R
Community Corrections				
66 Probation Parole Officer Reallocation The Governor recommends an appropriation to reallocate 1,048 Probation/Parole Officers from a pay grade 68 to a pay grade 69, as recently authorized by the State Personnel Commission. This request would address significant recruitment and retention issues for the classification.	$2,383,273	R	$2,383,273	R
67 Community Corrections Intake Officers The Governor reports on the use of funding of up to $1.23 million to be made available through the American Reinvestment and Recovery Act for new Community Corrections Intake Officer positions. These positions will perform court intake duties and administrative functions in urban areas where court dockets currently require significant time commitments from Probation/Parole Officers. As recommended in the recent National Institute of Corrections report, these new positions will enable Probation/Parole Officers to dedicate more time to monitoring offenders under their supervision and less time performing administrative functions.				
68 Expand Chief Probation Parole Officer Positions Provides funding for an additional 40 Chief Probation Parole Officer (CPPO) positions and 13 Office Assistants to support the chiefs and officers in each newly-established unit. This expansion supports recommendations from the National Institute of Corrections 2008 report to improve the span of control between supervisors and field officers . The Division's goal is to have a 7:1 ratio between supervisors and field officers. Fifty-one positions will be effective October 1, 2009 and an additional two positions will be effective in July 1, 2010.	$2,754,683 $376,981 51.00	R NR	$3,793,573 53.00	R

	FY 09-10		FY 10-11	
69 Expand Probation Parole Officer Positions Provides funding for an additional 91 Probation Parole Officers (PPO). These additional officers will improve the Department's supervision of probationers and provide more field officers to manage offender caseloads. Seventy-seven positions will be effective October 1, 2009 and an additional 14 positions will be effective in July 1, 2010.	$4,251,435 $528,746 77.00	R NR	$6,270,806 91.00	R
70 Cap DCC Judicial District Managers Caps Judicial District Manager positions at 30. The original judicial district structure of the Unified Court System had 30 districts. As judicial districts have been split, the Division of Community Corrections has established new management offices for each district, now numbering 45.	($814,065) -15.00	R	($814,065) -15.00	R
71 Expand funding for CJPP programs Provide additional funding for the Criminal Justice Partnership Program (CJPP). Counties are encouraged to use the additional funds to provide pre-trial release, as well as multiple treatment, control, and referral options for convicted offenders in each county.	$3,000,000	R	$3,000,000	R
72 VIPER Radios for Improved Community in DCC The Governor recommends using $1.3 million from the American Reinvestment and Recovery Act for the purchase of 406 VIPER (interoperable communications) radios to be deployed to those Division of Community Corrections offices within the current VIPER service area.				

	FY 09-10		FY 10-11	
Department-Wide				
73 Eliminate 114 Positions Governor's Recommendation: eliminates 114 positions, both filled and vacant. Vacant positions will be eliminated effective July 1, 2009; filled positions will be eliminated September 1, 2009. Within the Division of Prisons, positions eliminated include - Nine Canteen Officer Positions - Three Unit Managers and Three Assistant Unit Managers at Southern Correctional Institution - Two Dental Assistant Positions - Four Dog Handler Positions - Seven DNA Testing Officer Positions - Twenty-two Administrative Operations Positions - Five positions through operational consolidation among prisons - Fifteen Correctional Enterprise Officer Positions The positions eliminated in the Division of Alcoholism and Chemical Dependency Programs are - Eleven treatment positions at Haywood and Tyrrell Work Farm One position each will be taken from the Parole and Post-Release Commission, the Inmate Grievance Commission, and DOC Administration. Additionally, thirty positions throughout DOC that have been vacant over six months will be eliminated.	($4,369,668) -114.00	R	($4,369,668) -114.00	R
74 Increase Federal Alien Assistance Receipts Governor's Recommendation: the State Criminal Alien Assistance Program (SCAAP) makes federal funds available to states for the purpose of recouping costs associated with incarcerating undocumented aliens. The Department of Correction anticipates future funding from this program will exceed its current budget, and increases the budgeted amount for this receipt line item.	($872,000)	NR		
75 Reduce Pass-Through Funding Reduces appropriations to pass-throughs in the Department of Correction by 10%. Specifically, reduces Women at Risk ($35,000), Summit House ($123,129), Harriet's House ($27,500),and Our Children's Place ($14,600).	($200,229)	R	($200,229)	R
76 Our Children's Place Administration Provides funds for a contractual position to develop the children's component of a proposed program to allow incarcerated mothers to keep their children while in prison.	$50,000	NR		

	FY 09-10		FY 10-11	
77 Reduce Various Operating Accounts	($2,197,035)	R	($2,197,035)	R
Governor's Recommendation: reduces the following operating accounts on a recurring basis.	($3,950,000)	NR		
Safety and Security Supplies ($200,000)				
Autos, Trucks, and Buses ($1,250,000)				
Rent/Lease Motor Vehicles ($600,000)				
Rent/Lease Building Office ($147,035)				
The following accounts are reduced on a non-recurring basis.				
Autos, Trucks, and Buses ($1,250,000)				
Clothing and Uniforms ($500,000)				
Carpentry and Hardware Supplies ($300,000)				
PC/Printer Equipment ($300,000)				
General Office Supplies ($800,000)				
Office Equipment ($800,000)				

Division of Prisons

78 Double Celling at Pamlico	$1,880,234	R	$1,581,281	R
Expands the capacity of Pamlico Correctional Institution by 332 through double-celling. This conversion will be effective on September 1, 2009.	38.00		38.00	
79 Close McCain Correctional Hospital	($9,086,942)	R	($15,491,279)	R
McCain Correctional Hospital is closed effective September 1, 2009. McCain is a former tuberculosis hospital originally built in 1908 and transferred in 1983 to the Department of Correction to provide space for chronically ill and disabled inmates. The facility has capacity for over 400 inmates, of whom around 66% are chronically ill, geriatric, or disabled. The other third are minimum custody population assigned to unit support jobs, such as maintenance, landscaping, and food service. The prison employs 234 positions.	-343.00		-343.00	
This facility operates at 25% above the average daily cost per inmate for a minimum custody facility. As more modern facilities have been built, it will be possible to serve this population more efficiently.				
In order to maintain community-standard health care for chronically ill inmates and remain population-neutral, Hoke and Odom Correctional Institutions will be converted from medium to minimum custody, and those units as well as Nash Correctional Institution will be partially double-celled.				
The annualized savings for the closure of McCain is $11,625,952, but due to one-time costs to convert the other three facilities, the reduction is lower in the first year. In addition to the positions eliminated at McCain, Hoke and Odom together will lose 155 positions, and Nash will gain 46, for a net reduction in State positions of 343.				

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
80 Close Umstead and Guilford Correctional Centers Umstead and Guilford Correctional Centers are closed effective September 1, 2009. Both facilities operate with higher than average daily costs, and have a combined capacity of 263 inmates, and 95 positions, 87 of which are filled. To accommodate inmates displaced by these closings, the Department will convert Lincoln Correctional Center from medium custody to minimum custody, and will double-cell inmates at Warren Correctional Institution. The savings in the first year are reduced by costs associated with double-celling and with providing bunks and lockers at both Warren and Lincoln. The annualized savings will amount to $4,627,854.	($3,723,492) -107.00	R	($4,627,854) -107.00	R
81 Close Wilmington Residential Facility for Women The Wilmington Residential Facility for Women is closed effective September 1, 2009. This minimum custody work release prison is in a rental building in Wilmington and has a capacity of 35 inmates. The owner of the building does not wish to continue the lease to the Department of Correction. Inmates housed in this facility can be transferred to other minimum custody prisons through the State.	($430,068) -10.00	R	($513,298) -10.00	R
82 Reduce Continuation Increases Reduce continuation budget items, including OT pay, Shift Premium, and Workers Compensation, were reduced to match actual prior-year expenditures, as well as Hospital Provided Medical Services and Inmate Food and Clothing.	($25,965,276)	R	($5,417,400)	R
83 Reduce Job Orders for Repair and Renovation Governor's Recommendation: reduces requests for repairs and renovations to prison facilities.	($299,259)	NR	($299,259)	NR
84 Reduce Temporary/Contractual Positions Governor's Recommendation: Reduce funding for temporary and contractual positions on a one-time basis.	($89,788)	NR		
85 Shift Positions to Inmate Welfare Support Governor's Recommendation: shifts three Telecommunication Support Technician positions that support the inmate pay phone system from General Fund support to Inmate Welfare Fund receipts.	($149,056) -3.00	R	($149,056) -3.00	R
Engineering				
86 Shift Construction Contracts to Receipt Support Governor's Recommendation: funds contracts for oversight of Inmate Construction Program from the special indebtedness funding new prison construction.	($200,000) ($600,000)	R NR	($200,000) ($600,000)	R NR

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
Secretary's Office				
87 Eliminate Assistant Secretary Eliminates the position of Assistant Secretary for Program Development. This position's primary function is to seek federal grants for the Department. This function can be performed by the Office of Research and Planning, and financial oversight of grants is performed by the DOC Controller's Office.	($77,046) -1.00	R	($77,046) -1.00	R
Total Legislative Changes	**($87,421,903)**	R	**($71,506,648)**	R
	($4,855,320)	NR	**($899,259)**	NR
Total Position Changes	-427.00		-411.00	
Revised Budget	**$1,292,633,348**		**$1,334,385,357**	

24502 Correction Canteen Fund

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$14,827,712**	**$14,827,712**	**$14,827,712**	**$14,827,712**
Legislative Changes				
Inmate Welfare Fund Shifts three positions from General Fund support to Inmate Welfare Fund receipts. Positions: 3.0	$149,056		$149,056	
Total Legislative Changes	**$149,056**		**$149,056**	
Net Change in Fund Balance	**($149,056)**		**($149,056)**	

Crime Control and Public Safety

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$43,925,878**		**$44,067,870**	
Legislative Changes				
Administration				
88 Law Enforcement Support Services (LESS) This recommendation makes funding for the Law Enforcement Support Services (LESS) nonrecurring in FY 2009-10. The program is also directed to propose a fee structure to make the program fully receipt supported by the FY 2010-11.	($430,366) $430,336 	R NR	($430,336) -4.00	R
89 Elimination of Administrative Staff Positions Elimination of two administrative positions.	($82,685) -2.00	R	($82,685) -2.00	R
Alcohol Law Enforcement - ALE				
90 Reduce funding for ALE Vehicle Replacement Reduce funding for ALE vehicle replacement.	($316,152)	R	($316,152)	R
91 Make the Boxing Authority Receipt Supported Governor's recommendation that the North Carolina Boxing Authority no longer be supported through appropriation. All of the operations of the Boxing Authority will be shifted to fee receipts collected by the Authority. These fee receipts are currently over realized.	($147,751) -2.00	R	($147,751) -2.00	R
92 Make Bingo Regulation Receipt Supported This recommendation eliminates the General Fund appropriation used for bingo regulation. This action will be offset by an increase in the bingo license fee to make the program no longer rely on General Fund appropriation. This fee has not been increased since 1983.	($26,600)	R	($26,600)	R

	FY 09-10		FY 10-11	
Butner Public Safety - BPS				
93 Elimination of Butner Public Safety Division With the incorporation of the Town of Butner, this recommendation eliminates the Butner Public Safety Division that is using state funds to provide law enforcement services and fire protection to the Town of Butner and surrounding areas in Durham and Granville Counties. Significant residential and commercial growth has occurred in this area and despite several state facilities being located within the Butner jurisdiction, a significant portion of the work done by Butner Public Safety is related to residential and local business calls. This recommendation will require the Town of Butner and surrounding areas to establish fire and police departments.	($2,617,339) -55.00	R	($2,617,339) -55.00	R
Department-Wide				
94 Reduce Various Operating Accounts Governor's recommendation that various operating accounts be reduced across the agency.	($641,147)	R	($641,147)	R
95 Transfer of State Capitol Police to Crime Control Type I transfer of the State Capitol Police Division from the Department of Administration to the Department of Crime Control and Public Safety. Of the total positions transferred, 6.25 positions will be used to support the division's fiscal, policy and administrative functions.	$3,675,861 89.25	R	$3,675,861 89.25	R
96 Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the Department of Crime Control and Public Safety with the flexibility to manage additional reductions totaling $857,631.	($857,631)	R	($857,631)	R
Emergency Management				
97 Shift Floodplain Mapping Positions to Receipts Governor's recommendation that the appropriation for the Floodplain Mapping Program be replaced with receipts collected under the terms of Section 29.7(b) of H2436 (S.L. 2008-107), which established a fee to support floodplain mapping. This recommendation will shift 20 appropriated positions in the Floodplain Mapping Program to receipt support.	($1,405,098) -20.00	R	($1,405,098) -20.00	R
98 Reduce Emergency Management Continuation Budget Reduction in the Emergency Management continuation budget. A major portion of this reduction is associated with the amount appropriated in the division's continuation budget for miscellaneous contracts.	($1,843,248)	R	($1,843,248)	R

	FY 09-10		FY 10-11	
Governor's Crime Commission				
99 Illegal Immigration Project Funding to the Governor's Crime Commission to contract with the North Carolina Sheriffs' Association for immigration enforcement services. This funding will be used for salary replacement costs associated with officer training.	$150,000	NR		
100 Reduce State Matching Funds Governor's recommendation that excess state funding for matches to federal grants be reduced.	($60,091)	R	($60,091)	R
101 Reduce funding for NCVAN 10 percent decrease in funding for the North Carolina Victims Assistance Network (NCVAN).	($15,000)	R	($15,000)	R
102 Evidence-Based Gang Grants The Governor reports on the use of funding of up to $5 million to be made available through the American reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to award evidence-based grants that focus on gang prevention, treatment, intervention, and re-entry programs. Special emphasis will be placed on consultation with the Department of Juvenile Justice and Delinquency Prevention to engage local Juvenile Crime Prevention Councils (JCPC's) in the development of gang prevention programs that address local priorities developed as a result of the JCPC's local gang threat assessments. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.				
103 Local Government Grants to Purchase VIPER Equip't The Governor reports on the use of funding of up to $5 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to award grants to local governments for VIPER (Interoperable communications) equipment in order to enhance communications among public safety agencies. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.				

104 Governor's Statewide Gang Task Force

The Governor reports on the use of $200,000 recurring funding from the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the establishment of a Statewide Gang Task Force. This task force will be established within the Governor's Crime Commission to bring key stakeholders together to develop a comprehensive plan and create legislation to ensure a well coordinated, statewide enforcement program and increase the flow of gang-related information among various law enforcement agencies, correctional institutions, and the judicial system. This item will be supported by administrative funds made available to the Governor's Crime Commission through the Byrne/JAG Formula Program.

105 Supplemental Grants for COPS Hiring & Recovery Pgm

The Governor reports on the use of funding of up to $400,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to provide supplemental grants to incentives local governments to participate in the COPS Hiring and Recovery Program (CHRP). CHRP grants are awarded on a competitive basis and provide funding for salaries and benefits for new law enforcement positions as well as for the reemployment of officers affected by recent budget cuts. Through the supplemental grants, up to $4,000 will be provided to support the equipment costs for every officer hired through the COPS Hiring and Recovery Program. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.

National Guard

106 Eliminate Funding for Family Assistance Centers — ($420,000) R — ($420,000) R

Eliminates state funding for three National Guard Family Assistance Centers. With the scheduled deployment of a significant portion of the NC National Guard in 2009 and 2010, there will be federal funds available for family assistance centers while the troops are deployed.

107 Transfer the National Guard Pension Fund — ($7,007,443) R — ($7,007,443) R

Transfer of the National Guard Pension Fund ($7,007,443) from the Department of Crime Control and Public Safety to the Department of State Treasurer. This transfer will allow the Department of the State Treasurer to manage this program as it does for most of the State's pension programs.

Senate Subcommittee on Justice and Public Safety	FY 09-10		FY 10-11	
108 Reduce National Guard Tuition Assistance Program Recommendation to reduce the National Guard Tuition Assistance program appropriation. With the scheduled deployment of a significant portion of the NC National Guard in 2009 and 2010 there will be a decrease in the number of National Guard members requesting tuition assistance through this program. In addition to the state program, there is also a federal program that provides tuition assistance to National Guard members.	($500,000)	R	($500,000)	R
State Highway Patrol - SHP				
109 Training to Improve State Highway Patrol Operation Governor's report on the use of funding of up to $1.8 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) to provide leadership development training at every level of supervision within the State Highway Patrol, as recommended in a recent independent evaluation of the Patrol drew upon the best practices for statewide law enforcement The evaluation found that many Patrol supervisors require stronger coaching, mentoring, and counseling skills to effectively supervise their direct reports and therefore, improve State Highway Patrol operations. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Program.				
Victim Compensation Services				
110 Budget Over Realized Receipts Reduction in the General Fund appropriation for the Victim Compensation Program. Under budgeted receipts from the Department of Correction and American Reinvestment and Recovery Act funds will be used to offset this reduction. The program will still have enough funding to pay for all FY 2008-09 approved claims.	($472,619)	R	($472,619)	R
Total Legislative Changes	**($13,167,309)**	R	**($13,167,279)**	R
	$580,336	NR		
Total Position Changes	10.25		6.25	
Revised Budget	**$31,338,905**		**$30,900,591**	

24960 Highway Patrol

Highway

	FY 2009-10		FY 2010-11	
	Requirements	Receipts	Requirements	Receipts
Recommended Budget	**$222,019,507**	**$222,019,507**	**$224,837,882**	**$224,808,402**
Legislative Changes				
Crime Control and Public Safety-Highway Patrol Highway Fund transfer to the Department of Crime Control and Public Safety to support the State Highway Patrol Division.				
SHP - Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the State Highway Patrol with the flexibility to mange additional reductions totaling $5,608,242	($5,608,242)	($5,608,242)	($5,608,242)	($5,608,242)
SHP - Operating Cuts Funding for various operating accounts are reduced across the agency: FY 2009-10 FY 2010-11 ($2,253,000) R ($2,253,000) ($1,500,000) NR ($1,450,000)NR	($3,753,000)	($3,753,000)	($3,703,000)	($3,703,000)
SHP - Freeze Step Increase for Troopers The step increases for the salaries of Troopers are frozen for both years of the biennium. These are non-recurring reductions in both years.	($1,674,280)	($1,674,280)	($3,373,932)	($3,373,932)

SHP - Eliminate Continuation Budget Increases	($2,832,607)	($2,832,607)	($2,647,712)	($2,647,712)

Eliminates additions included in the Continuation Budget:

FY2009-10	FY2010-11
531321 Contractual Staff	
($77,825)	($77,825)
531411 Overtime	
($400,000)	($400,000)
531421 Holiday Pay	
($140,000)	($140,000)
531431 Shift Premium	
($470,000)	($470,000)
531572 Unemployment Comp	
($20,000)	($20,000)
531631 Workers Comp Med	
($726,000)	($541,105)
531632 Workers Comp Disability	
($222,468)	($222,468)
532170 Admin Services	
($150,000)	($150,000)
532199 Misc Conract Services	
($626,314	($626,314)

Total Legislative Changes	**($13,868,129)**	**($13,868,129)**	**($15,332,886)**	**($15,332,886)**
Net Change in Fund Balance				

GENERAL GOVERNMENT
Section J

Administration

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$78,170,163**		**$78,362,881**	

Legislative Changes

1111 Office of the Secretary

1 Justice for Sterilization Victims Foundation $250,000 NR

Funding is provided for planning efforts associated with the establishment of the Justice for Sterilization Victims Foundation. This foundation will provide justice and compensate victims who were forcibly sterilized by the State of North Carolina between 1929 and 1974.

2 Eliminate Continuation Budget Increase ($1,578,280) R ($1,578,280) R

Eliminate funding increase in continuation budget:

531311 Temp Wages	($100,864)
531321 Cont Empl Per IRS	($ 21,149)
531411 OT Pay	($196,843)
531421 Holiday Pay	(4,619)
531431 Shift Prem Pay	($ 43,642)
531441 Callbk/Stby Prem Pay	($ 27,896)
531631 Wrker Comp-Med Payments	($ 44,090)
531632 Wrker Comp-Temp Dis Paym	($ 20,858)
532150 Academic Services	($ 24,543)
532170 Admin Services	($104,089)
532199 Misc Contractual Svs	($284,817)
532210 Eng Ser-Electrical	($288,117)
532220 Eng Ser-Nat gas/Propn	($416,753)

1123 Historically Underutilized Businesses

3 Reduction to Historically Underutilized Businesses ($43,473) R ($43,473) R

Reduce appropriation to Historically Underutilized Businesses.

1230 Non-Public Education

4 Reduction to Non-Public Education ($17,833) R ($17,833) R

Reduce appropriation to Non-Public Education.

1264 Telecommunications Office

5 Reduction to Telecommunications Office ($32,781) R ($32,781) R

Reduce appropriation to Telecommunications Office.

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
1311 Office of State Personnel				
6 Eliminate Scanning Function of Applications Eliminate funding to support the scanning of all North Carolina state government job applications. This recommendation includes the elimination of one filled position.	($36,535) -1.00	R	($36,535) -1.00	R
1623 State Capitol Police				
7 Transfer of State Capitol Police to Crime Control Type I transfer of the State Capitol Police Division from the Department of Administration to the Department of Crime Control and Public Safety. Of the total positions transferred, 6.25 will be used to support the division's fiscal, policy, and administrative functions.	($3,675,861) -89.25	R	($3,675,861) -89.25	R
1732 Displaced Homemakers Program				
8 Reduction to Displaced Homemakers Program Fund Reduce appropriation to Displaced Homemakers Program Fund.	($20,096)	R	($20,096)	R
1734 Rape Crisis Program				
9 Reduction to Sexual Assault/Rape Crisis Funds Reduce appropriation to Sexual Assault/Rape Crisis Funds.	($195,175)	R	($195,175)	R
1741 Human Relations Commission				
10 Reduction to Human Relations Commission Reduce appropriation to Human Relations Commission.	($39,352)	R	($39,352)	R
1742 MLK Commission				
11 Reduction to MLK Commission Reduce appropriation to MLK Commission.	($3,379)	R	($3,379)	R
1761 Youth Involvement Office				
12 Reduction to Youth Involvement Office Reduce appropriation to Youth Involvement Office.	($50,752)	R	($50,752)	R
13 Reduction to Youth Involvement Grant Program Reduce appropriation to Youth Involvement Grant Program.	($416)	R	($416)	R
1771 Veterans Affairs				
14 Reduce Aid to Counties Reduce Aid to Counties funding.	($12,032)	R	($12,032)	R

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
1771 Veterans Affairs				
15 Shift Three Positions to Receipt Support Shift three appropriated Veterans Affairs positions to receipt support. The positions will now be supported through burial fee receipts that are collected by veterans cemeteries operated by the Department of Administration.	($114,175) -3.00	R	($114,175) -3.00	R
16 Reduction to Veterans Affairs Reduce appropriation to Veterans Affairs.	($364,551)	R	($364,551)	R
1782 Domestic Violence Center				
17 Reduction to Domestic Violence Center Fund Reduce appropriation to Domestic Violence Center Fund.	($340,405)	R	($340,405)	R
1861 Commission on Indian Affairs				
18 Reduction to Commission on Indian Affairs Reduce appropriation to Commission on Indian Affairs.	($25,549)	R	($25,549)	R
7251 State Parking System				
19 Restore Funding for the State Parking System Restore funding for the State Parking System, which is a receipt-supported program (budget code 74103) that is currently under a legislatively required Continuation Review. Funding will be restored at the current level ($1,667,708), which includes support for 12.75 positions.				
Department-Wide				
20 Eliminate Vacant Positions Eliminate 20 vacant positions across the agency.	($976,196) -20.00	R	($976,196) -20.00	R
21 Management Flexibility Reserve Create Management Flexibility Reserve.	($563,504)	R	($563,504)	R
22 Reduce Temporary Wages Reduce temporary wages funding across the agency.	($11,842)	R	($11,842)	R
23 Reduce Various Operating Accounts Reduce various operating accounts across the agency.	($839,546) ($315,011)	R NR	($839,546) ($315,011)	R NR

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
Total Legislative Changes	**($8,941,733)**	**R**	**($8,941,733)**	**R**
	($65,011)	**NR**	**($315,011)**	**NR**
Total Position Changes	-113.25		-113.25	
Revised Budget	**$69,163,419**		**$69,106,137**	

Auditor

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$14,389,111**		**$14,405,383**	
Legislative Changes				
1210 Field Audit				
24 Eliminate Continuation Budget Increase	($636,675)	R	($636,675)	R
Eliminate increase in the continuation budget:				
532120 Financial Audit Services ($322,504)				
532199 Misc Contractual Svs ($314,171)				
1210 Field Audit Division				
25 Eliminate Grants Training Unit	($300,797)	R	($300,797)	R
Eliminate the Grants Training Unit, including the elimination of five positions.	-5.00		-5.00	
Department-Wide				
26 Reduce Various Operating Accounts				
Reduce various operating accounts across the agency.	($100,266)	NR	($100,266)	NR
27 Management Flexibility Reserve	($126,861)	R	($126,861)	R
Create Management Flexibility Reserve.				
Total Legislative Changes	**($1,064,333)**	R	**($1,064,333)**	R
	($100,266)	NR	**($100,266)**	NR
Total Position Changes	-5.00		-5.00	
Revised Budget	**$13,224,512**		**$13,240,784**	

Cultural Resources

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	$77,933,037		$79,329,609	

Legislative Changes

1120 Administrative Services

28 Eliminate Continuation Budget Increase ($898,648) R ($898,648) R

Eliminate funding increases in continuation budget both fiscal years:

531311 Temp Wages	($442,469)
531411 OT Pay	($ 55,352)
531421 Holiday Pay	($ 5,582)
531431 Shift Prem Pay	($ 7,156)
531627 Short Term Disab	($ 20,049)
531631 Worker Comp-Med Payments	($ 33,327)
532199 Misc Contractual Svs	($334,713)

1241 State Historic Sites

29 Reductions to State Historic Sites ($589,968) R ($589,968)

Reduce the budget of each State Historic Site listed below by 6.4% each fiscal year and report the reductions to the General Assembly by September 1, 2009:

Alamance Battleground
Aycock Birthplace
Historic Bath
Bennett Place
Bentonville Battleground
Brunswick Town
Charlotte Hawkins Brown Memorial
CSS Neuse and Governor Caswell Memorial
Duke Homestead
Fort Dobbs
Fort Fisher
Historic Halifax
Horne Creek
House in the Horseshoe
Historic Edenton
North Carolina Transportation Museum
Polk Memorial
Reed Gold Mine
Somerset Place
Town Creek Indian Mound
Vance Birthplace
Thomas Wolfe Memorial
Historic Stagville

	FY 09-10		FY 10-11	
1242 Tryon Palace Historic Sites and Gardens				
30 Reduction to Tryon Palace Budget Reduce the budget of Tryon Palace by 6.4% each fiscal year and report the reduction to the General Assembly by September 1, 2009.	($183,238)	R	($183,238)	R
1245 NC Maritime Museum				
31 Reductions to NC Maritime Museums Reduce the budgets of the Maritime Museums listed below by 6.4% each fiscal year and report the reductions to the General Assembly by September 1, 2009: North Carolina Maritime Museum in Beaufort North Carolina Maritime Museum in Southport Graveyard of the Atlantic Museum	($87,235)	R	($87,235)	R
1330 Arts Council				
32 Reduction to Grants Reduce appropriations to the following grants by 6.4% each fiscal year: 536G32 Vagabond School Drama ($2,759) 536G48 Lost Colony ($14,751) 536G71 Shakespeare Festival ($14,751) 536990 Basic Grants ($247,892) 536996 Grassroots Arts ($173,456)	($453,609)	R	($453,609)	R
1410 State Library Services				
33 Eliminate NC ECHO Program Eliminate funding for the NC ECHO Program (Exploring Cultural Heritage Online), including one vacant position: # 60083816.	($67,941) -0.83	R	($67,941) -0.83	R
1480 Statewide Programs and Grants				
34 Reduce State-Aid to Libraries Reduce funding to county libraries by 6.4% each fiscal year.	($994,293)	R	($994,293)	R
1500 Museum of History				
35 Reductions to History Museums Reduce the budgets of the History Museums listed below by 6.4% each fiscal year and report the reductions to the General Assembly by September 1, 2009: North Carolina Museum of History Museum of the Albemarle Gateway Mountain Museum (Old Fort) Museum of the Cape Fear	($468,157)	R	($468,157)	R

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
Department-Wide				
36 Management Flexibility Reserve Create Management Flexibility Reserve.	($1,131,188)	R	($1,131,188)	R
37 Reduce Various Operating Accounts Recurring and non-recurring funding is reduced in the same amount each fiscal year in the following accounts:	($1,077,030) ($370,444)	R NR	($1,077,030) ($370,444)	R NR
38 Reduce Temporary Wages Reduce temporary wages across the department.	($320,596)	R	($320,596)	R
39 Eliminate Filled and Vacant Positions Eliminate 4.8 filled and 11.62 vacant positions across the department. The reduction to salary and benefits for the 4.8 filled positions is $242,966. The reduction to salary and benefits for the 11.62 vacant positions is $524,905 and includes the following:	($767,901) -16.42	R	($767,901) -16.42	R
Total Legislative Changes	($7,039,804) ($370,444)	R NR	($7,039,804) ($370,444)	R NR
Total Position Changes	-17.25		-17.25	
Revised Budget	$70,522,789		$71,919,361	

532199	Misc Contractual Svs	($480,500)
5322XX	Utilities	($ 94,000)
5327XX	Travel	($156,000)
5328XX	Computer/Data Proc	($ 41,000)
5328XX	Telephone	($ 51,100)
533900	Other Materials and Supplies	($244,674)
5345XX	Furniture and Equipment	($262,200)
5358XX	Membership Dues	($110,000)
5359XX	Registration Fees	($ 8,000)

Vacant Position #	Title	Budgeted Salary
60083260	Executive Asst I	($47,233)
60083385	Office Asst IV	($18,975)
60083382	Processing Asst IV	($26,878)
60083379	Processing Asst IV	($16,576)
60083367	Arch & Rec Profess	($22,852)
60083649	Museum Curator	($64,123)
60083915	Arts Pgm Admin	($38,790)
60083644	A&H Reg Supv	($44,225)
65005183	Librarian Consultant I	($35,585)
60083831	Library Professional	($41,055)
60083973	History Mus Conservator	($35,337)
60083569	Horticulture/Gr Tech	($18,288)

Cultural Resources - Roanoke Island Commission

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$2,095,402**		**$2,095,402**	
Legislative Changes				
1584 Roanoke Island Commission				
40 Reduce Various Operating Accounts	($134,106)	R	($134,106)	R
Reduce funding in various accounts across the agency.				
Total Legislative Changes	**($134,106)**	**R**	**($134,106)**	**R**
Total Position Changes				
Revised Budget	**$1,961,296**		**$1,961,296**	

General Assembly

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$62,347,066**		**$64,056,544**	
Legislative Changes				
Department-Wide				
41 Management Flexibility Reserve Create Management Flexibility Reserve.	($632,000)	R	($632,000)	R
42 Reduce Various Accounts Reduce various operating accounts, delay filling vacant positions, and reduce the number of budgeted session days and interim weeks.	($1,661,726) ($1,141,554)	R NR	($1,743,916) ($984,364)	R NR
43 Reserves and Transfers Reduce agency and contingency reserves.	($1,250,000)	R	($1,325,000)	R
Total Legislative Changes	**($3,543,726)** **($1,141,554)**	**R** **NR**	**($3,700,916)** **($984,364)**	**NR**
Total Position Changes				
Revised Budget	**$57,661,786**		**$59,371,264**	

Governor

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$6,616,233**		**$6,622,879**	
Legislative Changes				
1110 Administration				
44 Eliminate Continuation Budget Increase	($53,527)	R	($53,527)	R
Eliminate funding increase in continuation budget:				
531311 Temp Wages ($52,676)				
532182 Laundry Services ($ 601)				
532185 Waste Rem/Recy Svs Agreement ($ 250)				
Department-Wide				
45 Management Flexibility Reserve	($177,183)	R	($177,183)	R
Create Management Flexibility Reserve.				
46 Reduce Various Operating Accounts	($271,992)	R	($272,457)	R
Reduce funding for various operating accounts across the agency.				
Total Legislative Changes	**($502,702)**	R	**($503,167)**	R
Total Position Changes				
Revised Budget	**$6,113,531**		**$6,119,712**	

Housing Finance Agency

	GENERAL FUND	
	FY 09-10	FY 10-11
Adjusted Continuation Budget	**$14,608,417**	**$14,608,417**
Legislative Changes		
47 NO LEGISLATIVE ACTION REPORTED		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$14,608,417**	**$14,608,417**

Insurance

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$33,824,822**		**$33,887,006**	
Legislative Changes				
1400 Public Services				
48 Eliminate Continuation Budget Increase	($144,300)	R	($144,300)	R
Eliminate funding increase in continuation budget:				
532140 Information Tech Svs ($62,634)				
532170 Admin Services ($32,243)				
532199 Misc Contractual Svs ($49,423)				
Department-Wide				
49 Management Flexibility Reserve	($850,880)	R	($850,880)	R
Create Management Flexibility Reserve.				
50 Reduce Various Operating Accounts	($888,592)	R	($888,592)	R
Reduce various operating accounts across the agency.	($296,197)	NR	($296,197)	NR
Total Legislative Changes	**($1,883,772)**	**R**	**($1,883,772)**	**R**
	($296,197)	**NR**	**($296,197)**	**NR**
Total Position Changes				
Revised Budget	**$31,644,853**		**$31,707,037**	

Insurance - Volunteer Safety Workers' Compensation Fund

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$4,500,000**		**$4,500,000**	
Legislative Changes				
Reserves and Transfers				
51 Reduce Volunteer Safety Workers' Compensation Fund Reduce the Volunteer Safety Workers' Compensation Fund on a non-recurring basis.	($2,500,000)	NR	($2,500,000)	NR
Total Legislative Changes	**($2,500,000)**	**NR**	**($2,500,000)**	**NR**
Total Position Changes				
Revised Budget	**$2,000,000**		**$2,000,000**	

Lieutenant Governor

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$966,706**		**$966,706**	
Legislative Changes				
1110 Administration				
52 Eliminate Continuation Budget Increase	($5,673)	R	($5,673)	R
Eliminate funding increase in continuation budget:				
531321 Contr Empl Per IRS ($4,843)				
531461 EPA&SPA Longevity Pay ($ 830)				
Department-Wide				
53 Reduce Various Operating Accounts	($12,023)	R	($12,023)	R
Reduce various operating accounts in the following line items:	($16,831)	NR	($16,831)	NR
532400 PC Printer Support ($14,490)				
532400 LAN Support ($ 2,341)				
532700 Travel ($ 2,500)				
532800 Comm & Data Processing ($ 3,523)				
533100 General Supp & Exp ($ 6,000)				
Total Legislative Changes	**($17,696)**	R	**($17,696)**	R
	($16,831)	NR	**($16,831)**	NR
Total Position Changes				
Revised Budget	**$932,179**		**$932,179**	

Office of Administrative Hearings

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$4,266,407**		**$4,279,242**	
Legislative Changes				
Department-Wide				
54 Management Flexibility Reserve Create Management Flexibility Reserve.	($214,263)	R	($214,263)	R
55 Reduce Various Operating Accounts Reduce various operating accounts in the following line items: 532700 Travel ($5,500) 532500 Lease Expense ($23,300) 532800 Telephone ($4,000) 534500 PC/Printer and Other Equipment ($5,000) 534700 Software Purchases ($8,000) 532800 Data Processing & Desktop Support Services ($7,300) 532199 Maintenance Agreements & Contracts ($7,000) 533100 Misc. Materials & Supplies ($24,589)	($84,689)	R	($84,689)	R
Total Legislative Changes	**($298,952)**	R	**($298,952)**	R
Total Position Changes				
Revised Budget	**$3,967,455**		**$3,980,290**	

Revenue

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$91,347,503**		**$91,440,473**	
Legislative Changes				
1600 Administration				
56 Eliminate Continuation Budget Increase	($1,236,436)	R	($1,236,436)	R
Eliminate funding increase in continuation budget:				
531211 Salaries ($424,122)				
531411 OT Pay ($ 30,435)				
531431 Shift Prem Pay ($ 3,763)				
531631 Wrker Comp-Med Payments ($ 6,845)				
532110 Legal Services ($ 13,153)				
532140 Information Tech Svs ($660,972)				
532170 Contractual Svs ($ 28,795)				
532184 Janitorial Svs Agreement ($ 7,302)				
532185 Waste Rem Agreement ($ 659)				
532191 Payments-Empl on Loan ($ 9,957)				
532199 Misc Contractual Svs ($ 50,433)				
1629 Property Tax Division				
57 Conversion of Property Tax Division to Receipt Support	($1,461,744)	R	($1,461,744)	R
Convert the Property Tax Division from appropriation to receipt support. GS 105-501 allows the department to recover certain costs from local sales and use tax collections.	-17.00		-17.00	
1660 Examination & Collection				
58 Eliminate $300 Per Month Stipend for Interstate Auditors	($132,030)	R	($132,030)	R
Eliminate the $300 per month stipend for 37 interstate auditors.				
1664 Guest Worker Program				
59 Adjust Appropriation for Guest Worker Program	($375,000)	R	($375,000)	R
Adjust the appropriation for the Guest Worker Program to better reflect actual expenditure needs. This program provides information to non-English speaking people regarding their obligation to file taxes and how to obtain assistance in filing taxes.				
Department-Wide				
60 Reduce Various Operating Accounts	($589,493)	R	($589,493)	R
Reduce various operating accounts across the department.				

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
Department-Wide				
61 Eliminate 14 Vacant Positions Eliminate 14 vacant positions across the department.	($767,020) -14.00	R	($767,020) -14.00	R
62 Management Flexibility Reserve Create Management Flexibility Reserve.	($1,865,184)	R	($1,865,184)	R
Total Legislative Changes	**($6,426,907)**	R	**($6,426,907)**	R
Total Position Changes	-31.00		-31.00	
Revised Budget	**$84,920,596**		**$85,013,566**	

Secretary of State

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$11,854,656**		**$11,928,530**	
Legislative Changes				
1220 Certification & Filing				
63 Eliminate Continuation Budget Increase Eliminate funding increase in continuation budget: 531411 OT Pay ($ 8,957) 531631 Wrker Comp-Med Payments ($ 10,297) 532170 Admin Services ($ 79,235) 532199 Misc Contractual Svs ($ 55,323)	($153,812)	R	($153,812)	R
1220 Certification & Filing Division				
64 Eliminate Vacant Positions Eliminate $74,482 for salaries and benefits of two vacant positions: -2.00 Position # Title Budgeted Salary 60008713 Processing Asst V $27,544 60008750 Processing Asst V $29,601	($74,482) -2.00	R	($74,482) -2.00	R
Department-Wide				
65 Management Flexibility Reserve Create Management Flexibility Reserve.	($272,188)	R	($272,188)	R
66 LAN Support Services Restore reductions to LAN support services.	$10,281	R	$10,281	R
Total Legislative Changes	**($490,201)**	R	**($490,201)**	R
Total Position Changes	-2.00		-2.00	
Revised Budget	**$11,364,455**		**$11,438,329**	

State Board of Elections

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$6,627,101**		**$6,630,894**	
Legislative Changes				
1300 Voter Reg & Voting Systems				
67 Eliminate Continuation Budget Increase	($11,667)	R	($11,667)	R
Eliminate funding increase in continuation budget:				
532170 Admin Services ($11,667)				
Department-Wide				
68 Reduce Various Operating Accounts	($180,528)	R	($180,528)	R
Reduce the budgets for various operating accounts.	($40,007)	NR	($40,007)	NR
69 Management Flexibility Reserve	($211,077)	R	($211,077)	R
Create Management Flexibility Reserve.				
Reserves and Transfers				
70 Reduce Voter-Owned Elections Fund Balance				
Reduce Voter-Owned Elections Fund balance.	($1,500,000)	NR		
Total Legislative Changes	**($403,272)**	**R**	**($403,272)**	**R**
	($1,540,007)	**NR**	**($40,007)**	**NR**
Total Position Changes				
Revised Budget	**$4,683,822**		**$6,187,615**	

State Budget & Management

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$7,144,221**		**$7,147,928**	
Legislative Changes				
1310 State Budget and Management				
71 Eliminate Continuation Budget Increase Eliminate funding increase in continuation budget: 532120 Financial/Audit Svs ($350)	($350)	R	($350)	R
Department-Wide				
72 Eliminate Vacant Position. Eliminate salary ($24,764) and benefits ($8,067) of one vacant position - # 60014796, Building & Environmental Technician.	($32,831) -1.00	R	($32,831) -1.00	R
73 Management Flexibility Reserve Create Management Flexibility Reserve.	($214,954)	R	($214,954)	R
74 Reduce Various Operating Accounts Reduce funding for various operating accounts across the agency.	($235,071)	R	($235,330)	R
75 Eliminate Reserve for Rules Impact Review Eliminate funding for the Reserve for the Rules Impact Review.	($100,000)	R	($100,000)	R
Total Legislative Changes	**($583,206)**	R	**($583,465)**	R
Total Position Changes	-1.00		-1.00	
Revised Budget	**$6,561,015**		**$6,564,463**	

State Budget and Management - Special

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$4,280,000**		**$4,280,000**	
Legislative Changes				
Grants to Non-Government Agencies				
76 Reduce Pass-Through Funding Reduce grant funding to NC Humanities Council by 7% each fiscal year.	($7,000)	R	($7,000)	R
Reserves and Transfers				
77 Military Morale and Welfare Fund Appropriate funding to sustain historical grants to military installations to provide community service and quality-of-life programs for military members and families.	$750,000	NR		
Total Legislative Changes	**($7,000)** **$750,000**	R NR	**($7,000)**	R
Total Position Changes				
Revised Budget	**$5,023,000**		**$4,273,000**	

State Controller

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$24,536,602**		**$24,568,908**	
Legislative Changes				
1000 Department-Wide				
78 Management Flexibility Reserve Create Management Flexibility Reserve.	($521,217)	R	($521,217)	R
79 Reduce Various Operating Accounts Reduce the same amount of recurring and non-recurring expenses in various IT accounts each fiscal year and eliminate funding for ITS support:	($724,502) ($55,965)	R NR	($724,502) ($55,965)	R NR
Recurring 532821 eRoom Reduction in Licenses (400 to 200) ($130,224) 532811 Disconnect vacant telephone lines ($ 20,232) 532821 Discontinue SQA - OSC Dedicated ($246,528) 532140 Eliminate ITS Support ($327,518)				
Non-recurring Various Accounts ($ 55,965)				
80 Fund-shift Positions to Receipt Support Transfer two positions - an Accountant (1 FTE) and a Senior State Management Analyst (.25 FTE) - that support the NC FLEX Benefits Program from appropriation to receipt support generated by the program:	($91,488) -1.25	R	($91,488) -1.25	R
531211 Salaries ($74,525) 531511 Social Security ($ 5,701) 531521 Retirement ($ 6,066) 531561 Medical Insurance ($ 5,196)				
81 Eliminate Internship Program Eliminate funding for OSC's Internship Program with the reduction of 6 positions at .75 FTE for a total of 4.5 FTE that had salaries of $18,432 each and benefits of $8,460:	($119,052) -4.50	R	($119,052) -4.50	R
Position # Title 60087170 Integration Intern 60087172 Communications Intern (P/T) 60087173 PMO Intern (P/T) 60087219 Technical Infrastructure Intern				
531351 Student Temp Wages ($110,592) 531511 Social Security ($ 8,460)				

	FY 09-10		FY 10-11	
1000 Department-Wide				
82 Eliminate Continuation Budget Increase	($13,223)	R	($13,223)	R
Eliminate funding increase in continuation budget:				
531627 St Disability Pmt ($3,470)				
532120 Financial/Audit Svs ($9,753)				
83 Eliminate Vacant Positions	($250,005)	R	($250,005)	R
Eliminate salaries ($197,962) and benefits ($52,043) of five vacant positions:	-5.00		-5.00	

Position #	Title	Budgeted Salary
60087168	Financial Spec	($54,540)
60014113	Admin Support Spec	($26,444)
60037611	Admin Assistant I	($34,842)
60091145	Admin Officer III	($43,157)
60092193	Admin Support Spec	($38,979)

84 Operational Support for HR/Payroll System (BEACON)	$600,000	R	$1,200,000	R
Funding is appropriated to stabilize the BEACON payroll system. Funding will support recurring expenses for software maintenance, the telephone application system (Shared Service Center), ticket-tracking, system hosting, disaster recovery, and data storage costs. The appropriation also includes funding for ten new positions that are needed to reduce dependence on the 13 remaining contractors.	5.00		10.00	

	FY 2009-10	FY 2010-11
531211 Salaries	$ 276,779	$ 677,356
531511 Social Sec	$ 21,173	$ 51,818
531521 Retirement	$ 22,530	$ 55,137
531561 Medical Ins	$ 17,319	$ 41,556
532XXX Purchased Svs	$ 262,199	$ 374,123

Total Legislative Changes	**($1,119,487)**	**R**	**($519,487)**	**R**
	($55,965)	**NR**	**($55,965)**	**NR**
Total Position Changes	-5.75		-0.75	
Revised Budget	**$23,361,150**		**$23,993,456**	

Treasurer

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$11,150,002**		**$11,163,790**	
Legislative Changes				
1210 Investment Management				
85 Eliminate Vacant Positions	($105,963)	R	($105,963)	R
Eliminate salary ($87,923) and benefits ($18,040) of one vacant position - # 60009068, Investments Director.	-1.00		-1.00	
1310 Local Government Operations				
86 Eliminate Continuation Budget Increase	($299,960)	R	($299,960)	R
Eliminate funding increase in continuation budget:				
531321 Contr Empl Per IRS ($ 86,438)				
531631 Worker Comp-Med Payments ($ 31,376)				
532110 Legal services ($ 71,765)				
532199 Misc Contractual Svs ($110,381)				
1410 Retirement Systems Division				
87 Transfer the National Guard Pension Fund	$7,007,443	R	$7,007,443	R
Transfer the National Guard Pension Fund from the Department of Crime Control and Public Safety to the Department of State Treasurer. This transfer will allow the Department of State Treasurer to manage this program as it does most of the State's pension programs.				
88 Maintenance Costs for ORBIT System				
To properly complete the transition of ORBIT receipts for both recurring and non-recurring expenditures are authorized for maintenance of software and hardware which includes an annual recurring expense of $378,652. The non-recurring portion of funding will decrease each year as the amount of support required by the vendor will phase out by FY 2015-16. Funding is allocated for each fiscal year as indicated below:				
FY 2009-10 / FY 2010-11				
Recurring $378,652 / $378,652				
Non-recurring $575,025 / $383,250				
Department-Wide				
89 Management Flexibility Reserve	($2,368)	R	($2,368)	R
Create Management Flexibility Reserve.				

Senate Subcommittee on General Government	FY 09-10		FY 10-11	
Department-Wide				
90 Reduce Various Operating Accounts	($308,376)	R	($308,376)	R
Reduce funding for various operating accounts across the agency.	($119,053)	NR	($119,053)	NR
91 Eliminate Vacant Position	($49,601)	R	($49,601)	R
Eliminate salary and benefits for a vacant position.	-1.00		-1.00	
Total Legislative Changes	**$6,241,175**	R	**$6,241,175**	R
	($119,053)	NR	**($119,053)**	NR
Total Position Changes	-2.00		-2.00	
Revised Budget	**$17,272,124**		**$17,285,912**	

Treasurer - Retirement for Fire and Rescue

	GENERAL FUND	
	FY 09-10	FY 10-11
Adjusted Continuation Budget	**$10,804,671**	**$10,804,671**
Legislative Changes		
92 NO LEGISLATIVE ACTION REPORTED		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$10,804,671**	**$10,804,671**

TRANSPORTATION
Section K

Highway Fund

	HIGHWAY FUND	
	FY 09-10	FY 10-11
Adjusted Continuation Budget	$1,798,936,717	$1,798,493,030

Legislative Changes

Administration

1 Update Printing Operations — $636,000 R

Funds are provided to consolidate print operations located at the Transportation Building and the Division of Motor Vehicles. A single printing services contract will be used, incorporating mainframe and network printing services for both locations.

2 Combined Registration & Tax Collection System - Database and Implementation

Funding from receipts is provided to continue the implementation of HB 1779. Receipts will fund the development of the Statewide database, which will calculate vehicle property taxes, and to implement the outstanding components required to complete the System.

Receipts (nonrecurring)
Database: FY 2009-10 - $1,174,232; FY 2010-11 - $1,043,460
Implementation: FY 2009-10 - $4,128,573; FY 2010-11 - $7,798,424

Aviation Division

3 Aviation Funds — ($1,128,445) R; ($871,555) NR — ($1,125,523) R; ($874,477) NR

Funds for Aviation Division are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for the Aviation Division is $17,349,592 in FY 2009-10 and $17,291,543 in FY 2010-11.

Construction

4 Public Service and Access Road Funds — ($140,000) R — ($140,000) R

Funds for public service and access road construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for public service and access roads is $1,860,000 in both years of the biennium.

	FY 09-10		FY 10-11	
5 Small Construction Funds Funds for small construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. The total budget for small construction is $14,000,000 in both years of the biennium.	($7,000,000)	R	($7,000,000)	R
6 Contingency Funds Funds for contingency construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. The total budget for contingency construction is $13,950,000 in both years of the biennium.	($1,050,000)	R	($1,050,000)	R
7 Secondary Road Improvement Funds Reprogrammed to Maintenance Notwithstanding G.S.136-44.2A, FY 2009-10 funding for the secondary roads improvement program from the Highway Fund is reprogrammed to Statewide maintenance programs (See Item 14, page K3) to prevent further deterioration of the State highway system due to reduced transportation revenues and maintenance expenditures.	($84,481,404)	NR		
8 Spot Safety Program Based on the Continuation Review, funding is changed from non-recurring to recurring.	$9,100,000	R	$9,100,000	-

Department-Wide

9 Administration Cuts - Receipts Salary and operating funds for administration of the DOT, Division of Highways, and the Division of Motor Vehicles supported by Highway Trust Fund administration receipts are reduced for the biennium. The reductions are required to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. Receipts are reduced $3,814,114 in FY 2009-10 and $2,736,189 in FY 2010-11. Eleven vacant positions are eliminated in FY 2009-10 and an additional vacant position is eliminated in FY 2010-11.				

	FY 09-10		FY 10-11	
10 Administration Cuts	($7,181,194)	R	($6,788,533)	R
Salary and operating funds for administration of the DOT, Division of Highways, and the Division of Motor Vehicles are reduced for the biennium. The reductions are required to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.Twenty-two vacant positions are eliminated in FY 2009-10.	($4,528,043)	NR	($4,524,423)	NR
	-22.00		-22.00	
The total budget for DOT - General Administration is $80,810,522 in FY 2009-10 and $81,897,273 in FY 2010-11. The total budget for DOT - Highway Division Administration is $32,938,983 in FY 2009-10 and $32,993,177 in FY 2010-11. The total DMV budget is $101,732,813 in FY 2009-10 and $101,747,629 in FY 2010-11.				
Division of Motor Vehicles				
11 National Motor Vehicle Title Compliance	$264,359	R	$264,359	R
Funds are provided to comply with new federal legislation that requires states to report additional motor vehicle title information from all salvage and junk yards in the State.	$96,460	NR		
	4.00		4.00	
Funds are provided for 4 License and Theft Inspector positions ($38,612 each).				
Ferry Division				
12 Implement Coast Guard Requirements for Manning of Vessels	$3,116,267	R	$3,116,267	R
US Public Law 109-241, Section 301, passed in 2006, expanded the definition of a ferry to include State-operated passenger ferries. As a result, State ferry operations are required to operate under the US Coast Guard regulations (46 USC). In order to comply with these new federal requirements, funds are provided for additional field ferry vessel personnel and rescue boats.	$400,000	NR		
	79.00		79.00	
Positions include 20 Ferry Oiler positions ($33,445 each), 27 Ferry Member II positions ($32,232 each), 27 Ferry Crew Member I positions ($28,265 each), and 5 Marine Pipefitter and Welder positions ($42,121 each).				
The 79 positions cost $2,512,924 in salaries and $603,343 in benefits.				
Nine rescue boats are funded at $400,000 in FY 2009-10.				
13 Ferry Funds	($2,155,497)	R	($2,155,497)	R
Funds for the Ferry Division are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.				
The total budget for the Ferry Division is $30,126,209 in FY 2009-10 and $29,726,209 in FY 2010-11.				

Maintenance

14 Maintenance Funds — $12,808,444 NR

Funds for maintenance are increased to prevent further deterioration of the State highway system. Funds are not reduced to align overall expenditures for the Highway Fund with projected revenues for FY 2010-11.

The total budget for maintenance is $909,957,588 in FY 2009-10. Changes include:

	Adj (NR)	Total
Primary System	$2,951,041	$206,701,413
Secondary System	$4,209,372	$294,839,472
Contract Resurfacing	$3,919,356	$274,525,663
System Preservation	$1,122,003	$ 78,589,071
General Maintenance Reserve	$ 606,672	$ 55,301,969

15 Maintenance Funds — ($57,139,505) R; ($48,349,424) NR

Reduces funds for maintenance of the State's highway infrastructure to align overall expenditures for the Highway Fund with projected revenues for FY 2010-11.

The total budget for maintenance is $791,660,215 in FY 2010-11. Changes include:

	Adj (R)	Adj (NR)	Total
Primary System	$-13,053,866	$-12,760,379	$180,887,168
Secondary System	$-19,223,529	$-12,440,729	$263,175,214
Contract Resurfacing	$-17,801,562	$-12,480,686	$244,243,415
System Preservation	$ -4,086,001	$-10,667,630	$ 63,835,440
Gen. Maintenance Res	$ -2,974,547	$ 0	$ 39,518,978

OSHA

16 Workplace Safety and Health Funds — ($52,208) R; ($17,403) NR — ($52,208) R; ($17,403) NR

Reduces funds for OSHA to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total transfer to OSHA is $355,389 in both years of the biennium.

Public Transportation Division

17 Public Transportation Funds — ($16,366,078) R; ($8,582,189) NR — ($16,426,078) R; ($8,486,189) NR

Funds for public transportation programs are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for the Public Transportation Division is $71,595,962 in FY 2009-10 and $71,631,962 in FY 2010-11.

Reserves

18 Salary Adjustment Fund — ($3,922,758) R — ($3,922,758) R

Recurring funds available for salary adjustments are eliminated for the 2009-11 biennium.

	FY 09-10		FY 10-11	
19 Retirement System Contribution Employer contributions to the retirement system are increased to maintain the System's actuarially sound status.	$1,000,000	R	$1,000,000	R
State Highway Patrol				
20 SHP - Establish Management Flexibility Reserve Establishes a management flexibility reserve to provide the State Highway Patrol with the flexibility to manage additional reductions totaling $5,608,242.	($5,608,242)	R	($5,608,242)	R
21 SHP - Operating Cuts Funding for various operating accounts are reduced across the agency.	($2,253,000) ($1,500,000)	R NR	($2,253,000) ($1,450,000)	R NR
22 SHP - Freeze Step Increase for Troopers The step increase for the salaries of Troopers are frozen for both years of the biennium.	($1,674,280)	NR	($3,373,932)	NR
23 SHP - Eliminate Continuation Budget Increases Eliminates additions included in the Continuation Budget.	($2,832,607)	R	($2,647,712)	R

	FY2009-10	FY2010-11
531321 Contractual Staff	$77,825	$77,825
531411 Overtime	$400,000	$400,000
531421 Holiday Pay	$140,000	$140,000
531431 Shift Premium	$470,000	$470,000
531572 Unemployment Comp	$ 20,000	$ 20,000
531631 Workers Comp Med	$726,000	$541,105
531632 Workers Comp Disab	$222,468	$222,468
532170 Admin Services	$150,000	$150,000
532199 Misc Contract Serv	$626,314	$626,314

Statutory Adjustments				
24 Aid to Municipalities Adjusts funding for aid to municipalities based on revised projections for motor fuels tax revenue in accordance with G.S. 136-41.1. The total budget for aid to municipalities is $87,071,264 in FY 2009-10 and $86,200,551 in FY 2010-11.	$2,589,860	R	$2,986,368	R
25 Leaking Underground Storage Tank Fund Adjusts budget for the Leaking Underground Storage Tank Fund based on projections for the motor fuels inspection fee in accordance with G.S. 119-18. The total transfer to this trust fund is $2,500,123 in FY 2009-10 and $2,550,553 in FY 2010-11.	$590,000	R	$810,000	R

Senate Subcommittee on Transportation	FY 09-10		FY 10-11	
26 Secondary Road Improvement Program Funds Adjusts funding in FY 2010-11 for secondary road improvement program based on revised projections for motor fuels tax revenue in accordance with G.S. 136-44.2A. The total budget for the secondary road improvement program is $86,200,551 in FY 2010-11.			$2,986,368	R
Transfers				
27 State Health Plan Provides additional funding to continue non-contributory health benefit coverage for enrolled active and retired employees supported by the Highway fund for the biennium as appropriated in Senate Bill 287 (Third Edition). These appropriations correspond to an annual 8.6% premium increase in non-contributory premium rates for the fiscal year beginning July 1, 2009, and an additional annual premium increase of 8.6% for the fiscal year beginning July 1, 2010.	$5,992,476	R	$12,502,192	R
28 Department of Health and Human Services Funds for the Chemical Test Program are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. The total transfer is $660,039.	($49,680)	R	($49,680)	R
Total Legislative Changes	**($27,086,747)** **($88,349,970)**	R NR	**($72,957,182,** **($67,075,848)**	 NR
Total Position Changes	61.00		61.00	
Revised Budget	**$1,683,500,000**		**$1,658,460,000**	

Highway Trust Fund

	HIGHWAY TRUST FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$1,014,750,000**		**$1,057,460,000**	
Legislative Changes				
Highway Trust Fund				
29 Transfer to General Fund Reduces transfer to General Fund in FY 2010-11 to $2,561,829 in accordance with G.S. 105-187.9(b)2.			($367,350)	R
30 Urban Loops Reduces funds for the Urban Loops to $110,759,502 for FY 2009-10 consistent with new revenue estimates and statutory formula.	($37,512,354)	R	($41,238,334)	R
31 Administration Reduces funds for administration to $41,092,320 in FY 2009-10 consistent with new revenue estimates and statutory formula.	($7,510,080)	R	($8,278,560)	R
32 Aid to Municipalities Reduces funds for Aid to Municipalities to $39,893,942 for FY 2009-10 consistent with new revenue estimates and statutory formula.	($9,733,745)	R	($10,700,565)	R
33 Intrastate System Reduces funds for the Intrastate System to $352,674,316 for FY 2009-10 consistent with new revenue estimates and statutory formula.	($92,770,076)	R	($101,984,625)	R
34 Secondary Road Construction Reduces funds for the Secondary Road construction program to $57,777,091 for FY 2009-10 consistent with new revenue estimates and statutory formula.	($9,733,745)	R	($10,700,566)	R
Total Legislative Changes	**($157,260,000)**	R	**($173,270,000)**	R
Total Position Changes				
Revised Budget	**$857,490,000**		**$884,190,000**	

Turnpike Authority

	TURNPIKE AUTHORITY	
	FY 09-10	FY 10-11
Adjusted Continuation Budget	**$0**	**$0**
Legislative Changes		
Turnpike Authority		
35 Administration - Receipts Salary and operating funds available for administration of the Turnpike Authority supported from the Highway Trust Fund administration receipts are reduced for the biennium. The reductions are required to align overall expenditures for this receipt account with projected revenues for the 2009-11 biennium. Receipts (Recurring): 2009-10: ($569,925) 2010-11: ($413,826)		
Total Legislative Changes		
Total Position Changes		
Revised Budget	**$0**	**$0**

RESERVES/ DEBT SERVICE/ ADJUSTMENTS
Section L

Statewide Reserves

	GENERAL FUND			
	FY 09-10		FY 10-11	
Adjusted Continuation Budget	**$223,721,416**		**$96,721,416**	
Legislative Changes				
A. Employee Benefits				
1 Teachers and School Based Administrators Salary Increases Provide funds to support salary increases for teachers, instructional support, principals and assistant principals in local Public Schools and State agency based Public Schools. Teachers and Instructional Support - Funds are provided to support an experienced based step increase for teachers and instructional support personnel averaging 1.80%. Teachers and Instructional support at the top of the experience based salary schedule will receive a 1.8% one-time lump sum bonus. Principals and Assistant Principals - Funds are provided to support an experience based step-increase for school board administrators averaging 1.59%. School based administrators who are at the top of the experience based salary schedule will receive a 2.0% one-time lump sum bonus.	$56,765,776 $8,674,720	R NR	$56,765,776	R
2 Salary Adjustment Fund Eliminate funding in the continuation budget for the Salary Adjustment Fund.	($4,500,000)	R	($4,500,000)	R
3 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2009-11 biennium as recommended by the System's actuary.	$21,000,000	R	$21,000,000	R
4 Judicial Retirement System Contributions Increases the State's contribution to the Consolidated Judicial Retirement System for the 2009-11 biennium as recommended by the System's actuary.	$1,300,000	R	$1,300,000	R
5 State Health Plan Provides additional funding to continue non-contributory health benefit coverage for enrolled active and retired employees supported by the General fund for the biennium as appropriated in Senate Bill 287 (Third Edition). These appropriations correspond to an annual 8.6% premium increase in non-contributory premium rates for the fiscal year beginning July 1, 2009, and an additional annual premium increase of 8.6% for the fiscal year beginning July 1, 2010.	$128,410,208	R	$267,904,114	R

	FY 09-10		FY 10-11	
B. Other Reserves				
6 Federal Economic Recovery Management and Accountability Provides funding for the Office of Economic Recovery Management and Accountability to maximize the use of federal economic recovery funds, report on the uses of these funds, and measure progress of the recovery effort.	$1,000,000	NR	$1,000,000	NR
7 Budget E-Procurement Receipts Budgets projected over-realized receipts from the E-Procurement transaction fee in the second year of the biennium, consistent with the Governor's recommendations.			($10,000,000)	R
8 Administrative Support Reduction Reduces funding for administrative support to a 10:1 ratio, consistent with recommendations from the Governor.	($3,000,000) -75.00	R	($4,000,000) -100.00	R
9 Job Development Incentive Grants Reserve Reduces budget to requirements based on projected payment schedule.	($8,400,000)	NR		
10 Biomedical Research Imaging Center (BRIC) Eliminates continuation budget appropriations for the construction of BRIC. Construction of BRIC will be funded with "Two-thirds" general obligation bonds.	($172,000,000)	NR	($45,000,000)	NR
11 Reserve for the Biomedical Research Imaging Center (BRIC) Establishes a reserve of funds for BRIC that can be spent only if the Council of State fails to issue bonds authorized for the construction of BRIC.	$74,000,000	NR	$100,000,000	NR
B. Statewide Reserves				
12 Reduction to Information Technology Initiative Reserve Reduces funding to IT Initiatives Reserve to the amount appropriated for the IT Fund for State fiscal years 2009-2010 and 2010-2011.	($5,459,431)	NR	($5,459,431)	NR
C. Debt Service				
13 Adjust Debt Service Payments Modifies budgeted debt service payments to correspond to projected payment schedule.	($7,500,000)	NR	$7,307,323	R

	FY 09-10		FY 10-11	
tal Legislative Changes	**$199,975,984**	**R**	**$335,777,213**	**R**
	($109,684,711)	**NR**	**$50,540,569**	**NR**
Total Position Changes	-75.00		-100.00	
Revised Budget	**$314,012,689**		**$483,039,198**	

CAPITAL
Section M

Capital

	GENERAL FUND	
	FY 09-10	FY 10-11

B. Department of Environment and Natural Resources

1 Water Resources Development Projects

Provides funds for the State's share of Water Resources Development Projects. Projects are specified in a special provision.

$17,600,000 NR

C. General Obligation Bonds

2 UNC Chapel Hill - Biomedical Research Imaging Center (BRIC)

Authorizes the issuance of general obligation bonds under Article V, Section 3(1) of the NC Constitution for construction of the Biomedical Research Imaging Center (BRIC). The facility will house research on the use of imaging to detect, diagnose, and treat cancer. The facility will also house lab and drug research space. BRIC will facilitate the collaboration of cross disiciplinary researchers. The facility will contribute to the UNC Tomorrow committee's goal of improving health and wellness. The building size will be no more than 343,000 square feet. The total project cost is $260 million.

The General Assembly appropriated $8 million in FY 2007-08. In FY 08-09, the General Assembly appropriated $35 million for planning, site development, and material prepurchase, of which only $12.5 million was allocated. The remaining $22.5 million sequestered by the Governor to manage budget shortfall. The total debt authorized is $240 million.

A special provision revises the statutory appropriation for BRIC in G.S. 116-29.5. This statute would now appropriate $74 million to a reserve for expendure on constructing BRIC, if the Council of State does not authorize the issuance of debt for the project. In the event that the Council of State authorizes the issuance of an amount less than $74 million, then the unauthorized balance would be offset by this BRIC Reserve.

The provision further revises G.S. 116-29.5 to appropriate $100 million in FY 2010-11, $50 million in FY 2012-13, and $16 million in FY 2013-14 towards the project.

Total Appropriation to Capital

$17,600,000 NR

INFORMATION TECHNOLOGY SERVICES
Section N

Information Technology Services

SPECIAL FUND

Recommended Budget Adjustments	FY 2009-10 $0		FY 2010-11 $0	
Legislative Changes				
IT Operations				
1 Adminstration Eliminates appropriated funding to support the Office of the State Chief Information Officer and requires the Office to include required funding in agency rates.	$0	R	$0	R
2 Business Infrastructure Provides funding to support Statewide business infrastructure requirements.	$423,196	R	$423,196	R
3 Enterprise Security and Risk Management Office Provides funding to support the operation of the Enterprise Security and Risk Management Office.	$1,497,298	R	$1,497,298	R
4 Asset Management Provides funding to allow the State to account for and manage information technology assets.	$2,063,691	R	$2,063,691	R
5 Enterprise Program Management Office Provides funding for the Enterprise Program Management Office.	$1,700,286	R	$1,700,286	R
6 Architecture and Engineering Provides funding for Statewide architecture and engineering requirements.	$957,136	R	$957,136	R
7 Geographic Information System Transfers the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and funds seven positions.	$650,000 7.00	R	$650,000 7.00	R
8 Enterprise Licenses Provides funding for Statewide software licenses that benefit multiple agencies.	$600,000	R	$600,000	R
IT Projects				
9 Email Initiatives Provides funding to support Statewide email requirements.	$686,749	R	$686,749	R
10 State Web Page Provides funding for the State website.	$65,176	R	$65,176	R

	FY 2009-10		FY 2010-11	
11 Enterprise Identity Management Provides the State with technology to support identity management, authentication, and authorization of users.	$1,416,831	R	$1,416,831	R
12 Information Technology Consolidation Provides funding to continue the Information Technology Consolidation program.	$2,661,041	R	$2,661,041	R
Total Legislative Changes	**$12,721,404**	R	**$12,721,404**	R
Total Position Changes	7.00		7.00	
Total Budget Adjustments	**$12,721,404**		**$12,721,404**	

SENATE BILL 202:
Appropriations Act of 2009

2009-2010 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	April 7, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S202-CSLExf-15, as amended by Appropriations		

SPECIAL INDEBTEDNESS: Senate Bill 202 does not authorize any new special indebtedness. It does modify some projects authorized in past sessions, financed through special indebtedness, to reflect reductions in the projected costs. (SEE Section 27.9, page 191)

Senate Bill 202 authorizes two-thirds bonds over the course of four years. Two hundred forty million dollars of the bond proceeds would be allocated to finance the capital facility costs of the Biomedical Research Imaging Center at UNC-CH. The remaining $66,610,000 would be used for the repair and renovation of State facilities and infrastructure. (SEE Section 27.10, page 200)

For the fiscal year 2009-2010, 54% the moneys in the Reserve for Repairs and Renovations would be allocated to the Board of Governors of The University of North Carolina and the remaining 46% would be allocated to OSBM. (SEE Section 27.5, page 188)

FEE PROVISIONS: As the General Assembly begins to rely more heavily on fees as a means to support the cost of a program, the difference between a tax and a fee becomes increasingly difficult to determine. A tax is a pecuniary charge imposed equally on everyone in the same class to provide revenue for the support of government in general. It is imposed at regularly recurring periods or upon the occurrence of an event and must be paid regardless of whether the taxpayer receives a benefit in return for payment. A fee is a charge imposed for the use of property, the provision of a service, or the regulation or protection of an item or an activity. Though more difficult to distinguish from a tax, a charge imposed on an item or activity as a means of, or to cover the cost of, regulating or protecting the use of the item is also a fee. This principle applies even if some of the revenue raised by the fee is used for purposes other than the regulation or protection of the item or activity on which the fee is imposed as long as the expenditure of the revenue bears a direct and reasonable relationship to the primary purpose of enforcing the laws governing the item and is not imposed for the support of government in general.

Fee Provisions

Section Page, Line	Name	Explanation
9.5 46, 35	UNC Center for Alcohol Studies	• Removes decrease of fee to restore drivers license from $75 to $50 triggered by the cumulative total of fees paid into the General Fund exceeding $10 million. Prior to 2007 the fee was $50 and reduced to $25 when the cumulative total of fees paid into the General Fund exceeding $10 million.
10.11 57, 12	Increase Child Care Licensing Fees for Child Care Facilities	• Increases fee for a child care facility of 12 or fewer children from $35 to $52. Fee established at $35 in 2003. • Creates new fee of $52 for licensure of child care

Section Page, Line	Name	Explanation
		homes. • Increases fee for a child care facility of 13-50 children from $125 to $187. Fee established at $125 in 2003. • Increases fee for a child care facility of 51-100 children from $250 to $375. Fee established at $250 in 2003. • Increases fee for a child care facility of more than 100 children from $400 to $600. Fee established at $400 in 2003. • Fiscal impact = $602, 385.
10.22 62, 11	Vital Records Fees	• Increases fee for first copy of vital record or search of files from $15 to $20. Fee was raised to $15 from $10 in 2002. • Each additional certificate copy requested from same search retains a fee of $15. • Amount retained from fees for searching by local agencies using State Registrar-maintained databases is increased from $5 to $10 with remainder remitted to Registrar. • Fee for out of state requests increased from $15 to $20. Fee was raised from $10 to $15 in 2002. • Fiscal impact = $750,000.
10.76 102, 4	DHSR License Fees	• Adult care home (6 or fewer beds) annual license fee increased from $250 to $315. • Adult care home (more than 6 beds) annual license fee increased from $350 to $360 plus a per-bed fee increase from $12.50 to $17.50. • Ambulatory surgery facility license base fee increased from $700 to $850 with per-operating room fee increase: $50 to $75. • Department annual certification fee for cardiac rehab facility increased from $250 to $385. • Home Care Agency annual licensure fee increased from $400 to $510 • General Acute Hospital bed per-bed fee increased across the board from $12.50 to $17.50 • Non-ICF/MR facilities base fee increase for no beds: $175 to $215; for 1-6 beds: $250 to $305; for more than 6 beds: $350 to $475 with a per-bed fees increase of $12.50 to $17.50. • ICF/MR facility base fee increase for 1-6 beds: $650 to $845; for more than 6 beds: $650 to $800 with a per-bed fee increase of $12.50 to $17.50.

Section Page, Line	Name	Explanation
		• Nursing home facility license fee decreased from $450 to $420 with a per-bed fee increase of $12.50 to $17.50. • Fiscal impact = $1,093,788.
10.77 104, 5	Initial Licensure Fees for New Facilities	• New Adult Care Licensure Facility fee with more than 6 beds: $400 with initial per-bed fee of $19. • New Adult Care Licensure Facility fee with 6 or fewer beds: $350. • New General Acute Hospitals all have an initial per-bed fee of $19 and an initial license fee as follows: 1-49 beds: $550; 50-99 beds: $750; 100-199 beds: $950; 200-399 beds: $1150; 400-699 beds: $1550; 700 or more beds: $1950. • New "other" hospitals: initial license fee of $1050 and initial per-bed fee of $19. • New home care facility initial license fee: $560. • New ambulatory surgical center facility initial license fee of $900 and initial per-bed fee of $85. • New free standing hospice facility initial license fee: $450. • New abortion clinic facility initial license fee: $750. • New cardiac rehab center facility initial license fee: $425. • New nursing home facility initial license fee of $470 with an intial per-bed fee of $19. • New L&C facility initial per-bed fee: $19. • New nonresidential mental health facility initial license fee: $265. • New Non-ICF/MR facility with 6 or fewer beds initial license fee: $350. • New ICF/MR facility with 6 or fewer beds initial license fee: $900. • New Non-ICF/MR facility with 7 or more beds initial license fee of $525 and an initial per-bed fee of $19. • New ICF/MR facility with 7 or more beds initial license fee of $850 and an initial per-bed fee of $19. • Fiscal Impact = 29,202.
11.1 120, 25	Increase Fertilizer Assessment Fee	• Increases inspection fee for commercial fertilizers and requires fee to be used for agronomic services. Raises fee from 25¢ to 50¢ per ton. The 25¢ fee was set in 1977.

Section Page, Line	Name	Explanation
		• Fiscal Impact = $375,000.
11.2 120, 41	Increase Pesticide Registration Fee	• Increases annual fee for pesticide registration from $100 to $150. This fee was raised from $30 to $100 in 2003.
12.1 121, 24	Apprenticeship Program at Labor	• Allows department to charge fees to cover the costs of program administration. • Labor has broad authority to raise fees for its operating costs. This provision adds authority to make rules regarding fees to administer the Apprenticeship Program. This program currently imposes no fees and has a budget of $1.8M in General Fund appropriations. For FY09-10 and beyond that appropriation is cut $450,000 to be made up for by fee collection. This would require an annual fee for each apprentice of $25.
13.2 121, 39	Raise Food & Lodging Fees	• Raises the fee the Commission for Public Health may charge for inspecting food and lodging establishments. • Inspecting establishments selling meat food products: fee raised: $50 to $60. Fee last raised from $25 to $50 in 2002. • Plan review of franchised, chain, and other food establishments: fee raised from $200 to $325. The $200 fee was established in 2002. • Fiscal Impact = 263,040.
13.3 122, 12	Radiation Inspection Fee	• Allows radiation protection section of DNER to raise fees to meet its administrative costs. • The radiation protection section has an annual operating budget of $4 million, $.8M of which comes from General Fund appropriations and $3.2M of which comes from fees. General Fund appropriation is reduced to $416,282 for FY 09-10 and to $0 for FY10-11.
13.4 122, 22	Scrap Tire Disposal Account Funds	• The State levies a scrap tire disposal tax on each new tire sold. The tax is 1% of the sales price on tires with a bead diameter of at least 20 inches, and 2% on tires with a bead diameter of less than 20 inches. • Credits $3 million of the net proceeds of the Scrap Tire Disposal Account Fund to the General Fund.
13.8 124, 50	Increase Timber Assessment	• Repeals language that requires a General Fund appropriation in order to charge the timber assessment.

Section Page, Line	Name	Explanation
13.9 125, 2	Forest Dev. Fund/Forest Products Assessment Rates	• Increases assessment rates levied on primary forest products by 50%. The assessments are credited to the Forest Development Fund and used to finance the forestry operations provided for in the Forest Development Act of 1977. These assessments have not been increased since the General Assembly established them in 1977. • Raises assessment per 1000 board feet of softwood sawtimber, veneer logs and bolts and all other softwood products measured in board feet from $.50 to no more than $1. • Raises assessment per 1000 board feet of hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products measured in board feet from $.40 to no more than $.80. • Raises assessment per cord for softwood pulpwood and other softwood products normally measured in cords from $.20 to no more than $.40. • Raises assessment per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords from $.12 to no more than $.24.
14.7 134, 11	Increase Industrial Commission Fee for Compromised Settlements	• Allows Industrial Commission to use the amount of the fee collected for approval of compromised settlement agreements in excess of $200 for its computer system replacement project. The funds may also be used for assessments of hardware and software needs. • The fee was increased from $200 to $250 in 2003.
14.8 134, 23	Safety Education Section of Industrial Commission to be Fee Supported	• Directs the Safety Education Section of the Industrial Commission to become fee supported by July 1, 2010. • The Industrial Commission must establish fee schedule. • At least 50% of fees used to support Safety Educational Section must come from fees charged for services provided by that Section. • FY 09-10 figures for the Commission are $4.6M in fees and $6.3M in General Fund appropriations. The Safety Education Section has an operating budget of $467,104. This amount is appropriated to the IC/Section in

Section Page, Line	Name	Explanation
		FY09-10, but is non-recurring. Thereafter, the program is to be fee supported
14.14 137, 10	Utilities Commission Regulatory Fee	• Sets Utilities Commission regulatory rate at 0.12 percent (0.12%). • No change from previous year.
15.18 144, 20	Sheriff's and Criminal Justice Education & Training Standards Commission	• New fee of $2 to court fees to go to Justice to offset the cost of criminal justice training and standards costs (split $1.65 to Criminal Justice and $.35 to Sheriffs). • Fiscal impact = $1,000,000.
15.19 144, 31	Convicted Criminal Lab Analysis Fee	• Increase fee charged for crime lab analysis from $300 to $600. The fee for use of the SBI lab was set at $300 in 2002. The fee for the use of local government labs was set at $300 in 2005. • Fiscal impact = $1,000,000.
15.20 145, 11	Increase Certain Court Fees	• Seat Belt (front seat)/Helmet Violations Penalty (20-135.2A and -140.4) raised from $75.00 to $103.50 plus the telephone facilities and law enforcement training certification fees in FY09-10 and from $103.50 to $111.50 plus the telephone facilities and law enforcement training certification fees in FY10-11 (sub j and k). • Failure to appear cost (7A-304(a)(6)) increased from $100 to $200 (sub (a)). • Amount credited to the Court Information Technology Fund for phone systems increased from $1 to $3 for FY09-10 and from $3 to $4 for FY10-11 (subs (a)/(b) (2a), subs (d)/(e) (1a), subs (f), (g), (h), (i) • New processing fee/newly created installment plan for payment of court costs of $20 (sub (c)). • General Court of Justice Fee: Superior criminal: raised from $102.50 to $115.50 for FY 09-10 and from $115.50 to $135.50 for FY 10-11 (subs (a)/(b) (4). • General Court of Justice Fee: Superior civil: raised from $93 to $130 for FY 09-10 and from $130 to $140 for FY 10-11 (subs (d)/(e) (2). • General Court of Justice Fee: District criminal: raised from $95.50 to $103.00 for FY 09-10 and from $103.50 to $105.50 (subs (a)(b) (4). • General Court of Justice Fee: District MV Road Safety: new fee created at $5 for FY 09-10 and raised to $10 for FY 10-11 (subs (a)/(b) (4a). • General Court of Justice Fee: District Civil

Section Page, Line	Name	Explanation
		Regular: raised from $73 to $78 for FY 09-10 and from $78 to $80 for FY 10-11 (sub (d)(e)(2). • General Court of Justice Fee: District Civil Magistrate: lowered from $63 to $55 (sub d). • Fiscal impact = $3,954,612.
17.2 154, 33	Abolish Butner Public Safety Division	• Repeals G.S. 122C-408, which required Butner to annually pay into the General Fund an amount for property taxes due assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) • Fiscal impact = ($1,200,000).
17.5 158, 4	Law Enforcement Support Services Fees	• Creates LESS as a division at Crime Control to be receipt-supported (via authorizing the division to charge and collect such fees it establishes for the cost of administering the program). • LESS currently exists as office in CCPS with the duties listed in the SP. Currently, LESS has a continuation budget of $430,336 a year and charges no fees. The budget gives them a non-recurring appropriation of $430,336 and rule-making authority to enable them to adopt and get in place a fee schedule necessary to meet annual needs.
17.6 158, 34	Charitable Bingo Licensing Fee	• Increases license application fee for operation of a bingo game from $100 to $200. This fee was set in 1987 at $100. • Fiscal impact = $26,600.
17.7 158, 47	Boxing Licensing Fees	• Increases license fee for boxing contestant from $37.50 to $50. This fee was raised from $25.00 to $37.50 in 2007. • Increases license fee for boxing second from $37.50 to $50. This fee was raised from $25.00 to $37.50 in 2007. • Increases admission fee per ticket sold for boxing events from $1.50 to $2. This fee was set at $1.50 in 2007. • Fiscal impact = $88,142
21.1 169, 43	Set Insurance Regulatory Charge	• Sets percentage rate for insurance regulatory charge at 5.5%
24.1 170, 48	Increase registration renewal fee for Securities Salesmen	• Increases the renewal & initial registration fee for securities salesmen from $75 to $100. This fee was raised from $55 to $75 in 2002. • Fiscal impact = $3,632,700.

#2

02

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALE-7 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
PCS

Date _____ ,2009

Senator _____

moves to amend the committee report on page F 12, by rewriting item # 68 to read:

"68 **Expansion of High-Demand/High Cost Health Care Programs** **$4,835,000 R** **$6,242,300 R**
Provides funds for FY 2009-10 for faculty recruitment in order to reduce the length of waiting lists of student applicants in nursing, dental, and radiography technology programs. In FY 2010-11, the State Board may increase the weighted funding in these specific program areas to sustain efforts made the previous year, and to reduce waiting lists and expand program offerings in other high-demand health care program areas."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

#3

3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALL-4 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
PCS35286

Date _____,2009

Senator Clodfelter

moves to amend the bill on page 151, lines 4 through 29,
by rewriting those lines to read:

"**SECTION 15.20.(j)** G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus the following court ~~costs in the sum of seventy-five dollars ($75.00).~~ costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars ($10.00) and no court costs. Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

SECTION 15.20.(k) G.S. 20-140.4 reads as rewritten:

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

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

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

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

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

(c) Any person convicted of violating this section shall have committed an infraction and shall ~~be fined according to G.S. 20-135.2A(e) and (f).~~ pay a penalty of twenty-five dollars ($25.00) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Conviction of an infraction under this section has no other consequence.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALL-4 [v.3]

and by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

#4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALL-10 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
PCS35286

Date _____,2009

Senator Clodfelter

moves to amend the committee report on page I-2, item 10,
by deleting that item;

and on page I-3, item 18,
by deleting that item;

and on page I-2, item 8,
by increasing the reduction on that line by $1,681,718;

and by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALLf-8 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
S202-PCS35286-LExf-15

Date 7 April .2009

Senator Kinnaird

moves to amend the bill on page 146 line 14, by deleting the phrase "one hundred three dollars ($103.00)" and substituting the phrase "one hundred three dollars and fifty cents ($103.50)"; and

on page 146, line 16, by deleting the phrase "one hundred fifteen dollars ($115.00)" and substituting the phrase "one hundred fifteen dollars and fifty cents ($115.50)"; and

on page 148, lines 18-19, by deleting the phrase "~~one hundred three dollars ($103.00)~~ one hundred five dollars ($105.00)" and substituting the phrase " ~~one hundred three dollars and fifty cents ($103.50)~~ one hundred five dollars and fifty cents ($105.50)"; and

on page ~~X,~~ 148 line ~~Y,~~ 20-21 by deleting the phrase "~~one hundred fifteen dollars ($115.00)~~ one hundred thirty-five dollars ($135.00)" and substituting the phrase "~~one hundred fifteen dollars and fifty cents ($115.50)~~ one hundred thirty-five dollars and fifty cents ($135.50)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S202-ALLF-8-V-1

16

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALN-48 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
PCS35286-LExf-15

Date _____,2009

Senator Nesbitt

moves to amend the bill on page 101, line 45,
by inserting on the line the following:
"**MEDICAID WAIVER TO PROVIDE HOME AND COMMUNITY-BASED MEDICAID SERVICES FOR CERTAIN INDIVIDUALS**

SECTION 10.74A. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall apply to the Centers for Medicare and Medicaid Services for a 1915(c) waiver to permit individuals who sustain traumatic brain injury after age 22 to access home and community-based Medicaid services. If approved, the Department shall not implement the waiver except as authorized by an act of the General Assembly appropriating funds for this purpose. The Department shall report on the status of the waiver to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2010."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

#17

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/

S. B. No. PCS-2-5202 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Sen. Jones
Sen.)

report

1 moves to amend the ~~bill~~ on page I-2, Item 8, line _____

2 ( ) WHICH CHANGES THE TITLE

3 by increasing the reduction by $121,401 in both years;

4 ~~page 1, Item 8~~

5 and on page I-3, Item 15

6 ~~and~~ by deleting that item.

7

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-AMA-3 [v.14]

Comm. Sub. [YES]
Amends Title [NO]
S202-CSLExf-15

Date _____,2009

Senator Garrou

moves to amend the proposed committee substitute on page 1, line 34, by increasing the amount for the 2010-2011 fiscal year by $11,393,030; and

also further moves to amend the proposed committee substitute on page 6, line 18, by increasing the reduction for the 2010-2011 fiscal year by $11,393,030; and

also moves to amend the committee report on page F 3, Item 19, by deleting the item; and

also moves to amend the proposed committee substitute on page 37, lines 11 through 29, by deleting the lines; and

moves to amend the proposed committee substitute on page 2, lines 14 and 15, by rewriting those lines to read:

"Agricultural Extension	46,237,503	60,787,417
Agricultural Research	61,941,281	45,963,661";

and also moves to amend the proposed committee substitute on page 121, lines 34-36, by deleting the language:
"no more than three percent (3%) of the funds appropriated to the Clean Water Management Trust Fund in each fiscal year of the 2009-2011 fiscal biennium",
and substituting:
"of the funds appropriated to the Clean Water Management Trust Fund for each fiscal year of the 2009-2011 fiscal biennium, no more than three million dollars ($3,000,000)"; and

and also moves to amend the proposed committee substitute on page 14, line 29, by deleting the word "sections" and substituting the word "section"; and

also moves to amend the proposed committee substitute on page 28, line 30, by deleting the word "may"" and substituting the word "shall"; and

also moves to amend the proposed committee substitute on page 42, line 5, by deleting the line; and

also moves to amend the proposed committee substitute on page 44, line 14, by deleting the line; and

also moves to amend the proposed committee substitute on page 126, line 16, by adding a new subsection after the line to read:

"**SECTION 14.2.(d)** Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the sum of two million dollars ($2,000,000) shall be transferred for the 2009-2010 fiscal year to the Regional Economic Development Commissions."; and

and also moves to amend the proposed committee substitute on page 3, line 8, by increasing the amount for the 2010-2011 fiscal year by $5,000,000; and

also moves to amend the proposed committee substitute on page 3, line 14 by decreasing the amount for the 2010-2011 fiscal year by $5,000,000; and

also moves to amend the Committee report on page H 16, item 82, by increasing the amount for the 2010-2011 fiscal year by $5,000,000 in nonrecurring funds; and

also moves to amend the bill on page 137, line 1, by adding a new subsection before the line to read:

"**SECTION 14.13.(c)** Of the funds appropriated for the Southeastern North Carolina Regional Economic Development Commission, the sum of two hundred fifty-four thousand dollars ($254,000) for the 2009-2010 fiscal year and the sum of two hundred fifty-four thousand dollars ($254,000) for the 2010-2011 fiscal year shall transferred to BRAC Regional Task Force, Inc. for economic development including defense procurement capabilities in the 11 county region it serves."; and by relettering the remaining subsections accordingly; and

also moves to amend the proposed committee substitute on page 127, line 7, by deleting the words "small business" and substituting the words "small businesses"; and

also moves to amend the proposed committee substitute on page 158, line 32, by deleting the word "Section" and substituting the word "section"; and

also moves to amend the proposed committee substitute on page 173, line 23, by deleting the line; and

also moves to amend the proposed committee substitute on page 173, line 39, by deleting the word "act" and substituting the word "section"; and

also moves to amend the proposed committee substitute on page 188, lines 47, rewriting that line to read:

"(1) Proceeds of bonds and notes issued pursuant to Section 27.10(f)(2) of this act for"; and

also moves to amend the proposed committee substitute on page 201, lines 9-12, by deleting those lines and by re-lettering the remaining sub-subdivisions accordingly; and

also moves to amend the proposed committee substitute on page 201, line 51 through page 202, line 10, by rewriting the lines to read:

"time to time general obligation bonds or notes of the State to be designated 'State of North Carolina General Obligation Bonds,' with any additional designations as may be determined, with any other available funds, for the purposes authorized by this section. The aggregate principal amount of bonds authorized by this section for the fiscal years ending June 30, 2010, and June 30, 2011, may not exceed the lesser of (i) the amount authorized by this subsection for that fiscal year and (ii) an amount that, together with all other general obligation bonds issued by the State, excluding refunding bonds, during the biennium ending June 30, 2011 is greater than two-thirds of the net amount by which the State's outstanding general obligation bonds was reduced during the biennium ended June 30, 2009. The aggregate principal amount of bonds authorized by this section for the fiscal years ending June 30, 2012, and June 30, 2013, may note exceed the lesser of (i) the amount authorized by this subsection for that fiscal year and (ii) an amount that, together with all other general obligation bonds issued by the State, excluding refunding bonds, during the biennium ending June 30, 2013 is greater than two-thirds of the net amount by which the State's outstanding general obligation bonds was reduced during the biennium ended June 30, 2011. If the maximum principal amount of bonds and notes authorized for a fiscal year is in excess of the amount described above, then the maximum amount of bonds and notes authorized in this section for that fiscal year is reduced by such excess. There is hereby authorized the following amount of bonds and notes authorized by this section in the following fiscal years:"; and

also moves to amend the proposed committee substitute on page 203, line 12, by rewriting the line to read:

"incurred under this subdivision prior to July 1, 2012."; and

also moves to amend the proposed committee substitute on page 206, lines 45 through 46, by rewriting those lines to read:

"2011-2012	$50,000,000
2012-2013	$16,000,000.""; and

also moves to amend the proposed committee substitute on page 208, line 1, by adding a new section before the line to read:

"**SECTION 28.5A.** This act becomes effective only if the General Assembly enacts modifications to tax law that increase revenues by an amount sufficient to ensure that the State's budget is balanced."; and

also moves to amend the proposed committee substitute on page 154, line 11, bay adding the following language:

"**SECTION 16.6(c).** This sections becomes effective July 1, 2010."; and

also moves to amend the Committee Report on page F 5, Item 27, by deleting the last sentence of the short description in that item; and

also moves to amend the Committee Report on page F 9, by adding a new item to read:

" 47A	**Management Flexibility Reduction - State Aid** Reduces funds in the State Aid budget. The State Board of Community Colleges shall distribute the flexibility reduction, accounting for the unique needs of each college. Each college reduced shall have the flexibility to adjust its budget to implement this reduction, but shall not impact those activities directly involved in retraining displaced workers."; and	**($1,023,133) R**	**($1,023,133) R**

also moves to amend the Committee Report on page F 11, item 65, by deleting the item.

also moves to amend the committee report on page F 13, by rewriting item # 72 to read:

"72	**Customized Training** Provides additional funding the for the Customized Training Program to improve programming and develop stronger infrastructure for college-based instruction. The Customized Training Program offers programs and training services to assist new and existing business and industry to remain productive, profitable, and within the State. Of the funds appropriated for Customized Training, the sum	$500,000 R	$500,000 R

of $250,000 for each year shall be used for a training program in entrepreneurial skills provided by NC REAL (NC Rural Entrepreneurship through Active Learning)."; and

also moves to amend the Committee Report on page G 2, Item 14, by adding a reduction of 102 positions in each fiscal year of that item; and

also moves to amend the Committee Report on page G 8, Item 71, by adding deleting the word "Access" everywhere it appears in that item and replacing it with the word "Assistance"; and

also moves to amend the Committee Report on page I 1, Item 2, by adding two positions to the list of positions to be eliminated as follows:

Pos. #	Position	Salary
...		
"65003747	Dep. Chief Information Officer	107,543
60094899	AOC Division Assistant	41,428"; and

also moves to amend the Committee Report on page I 2, Item 13, by deleting the word "Eliminate" from the first line in the short description and substituting the word "Reduce"; and

also moves to amend the Committee Report on page I 11, Item 64, by deleting the short description and substituting the following:

"Effective September 1, 2009, close the Dobbs YDC since the new Lenoir YDC, which was opened in 2008 to replace this older facility."; and

also moves to amend the Committee Report on page F 5, Item 26, by reducing the reduction by in fiscal year 2010-2011 $350,000; and adjusting the total accordingly; and

also moves to amend the Committee Report on page F 2, Item 12, by increasing the reduction by $350,000.; and

also moves to amend the Committee Report on page I 2, Item 9, by deleting that item; and

also moves to amend the Committee Report on page I 2, Item 8, by in creasing the reduction by $401,289 in fiscal year 2009-2010 and in fiscal year 2010-2011; and

by adjusting the totals in the bill and the committee report accordingly.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-AMA-3 [v.14]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

$306.6 million in Proposed 2/3rds Bonds
Estimated Debt Service

Senate Capital Budget

PROPOSED GOB'S
VARIOUS ISSUE DATES
ESTIMATED INTEREST RATE =5.75%

FISCAL YEAR	Principal	Estimated Interest	Principal & Est. Interest	FISCAL YEAR
2009-10	0	0	0	2009-10
2010-11	5,330,500	5,976,823	11,307,323	2010-11
2011-12	10,330,500	11,276,569	21,607,069	2011-12
2012-13	12,830,500	13,485,691	26,316,191	2012-13
2013-14	15,330,500	15,551,062	30,881,562	2013-14
2014-15	15,330,500	14,669,558	30,000,058	2014-15
2015-16	15,330,500	13,788,054	29,118,554	2015-16
2016-17	15,330,500	12,906,551	28,237,051	2016-17
2017-18	15,330,500	12,025,047	27,355,547	2017-18
2018-19	15,330,500	11,143,543	26,474,043	2018-19
2019-20	15,330,500	10,262,039	25,592,539	2019-20
2020-21	15,330,500	9,380,536	24,711,036	2020-21
2021-22	15,330,500	8,499,032	23,829,532	2021-22
2022-23	15,330,500	7,617,528	22,948,028	2022-23
2023-24	15,330,500	6,736,024	22,066,524	2023-24
2024-25	15,330,500	5,854,521	21,185,021	2024-25
2025-26	15,330,500	4,973,017	20,303,517	2025-26
2026-27	15,330,500	4,091,513	19,422,013	2026-27
2027-28	15,330,500	3,210,009	18,540,509	2027-28
2028-29	15,330,500	2,328,506	17,659,006	2028-29
2029-30	15,330,500	1,447,002	16,777,502	2029-30
2030-31	10,000,000	718,750	10,718,750	2030-31
2031-32	5,000,000	287,500	5,287,500	2031-32
2032-33	2,500,000	71,875	2,571,875	2032-33
2033-34				2033-34
TOTALS	306,610,000		482,910,750	TOTALS

Capital Team / Fiscal Research Division
04/07/2009 1:37 PM

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-AMCf-2 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S202-PCS35286-LExf-15

Date _____,2009

Senator Clodfelter

moves to amend the bill on page 121, lines 28-29, by deleting those lines and substituting the following:

"A fee of twenty-five dollars ($25.00) is imposed on each apprentice who is covered by a written apprenticeship agreement entered into under this Chapter. The fee is payable by the apprentice unless the employer who enters into the agreement pays the fee on behalf of the apprentice. The fees are departmental receipts and must be applied to the costs of administering the apprenticeship program. The Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes to implement this section."; and

on page 122, lines 13-20, by deleting those lines and substituting the following:

"**SECTION 13.3.(a)** G.S. 104E-19 reads as rewritten:

'**§ 104E-19. Fees.**

(a) ~~In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(c), of enforcing and carrying out the inspection provisions in G.S. 104E-7(a)(7) and G.S. 104E-11(a), and of administering the licensing program in G.S. 104E-10.3, the Department is authorized to charge and collect such reasonable fees as it may by rule establish.~~ An annual fee in the amount set by the Department is imposed on a person who is required to be registered or licensed under this Chapter. The Department must set the fees at amounts that provide revenue to offset its costs in performing its duties under this Chapter.

(b) Repealed by Session Laws 1987, c. 850, s. 13.'

SECTION 13.3(b) G.S. 104E-9(a)(8) reads as rewritten:

'(8) To establish fees in accordance with G.S. 104E-19.'"; and

on page 134, lines 24-29, by deleting those lines and substituting the following:

"**SECTION 14.8** G.S. 97-73 reads as rewritten:

'**§ 97-73. Fees.**

(a) Claims. -- The Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

(d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an employer for whom the Industrial Commission provides an educational training program on how to prevent or reduce accidents or injuries that result in workers' compensation claims or for whom the Industrial Commission provides other educational services. The fees are departmental receipts.'"; and

on page 158, lines 5-32, by deleting those lines, and substituting the following:

"**SECTION 17.5** Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

'**§ 143B-475.2. Fees for services.**

A fee in the amount set by the Department is imposed on the entities listed in this section. The fees are departmental receipts and are applied to the Department's costs in providing services to these entities. The fees apply to the following:

(1) A local law enforcement agency that receives equipment from the Department, whether by transfer, loan, or procurement under an agreement with the United States Department of Defense.

(2) A person for whom the Department stores evidence.'; and

on page 127, lines 7-8, by deleting those lines and renumbering the remaining subdivisions accordingly; and

on page H-13, item 69 of the money report, by deleting the phrase "-To finance bonds to allow small businesses to better leverage federal stimulus dollars;"; and

on page 12, lines 27-29, by rewriting those lines to read:
"the General Assembly' under G.S. 150B-21.1(a)(2).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

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

S202-ALL-10 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
PCS35286

Date _____,2009

Senator Clodfelter

moves to amend the bill on page 141, line 6, through page 142, line 17, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Wednesday, April 15, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 15, 2009, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator David Hoyle presided.

Review of Recommendations of Prior Tax Study Committees.

Governor's Commission to Modernize State Finances.

Mr. John Sanders, Commission member, was recognized to outline the commission's findings and recommendations, which included simplifying taxes, making taxes equitable and making North Carolina more competitive with its surrounding states. A copy of the commission's final report is attached.

Institute for Emerging Issues' Business Committee for Financing the Future.

Roland Stephen, IEI Assistant Director for Research and Policy, was recognized. He described the Institute and what it does (public policy think tank). He outlined the changes in the NC economy, the problems with the revenue system and reform recommendations. A copy of Mr. Stephen's power point and the press release of the Business Committee for Financing the Future's recommendations is attached.

Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions and offer a sampling of prior study committee recommendations. A copy of the handout is attached.

State and Local Fiscal Modernization Study Commission.

Roby Sawyer, CPA, Ph.D, NC State University College of Management, was recognized. He outlined the commission's charge, general findings and tax recommendations. A copy of the commission's charge and membership, and Dr. Sawyer's power point is attached.

The meeting adjourned at 2:19 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING

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

DAY	DATE	TIME	ROOM
Wednesday	April 15, 2009	1:00 PM	544 LOB

The following will be considered:

Review of Recommendations of Prior Tax Study Committees

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Agenda

Wednesday, April 15, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

Introduction of Pages

Governor's Commission to Modernize State Finances
Mr. John Sanders, Commission Member

Institute for Emerging Issues' Business Committee for Financing the Future
Mr. Roland Stephen, IEI Assistant Director for Research and Policy

State and Local Fiscal Modernization Study Commission
Dr. Roby Sawyers, Commission Staff and Professor,
College of Management, Department of Accounting, NCSU

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Frank Raden	Commissioner, Town of Mooresville
Amy McConkey	Smith Anderson
Julie White	NCMMC
Allison Tronto	NCACC
Lennie Collins	NC DOR
Andy Sasol	NC DOR
Ron Aycock	Retired
Gary Teegen	NMRS
Chip Killian	Nelson Mullins
Annette Dewkirk	Governor's Office

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NC DOR
JOHN SHAW	SELF
Ken Melton	Ken Melton & Assoc.
Houser	D.O.R.
Chief Linda Millsaps	DOR
Kay Hobart	A.G.
John Sadoff	D.O.R.
Tim Burgess	Progress Energy
Paul Matthews	Progress Energy
Patrick Cronin	Inst. for Emerging Issues
DAVID THOMPSON	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gregg Thomas	NFIB
Gene Ainsworth	A&A
BB Nobles	WM
Cam Cree	BBMH
Paul Sataf	NCBA
Franklin Dalton	NCRMA
Dan Miskiew	Capstar
Holly Grile	NCHAM
Gary Harris	NC Petroleum & Conv. Stores
Doug Hunt	11
Mike Barlowe	NCEL

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzie W. Monroe	NC ANPA
Jon Peters	JPA Assoc
Bill Hester	W.F. Hester, Jr.
Eddie Greene	AB College
Chris Stanley	Intern
JOE LANIER	SEN WICKER
Thom Yorke	R-Lead
Jonny Greenwood	R-Lead
L. Andrews	NCFB
DAVID BARNES	Pamm Sponsill
John Polinard	NCRDA

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 15, 2009

Name of Committee — **Date**

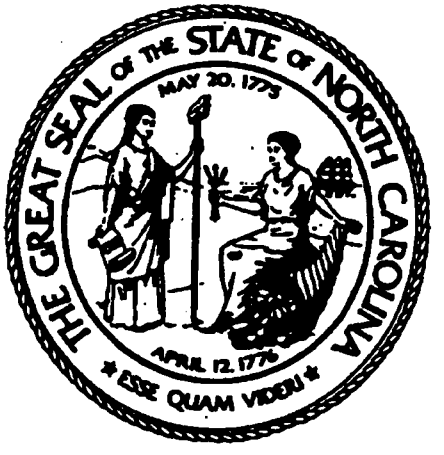
VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
LC Pennington	MCIC
FRAN PRESTON	NCRMA
[illegible]	JD, AL, PA
[illegible]	NCAHP
John Bourbeau	AstraZeneca
Barbara Carnley	BCBSNC
Jim Stewart	NC Chamber
Jorge Saddatha	PBV
John McAlister	NC Chamber
JOHN GOODMAN	

STATE OF NORTH CAROLINA

FINAL REPORT

GOVERNOR'S COMMISSION TO MODERNIZE STATE FINANCES



December 2002

OVERVIEW

In February 2002, Gov. Mike Easley issued an executive order creating the Commission to Modernize State Finances and named Thomas Ross, the executive director of the Z. Smith Reynolds Foundation, as its Chair. The Governor named 15 other North Carolinians with broad expertise to the Commission, which has met monthly since its appointment. The Commission members are listed in one of the appendices.

Governor Easley created the Commission out of a recognition that the state's fiscal system faces long-term challenges. Reform is crucial in order for the state and local governments to be successful at meeting the needs of their citizens. The Commission was charged with the task of modernizing state finances to ensure that the state's revenue system was more stable, fair and sufficient over the long term. Unlike the 2001 Efficiency and Loophole-Closing Commission, the Modernizing State Finances Commission did not have a specific revenue target to achieve. Rather, the Governor sought recommendations and insight as to crucial improvements for the long-term fiscal health of North Carolina.

THE GOALS OF THE COMMISSION

In order to guide its work, the Commission discussed and approved several principles as the goals of the Commission. These goals included:

1. *Equity.* A revenue system that ensures that all taxpayers pay a fair and equitable share of their income and wealth in state and local taxes. Those who benefit from services appropriate for user fees should pay the true cost.

2. *Competitiveness.* A revenue system that ensures that North Carolina remains competitive with other states in tax and revenue policy and promotes long-term, sustainable economic development, job creation and growth.

3. *Sufficiency.* A revenue system that provides enough resources over time to provide essential government services without wide variances from year to year.

4. *Simplicity.* A revenue system that is easier for taxpayers to understand and comply with and for administrators to administer.

5. *Efficiency.* A revenue system that does not interfere unduly with good economic decisionmaking.

6. *Appropriate Federalism.* A revenue system that provides both state and local government with appropriate tools for raising revenue to meet the growing needs of each level of government. The system should include consideration of federal tax policy for simplicity, uniformity and deductibility.

Various members of the Commission noted the tension among these goals.

CURRENT SITUATION

The State-Local Partnership

Due to the wisdom and foresight of Governors and legislators of an earlier generation, North Carolina in 1921-33 committed itself to the state financing of the essential services that all citizens need wherever they live and should not vary substantially in availability and quality from county to county. One consequence of that policy decision is that North Carolina relies more heavily than does almost any other state on state taxpayers to finance roads, schools, corrections, and courts. Because the state does not levy a property tax, income taxes (individual and corporate), franchise taxes, sales taxes, and motor vehicle fuel taxes and fees are relatively higher in North Carolina than they are in many states. Property taxes are correspondingly lower here than in most states, because less reliance is placed on that source than in most states. Therefore, in any comparison of tax burdens from state to state, it is essential that both state and local taxes be combined in order to gain a valid understanding of the subject.

In 1998-99 (the latest year available), North Carolina's state and local tax burden combined ranked 29th in the nation on a per-capita basis and 33rd as a percent of personal income. The state ranks 17th in per capita state taxes and 38th in per capita local taxes. In that year, North Carolina state government levied 71 percent of state-local taxes. Nationally, state governments levy 61 percent of the total. All of our neighboring states require local governments to fund a greater share of the state-local tax burden than our state.

The table below shows the source of major taxes as a percent of total state and local taxes for North Carolina, the Mid Southeast (which includes the four bordering states and Kentucky), and the nation. It shows that North Carolina is more reliant on the income tax, and less reliant on sales and property taxes, than states in the region and the nation as a whole. Nationally, the property tax is the largest major source of state and local taxes and is the most stable tax.

Certain Taxes as a Percent of Total State and Local Taxes,
North Carolina, the Mid-Southeast, and United States, 1998-99 Fiscal Year

	North Carolina	Mid Southeast	United States
Individual Income	32.5%	26.2%	23.2%
Sales and Use	21.7%	26.8%	24.6%
Property	21.5%	24.3%	29.4%
Other	24.3%	22.7%	22.8%
Total	100%	100%	100%

The Current Budget Situation

This report comes in the wake of two successive years of substantial revenue shortfalls. General Fund revenues fell short of projections by almost four percent (or over $500 million) in 2000-01 and an unprecedented $1.55 billion (or almost 11 percent) in 2001-02. This instability provides one reason for the need for reform.

The Necessity of Change

The state's tax code was updated in the 1920's and 1930's, when agriculture and traditional manufacturing dominated the state's economy. Record numbers of local governments had defaulted on their bonds. Property taxes were the primary revenue source for state and local government, and the state faced massive budgetary shortfalls.

Much has changed in the decades since Governors Gardner and Ehringhaus confronted these tough issues. The state's economy has become increasingly service-based, with fully half of consumption from the service sector today. People shop over the Internet, not always at the local store. The manufacturing and agriculture sectors continue to shrink as a share of the state's employment. Once-dominant industries such as apparel manufacturing barely exist in the state any more.

The tax policy changes of the 1920s and 1930s have largely been beneficial. Today, more North Carolina local governments have AAA bond ratings, the highest possible, than in any other state. The state's per-capita income rose from 47 percent of the national average in 1929 to 90 percent of the national average in 2001, and the state has reversed decades of population decline and stagnation as more people choose to live and work in the Tar Heel state.

The expectations of government have changed as well over time. Medicaid, the fastest-growing and second-largest item in the state budget, was not even created until the 1960s. For the first time, North Carolina has eclipsed the national average in terms of the rate of college attendance, as new generations find that postsecondary education is crucial for success in the global economy and older generations find that their workplaces are disappearing and their skills need upgrading. The environment and urban growth management are relatively new concerns for North Carolina.

The late 1990s were an unprecedented good time for state governments across the country, and North Carolina was no exception. The combination of a soaring stock market and the increase in consumption over saving spurred rapid growth in income and sales tax yields. But now the subsequent decline and ongoing volatility of financial markets and the growth in personal debt raise questions about whether that pace of revenue growth will ever be seen again. Many believe that it will not.

North Carolina needs a finance system that reflects all of these new realities. The state must make changes to ensure that our economic growth can continue, that adequate services

can be provided, that the burden for government spending is spread fairly, and that emergencies – both natural and economic – can be withstood.

Tax Reform Efforts

The Commission to Modernize State Finances is the latest in a long line of efforts to address tax reform issues. North Carolina's leaders of both parties have recognized the need to make changes, although these changes have been slow in coming. In the late 1980s, the state moved to conform its income tax more closely to that of the federal government, eliminating thousands of North Carolinians from the income tax rolls. In the early 1990s, the Economic Futures Study Commission noted:

> Modernization also requires that the state tax system be made more responsive to the future growth of income and consumption in North Carolina. If this goal is not achieved, then the General Assembly will be forced to result time and again to ad hoc measures to increase revenues or control spending. By their nature, ad hoc revenue and expenditure adjustments under severe budget pressure are unlikely to contribute to tax equity or tax modernization, except by accident (p. 17).

This quote is equally valid today. The 1991 Commission recommended taxation of services and a reduction in the use of corporate incentives, two items discussed by this Commission. Within the past few years, both the General Assembly and Governor Easley have appointed commissions to make recommendations about the improvement of the tax code. The 2001 Governor's Efficiency and Loophole-Closing Commission made several recommendations to end tax preferences, the vast majority of which were ultimately adopted by the General Assembly. The 2001 Commission, which met for two months, urged further study of many of the issues that this Commission examined in its work. Certainly this Commission's work will not be the final word on tax reform. But it continues the discussion on this important matter.

THE PROCESSES OF THE COMMISSION

The Commission has been organized into three subcommittees: the New Economy subcommittee, the Tax Simplification subcommittee, and the Intergovernmental Relations subcommittee. Due to staff and member time conflicts, most of the work in recent months has been done in full Commission meetings.

Subcommittees received input from state agencies, including the Departments of Revenue and Commerce; local government associations and officials; nongovernmental tax experts; and taxpayer representatives.

At its October meeting, the Commission authorized Chairman Ross, the three subcommittee chairs, and Commission staff to delineate a series of recommendations that meet the Commission goals and reflect the Commission's deliberations. Those recommendations have

largely been amended or accepted, and some other recommendations are included in this report.

THE PROPOSED RECOMMENDATIONS – MOVE TO BROADER BASES AND LOWER RATES

The overall recommendation of the Commission is that state and local taxes have broader bases and, in some instances, lower rates. This general recommendation is the best way to ensure simplicity, fairness, sufficiency and stability.

Taxes

1. Sales Taxation

The sales and use tax generated the most discussion by the Commission, perhaps because it has been widely recognized as one of the major taxes most impacted by structural changes in the economy and by economic downturns. Last year, the state sales tax generated over $3.7 billion in revenue, although sales tax revenues fell short of projections by over six percent. Most economists agree that sales tax revenues in recent years have been greatly aided by the increase in Americans' consumption patterns, a trend that many believe cannot continue.

Today, most North Carolina consumers pay six and one-half or seven percent on most tangible goods and a limited number of services. Currently, the state sales tax rate is four and one-half percent on most tangible goods and a very limited amount of services. Local governments receive two or two and one-half percent, distributed partially on a point-of-collection basis and partially on a per-capita basis. (Mecklenburg County levies an additional one-half cent sales tax). Effective December 1, 2002, counties were permitted to levy an additional one-half cent sales tax by action of their boards of county commissioners. A large majority of counties have done so.

The sales tax is levied at different rates on different items. Manufactured homes, utilities, satellite television, airplanes, boats, manufacturing machinery – all of these items are taxed at rates between one and six percent at the state level. These differential rates increase the complexity of the tax code.

The sales and use tax faces two major challenges. First, the economy is growing substantially more dependent on services, thereby diminishing the current sales tax base, which

is primarily goods-based. Second, the growth in the use of the Internet and mail-order merchants to purchase taxable items makes compliance with sales and use tax more difficult, because many of these merchants do not have sufficient presence in North Carolina to be required to collect and remit the tax. Many taxpayers do not understand, or do not comply with, the longstanding law that they pay use tax on purchases consumed in North Carolina for which sales tax was not charged by the out-of-state merchant and it is virtually impossible to enforce this provision.

The original intent of the sales tax was to levy a tax on transactions. Because the economy has changed so much in the past seven decades, many transactions are not taxed or taxed at a partial rate. The Commission recommendations in this area are an attempt to comply with the original intent of the sales tax. The Commission does so with the recognition that many states have not accomplished such a restoration at this time.

The Commission makes the following recommendations regarding the sales and use tax:

- **Eliminate the differential rates of taxation of goods and services and remove caps on the sales and use taxes.** As explained above, there are eight different state sales tax rates. Caps, such as $80 on an "item" of machinery and equipment, are difficult to use in a fair and efficient manner. The Department of Revenue has noted that the existing system of rate and cap preferences is administratively burdensome. The Commission concludes that items should either be taxed fully or not at all, including sales-like taxes on amusements and entertainment.
- **Eliminate sales tax exemptions.** The sales tax specifically exempts numerous items in G.S. 105-164.13 and G.S. 105-164.14. The Commission recommends that each of these exemptions should be considered for elimination if appropriate, especially because many of these exemptions have not been reviewed in many years.

  The exemption of the state sales tax on food is an example of these exemptions. Currently, the North Carolina consumer pays two percent sales tax on food purchased for home consumption. The revenues from this two percent tax benefit only local governments, as it was only the state sales tax on food that was eliminated in the late 1990s. No change was made in the local effective sales tax rate of two percent on food to consumers. The additional one-half cent sales tax that most local governments have authorized (and others may authorize) after December 1, 2002 does not include food in the base. The Commission notes that the difference in base at the local government level over the tax of food must be changed in order to comply with the Streamlined Sales Tax agreement to which North Carolina is

committed. The Commission also notes that the General Assembly recently acted to exempt food from the sales tax base.

- **Consider the expansion of the sales tax base to include more services.** The Department of Revenue's Tax Research Division has found that the possible tax base of services would nearly double the existing sales tax base of goods and utilities. As such, the estimated state sales tax rate could be reduced markedly if all goods and services were taxed at that rate. Because so few states tax services, the data used to perform these calculations may not be sufficiently reliable to use for revenue projections. The Tax Research Division has used gross receipts as a proxy for sales to customers, although such receipts may include some things not related to sales to consumers, such as earnings on investments or the sale of some asset.

  The Commission notes that the failure to tax services contributes to the discrepancies and inconsistencies in the sales tax code. The Commission cites the fact that a lawn mower is taxed, but lawn service is not, to support this observation.

  However, the taxation of services is very complicated and changes should not be made without further analysis. The Commission notes several issues that merit closer consideration than our time has allowed. These include:

  Appropriate exemptions. Some observers have noted that some services, such as medical care, are so important and basic that an exemption may be merited. Moreover, the Commission is wary of taxing business inputs, which are goods and services used in the production of a final good or service, as this results in a cascading effect and reduces efficiency. Many services that could be taxed, such as legal and accounting services, are used by businesses, and thereby complicate the efficiency problem. However, this issue is not new in North Carolina tax policy. An Office of State Budget and Management study showed that businesses paid almost 25 percent of the general sales tax (excluding food bought for home consumption) in 1990-91.

  Competitiveness. The taxation of services varies across states. Many states tax the repair of tangible personal property, while very few tax professional services. Any future analysis should benefit from experiences of other states in approaching service taxation.

  Representatives of service industries testified that such taxation would be burdensome and add to the regressivity of the system as a whole.

Services have become such an important part of the economy that any examination of a tax on consumption – the goal of the sales tax – should consider the inclusion of services in the tax base. Further, the services sector of our economy is expected to continue to grow at a much greater rate than that of goods.

- **Adopt changes required to comply with the Streamlined Sales Tax Agreement.** Representatives from 35 states, including North Carolina, recently completed a historic agreement to simplify state and local sales tax systems across the nation. Charles Collins, the former director of the Sales and Use Tax Division, was one of the co-chairs of the commission that negotiated this agreement after several years of work. The General Assembly has approved several interim steps to ensure our participation in the agreement. This Commission recommends the adoption of further measures to ensure equity among competitors and ease administrative burden on merchants and their customers.

- **Simplify the administration of local sales taxes.** The Department of Revenue has noted that it is difficult for taxpayers and the Department to determine the source county for local sales taxes. A state formula for distributing sales tax revenues to counties and municipalities would be the easiest way to ensure fairness and compliance.

2. *Individual Income Tax*

The individual income tax is the workhorse of the state tax system. It generates over one-half of all General Fund revenue. However, its actual yield has fallen short of projections in recent years. In 2001-02, it fell almost 13 percent – over $1 billion – short of its projection. This volatility is largely due to the drop in income from capital gains, bonuses and other such nonwage income. Currently, the state ranks 11th nationally in individual income tax burden, primarily because the state pays for a greater share of education, court, and correctional expenses than most other states. Local governments pay a smaller share of these expenses, leading to lower-than-average property tax burden described earlier.

The Commission has identified several major issues surrounding the income tax. First, North Carolina's income tax marginal rates are significantly higher than those in other states, especially for higher-income taxpayers. However, most of these taxpayers can deduct state income taxes paid from federal taxable income, thus reducing the real burden of their state income tax paid by nearly 40 percent. Second, the income tax has grown increasingly complex in recent years, due to a proliferation of tax credits and the growing gap between federal exemptions and deductions and state exemptions and deductions. Third, North Carolina's state

and local tax system is regressive, and a strong individual income tax helps offset that regressivity. Fourth, the state has higher marginal income tax rates than most Southeastern states, giving rise to a concern that the state has difficulty competing for crucial economic development and job creation opportunities. . The Commission also noted that a significant number of taxpayers have very little taxable income and pay a very small share of the income tax. In 2000, taxpayers with less than $10,000 in taxable income represented one-third (almost one million) of the taxpayers, but less than four percent of income taxes paid.

The Commission recommends the following:

- **The state income tax should tie more closely to the federal tax code.** The federal income tax code is progressive. The state could simplify the state income tax by eliminating most adjustments to federal definitions of income. Some adjustments, such as those required by the *Bailey* decision, would have to remain. The Commission notes that the simplest solution would be to use the federal definition of taxable income. However, that use would result in a substantial increase in the value of standard deductions and personal exemptions, and therefore would reduce state income tax receipts. An alternative would be to use a broader version of income, such as federal adjusted gross income or total income. The state could also use its own values for standard deductions and personal exemption. These changes would broaden the base and allow the tax rates to be lowered to levels similar to those in other states. There are 16 tax credits (outside of business tax credits) in the individual income tax code, many of which have very high error rates.

- **Adopt strategies to help low-income taxpayers.** Several Commission members believe an earned income tax credit, such as proposed by Gov. Easley last year, would provide targeted relief that offsets regressivity elsewhere in the system. The earned income tax credit is part of the federal tax system. Families with children and earnings below $30,000 are the primary recipients of the credit. However, the creation of a new credit when others are repealed adds some new administrative difficulty, although the tie to the federal credit may mitigate substantial enforcement issues. The Commission also discussed other alternatives to achieve the goal of relief for low-income income taxpayers. These include: a "no-tax" threshold for those with taxable incomes below $10,000 or a reduction in the beginning marginal income tax rate from six percent to a lower number.

3. Corporate Income/Franchise Taxes

The corporate income tax is one of the most volatile of all revenue sources. Its General Fund yield fell 30 percent below expectations last year, and was about half of its 2000 high. There are a number of reasons for the decrease in liability, such as declining corporate profits, the increased use of tax planning schemes by multistate corporations and the use of tax credits.

The state's corporate income tax rate of 6.9 percent is higher than rates in most of our competitor states. Because economic growth and job creation are so crucial to the ability of a state to meet its financial needs, changes to business taxation must be thoroughly analyzed so as to maintain a good business climate.

The Commission recommends the following:

- **Elimination or simplification in the use of tax credits.** Since 1996, the state has enacted a series of tax law changes geared to promote economic development (the William S. Lee Act). In 2002, the General Assembly enacted legislation to tighten eligibility for these tax credits, especially in urban counties. Gov. Easley has argued for reduced use of tax subsidies, replacing these subsidies with performance-based grants designed to increase efficiency. The Commission finds these efforts should be continued in order to help maintain our competitiveness.

  The Commission finds that a research and development tax credit should remain, due to its substantial economic benefits. The Department of Commerce and some taxpayers contend that North Carolina's tax incentives are less generous than those provided in other states.

- **Simplify taxation by moving to combined reporting by related entities, as required at the federal level.** In the past two years, the General Assembly has acted to limit the ability of related corporations to reduce their North Carolina tax liability. The move to a combined reporting system, required in many other states, may clarify the rules for both taxpayers and tax administrators. Combined reporting is required at the federal level and may help simplify the administrative burden for business taxpayers. The Commission recommends that this move be done carefully, as the effects on state revenues are not easily determined. Department of Revenue staff would have to be trained to handle this shift.
- **Modernize the franchise tax.** The Commission finds that the evolution of new forms of business organization has led to inequities in the imposition of franchise

taxes. The Commission recommends that the state impose the franchise tax on all types of business organizations, not just on traditional corporations. The Commission recommends that the revenues generated from this base broadening could be used to establish a minimum net worth threshold for payment of the tax. The franchise tax rate could also be reduced in the process.

- **Consider the effect of establishing a throwout provision.** held that all income of a multistate corporation should be taxed, and taxed only once, among states where the corporation conducts business. The majority of the states with corporate income taxes have a "throwback" or "throwout" provision to ensure that all of a corporation's income is taxed. A "throwout" rule provides that the corporation's sales to customers in states where it has no nexus, and therefore is not taxed, are not included in the calculation of state tax liability. However, the Commission recognizes that North Carolina's border states do not have a throwback or throwout rule, and that the General Assembly did not adopt the throwout provision that was approved by the House of Representatives as part of their original 2002-03 budget proposal.

- **Conform more closely to the federal definition of corporate income.** This simplifies tax administration and computation. There are now several dozen adjustments to the federal income in determining state income, and each should be evaluated on its merits. The interest expense deduction for financial institutions is the best-known example of these types of adjustments. The Commission also finds that North Carolina is one of the few states to use net economic loss rather than net operating loss in the calculation of state corporate income tax, and that the effects of using federal net operating loss instead of net economic loss be considered.

- **Consider the effects of a move back to the equal weighting of payroll, property and sales in determining the share of income taxed by North Carolina.** Currently, multistate corporations calculate their North Carolina income tax liability by determining their shares of property, payroll, and sales in North Carolina. In the late 1980s, the formula was changed from equal weighting of these three factors to a double-weighting of the sales factor. This change was made in order to provide relief to companies that own significant property and employ a significant portion of their total workforce in North Carolina. This weighting formula results in a net loss of approximately $60 million to the state

coffers when compared to the previous formula. Other corporations, especially those that conduct all of their business within North Carolina, have to pay higher corporate income taxes in order to compensate for this loss. For this reason, the Commission recommends consideration of the effects of returning to the previous formula. Most states, however, have moved to North Carolina's current system of "double-weighting" the sales factor in order to maintain competitiveness.

4. Other Tax Issues

The Commission notes that the state receives substantial revenue from taxes on specific products, such as alcohol, cigarettes, and gasoline. Some Commission members noted that these types of taxes may result in economic inefficiencies, as the singling out of certain products and industries violates the principle of broad bases and low rates. North Carolina alcohol taxes are generally higher than those in other states, while its cigarette taxes are far below the national average. The state has a higher than average gasoline tax, resulting from the fact that the state pays a higher than average share of the costs of road and highway construction than do other states.

The Intergovernmental Relations Subcommittee spent substantial time on local government finance issues. Because state-local roles were generally set in the 1930s, it is time for some updated changes. For this reason, the Commission recommends the following:

- **Shift Medicaid program costs from counties to the state government.** Medicaid expenditures are highest in the poorest counties in the state, because the program provides health care to low-income families, the aged, and the disabled. Because counties have no policy authority over Medicaid and many do not have the tax base to continue to fund a substantial share of this rapidly growing program, the state should pay all of the nonfederal costs of the program, as do over 40 other states. The Commission notes that the state half-cent sales tax levied in 2001 and due to expire on June 30, 2003 could be extended to pay for most of the current county share of Medicaid costs.
- **Establish a new State-Local Relations Commission.** In May, the Commission approved a recommendation to the Governor that he request that the General Assembly establish a Commission on State-Local Relations. This Commission should re-examine the ability of counties to provide crucial public facilities such as courthouses and public schools, the status of current functions of state and local governments, the ability of local governments to levy certain taxes from a menu authorized by the General Assembly, the

content of such a menu, and other issues that this Commission felt important, but beyond its scope and time. This Commission should have a definite sunset date and report back to the Governor and General Assembly as soon as possible.

- **Review the state unemployment insurance tax laws.** Although not part of the General Fund, unemployment insurance taxes should be examined as well in any comprehensive examination of the tax code. The Commission recommends that N.C. unemployment tax laws be reviewed and changed as needed to avoid the possibility that some entities may adopt techniques that artificially and unfairly reduce state unemployment insurance tax collections.

Other Nontax Finance Issues

1. Fees

The Commission believes that fees should be routinely evaluated to determine if they are covering the appropriate share of the cost of government services to which they apply. The Office of State Budget has produced a 359-page report on the various fees assessed by state government agencies and boards. The Commission recommends that the State Budget Office recommend an increase in fees to cover the cost of selected services, especially for those that have not been increased in several decades. This analysis should include consideration of the cost of collecting fees and perhaps recommend some fees to be eliminated.

For instance, some Commission members argued that some fees – or fee-like revenues such as privilege license taxes and installment paper taxes – are administratively burdensome for both state officials and taxpayers. The average privilege license tax is $185, with the average professional privilege license tax of $45. Repeal of some such fees that are not directly related to services, serving as *de facto* taxes, may also be appropriate.

2. Rainy Day Fund

North Carolina's Executive Budget Act requires that the state deposit 25 percent of the General Fund money remaining unspent at the end of the fiscal year into the state's Savings Reserve Account (the "rainy day" fund), until the fund reaches five percent of the prior year's general fund spending. While the state was able to reach this five percent target for some time, lawmakers decided to use rainy day funds for Hurricane Floyd relief and recovery and for payment of court judgments and have not maintained the fund at an appropriate level.

Recent research on economic downturns in North Carolina history showed that the recessions in recent years have resulted in increased severity of the revenue gap. The research

concluded that a five percent rainy day fund would fall far short of the likely need, if the goal were to maintain the same level of expenditures in times of shortfall, while making no change in revenue laws.

The Commission recommends that the rainy day fund cap be raised substantially above the level of five percent. The Local Government Commission requires that local governments maintain a fund balance of at least eight percent in order to issue debt, far above the state's present cap of five percent. The Commission believes that the state should replenish the fund as quickly as possible after its expenditure. Rather than relying exclusively on monies left over at the end of the year to replenish the fund, as is the current case, the General Assembly should appropriate monies to ensure that the fund remains healthy. Moreover, the state should more strictly limit the uses of the rainy day proceeds; specifically, to stabilize the general fund in an economic downturn.

3. Future Tax Changes

A number of observers have attributed the state's current budget problems to the $1.5 billion in permanent annual tax cuts enacted by the General Assembly in the late 1990s. These tax cuts were not accompanied by commensurate reductions in state spending, which have contributed to a structural deficit.

The state tax cuts were permanent in nature. This permanent loss of taxes through elimination of entire tax schedules makes a future increase in taxes even more difficult.

The Commission recommends that future tax relief be provided through one-time rebates or temporary rate reductions. Minnesota, Oregon and Colorado are among the states that provided rebate checks to their taxpayers when times were good and have ceased to do so during these challenging times, thus mitigating the need for tax increases.

4. Tax Procedure Reforms

Any discussion of the tax code should include discussion of tax procedures. The complexity of the economy and the tax code make tax administration more difficult for tax administrators and taxpayers. The Commission finds that it is important to reduce the possibility of conflicts over interpretation of state tax laws.

- **Clarify the Secretary of Revenue's authority to address inappropriate tax planning strategies by taxpayers.** The Commission recommends clarification of the Secretary of Revenue's power to ensure that it is clear that the Secretary can

void intercompany and other accounting transactions that are distortive, do not properly reflect state taxable income, or serve no legitimate business purpose.

- **Review tax hearing and appeal processes.** The Commission recommends a review of the administrative tax hearing process within the Department of Revenue, the appeal process to the Tax Review Board, and the Property Tax Commission for opportunities to streamline and otherwise improve the process, including the possibility of a new tax court.

5. Other Tax Policy Ideas

The Commission also heard testimony on, but did not have time to consider fully, some other tax policy proposals. The Commission makes no recommendations in regard to these ideas, other than to identify them as worthy of mention.

- Increase the cigarette tax in order to reduce the burden of other taxes. North Carolina's cigarette tax is third-lowest in the nation and the revenues from an increase could be used to replace revenues lost from a reduction in burden of other taxes.
- Adoption of "green taxes and fees." Testimony from environmental advocates found that "green taxes and fees" could result in increased revenue, better environmental outcomes, and improved adherence to the Commission's goal that those who benefit from a service pay for its cost.

CONCLUSION

The budget crisis may provide the motivation for necessary changes in how our state and local governments obtain the revenues to provide an appropriate level of public services. The last wholesale revision of North Carolina's government finances took place during the Great Depression. Perhaps these important recommendations will be accomplished in a similar manner. The Commission is one of a long line of groups to recommend crucial changes to the tax code. This long recognition that long-term systemic changes are required will help ensure that North Carolina emerges with a more stable, fairer and simpler system of raising revenue for important public services.

APPENDICES

Appendix 1 - List of Commission Members

Appendix 2 – Sources for General Fund Revenue, as a Pie Chart

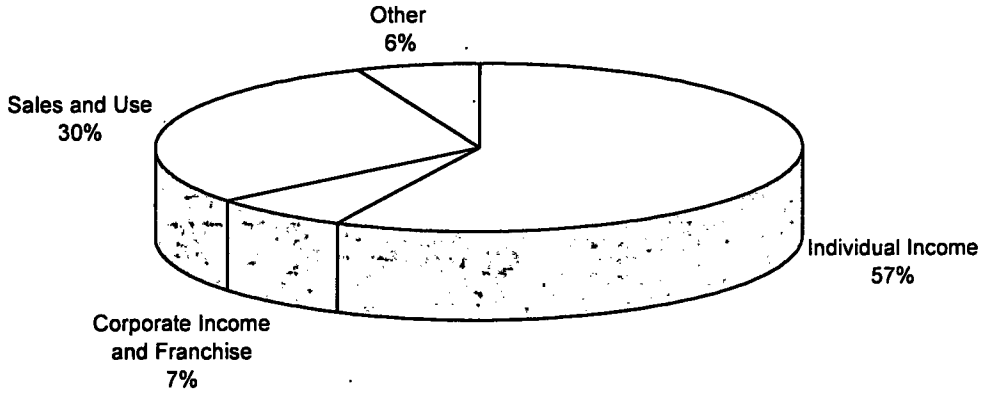
Appendix 3 – General Fund Sources of Revenue Over Time

Appendix 1: List of Commission Members

The Honorable Thomas Ross, Chairman	Winston-Salem
The Honorable Gordon Allen	Roxboro
The Honorable Daniel Clodfelter	Charlotte
The Honorable Wilma Sherrill	Asheville
The Honorable David Hoyle	Dallas
Mr. John Medlin, Jr.	Winston-Salem
The Honorable Lucy Allen	Louisburg
Mr. Charles Mercer, Jr.	Raleigh
Mr. Michael Hannah	Raleigh
Ms. Kay Hobart	Raleigh
Mr. James Talton, Jr.	Raleigh
Mr. John Sanders	Chapel Hill
Mr. Jack Cummings, Jr.	Raleigh
Dr. Ben Russo	Matthews

Appendix 2

NORTH CAROLINA GENERAL FUND TAX COLLECTIONS
(2001-02)



Individual Income	$7,134,629,832
Corporate Income and Franchise	855,593,220
Sales and Use	3,705,769,832
Other	749,616,899
Total	$12,445,609,783

N. C. Office of State Budget and Management

Summary of Actual Tax Revenue Collected by Category

For Fiscal Years 1980-81 Through 2001-2002

FY	Ind Income	%	Sales	%	Corporate	%	Franchise	%	Other	%	Total
1980-81	1,303.5	45.8%	737.1	25.9%	279.8	9.8%	235.3	8.3%	290.2	10.2%	**2,845.9**
1981-82	1,449.4	47.1%	777.4	25.3%	277.4	9.0%	269.8	8.8%	303.7	9.9%	**3,077.7**
1982-83	1,550.1	47.3%	823.4	25.1%	306.5	9.3%	298.6	9.1%	300.4	9.2%	**3,279.0**
1983-84	1,785.0	46.8%	999.0	26.2%	367.8	9.6%	326.8	8.6%	335.8	8.8%	**3,814.4**
1984-85	2,023.5	46.7%	1,155.8	26.7%	490.0	11.3%	310.1	7.2%	357.3	8.2%	**4,336.7**
1985-86	2,206.8	47.0%	1,380.4	29.4%	510.7	10.9%	197.6	4.2%	399.1	8.5%	**4,694.6**
1986-87	2,565.9	49.5%	1,451.6	28.0%	563.5	10.9%	206.5	4.0%	392.9	7.6%	**5,180.4**
1987-88	2,686.8	48.4%	1,555.3	28.0%	626.0	11.3%	234.8	4.2%	448.5	8.1%	**5,551.4**
1988-89	3,002.3	50.6%	1,681.7	28.4%	549.4	9.3%	236.3	4.0%	458.9	7.7%	**5,928.6**
1989-90	3,390.4	51.7%	1,762.7	26.9%	557.8	8.5%	262.8	4.0%	587.8	9.0%	**6,561.5**
1990-91	3,534.5	52.8%	1,682.3	25.1%	493.2	7.4%	372.9	5.6%	609.7	9.1%	**6,692.6**
1991-92	3,583.0	48.2%	2,161.4	29.1%	606.2	8.1%	407.0	5.5%	680.9	9.2%	**7,438.5**
1992-93	3,992.0	50.6%	2,344.1	29.7%	429.8	5.5%	420.0	5.3%	697.1	8.8%	**7,883.0**
1993-94	4,254.5	50.0%	2,578.9	30.3%	487.8	5.7%	439.3	5.2%	756.2	8.9%	**8,516.7**
1994-95	4,665.5	49.8%	2,781.7	29.7%	649.4	6.9%	458.1	4.9%	811.2	8.7%	**9,365.9**
1995-96	4,800.0	50.7%	2,958.1	31.3%	673.9	7.1%	355.9	3.8%	670.8	7.1%	**9,458.7**
1996-97	5,330.0	52.1%	3,127.7	30.5%	717.8	7.0%	387.8	3.8%	675.9	6.6%	**10,239.2**
1997-98	6,028.9	54.4%	3,255.4	29.3%	696.3	6.3%	407.3	3.7%	704.6	6.4%	**11,092.5**
1998-99	6,606.5	55.2%	3,376.2	28.2%	848.5	7.1%	409.6	3.4%	724.4	6.1%	**11,965.2**
1999-00	7,080.1	57.1%	3,354.9	27.1%	903.2	7.3%	307.0	2.5%	745.8	6.0%	**12,391.0**
2000-01	7,391.4	58.8%	3,435.6	27.3%	460.3	3.7%	580.4	4.6%	705.4	5.6%	**12,573.1**
2001-02	7,134.6	57.3%	3,713.1	29.8%	409.3	3.3%	446.3	3.6%	748.6	6.0%	**12,451.9**

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Institute for Emerging Issues

Financing the Future

Roland Stephen

April 15, 2009

NC STATE UNIVERSITY

Institute for Emerging Issues

Presentation Outline

- Who we are and what we did
- Changes in North Carolina's Economy
- Problems with North Carolina's system of revenue
- Elements of reform

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Institute for Emerging Issues

Who We Are

- The Institute for Emerging Issues (IEI) is a public policy, think-and-do tank.
- We convene leaders from business, non profit organizations, government and higher education.
- We tackle some of the biggest issues facing North Carolina's future growth and prosperity.

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What We Did

- In 2005 IEI convened three working groups
- 2006 Emerging Issues Forum--options for reform
- Five Community Forums held across the state
- Many presentations to local government, chambers and community groups
- Participation in Study Commission
- Organized Business Committee on Financing the Future (BCFTF).

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North Carolina's Future

- **Population Change**: Urbanization, Composition, Dependency Ratio
- **Economic Transformation**: Knowledge and Service-based economy
- **Financial Demands**: Healthcare, K-12, Higher Education, Infrastructure

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Shift to a Knowledge Economy

% Share of NC's Economy: Old Versus New Sectors

Sectors	1977	2005
Tobacco, Textiles and Apparel	22%	7%
Pharmaceuticals, Technology, Food Processing, Banking, Auto Parts	10%	17%

Source: *North Carolina in the Connected Age* by Michael Walden (UNC Press, 2008)

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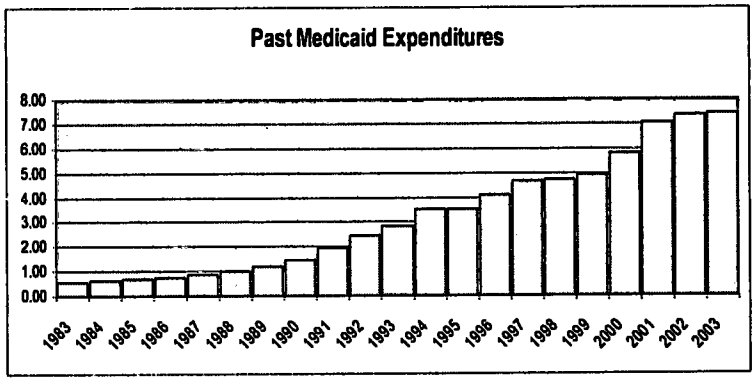
Financial Demands

Medicaid expenditures have risen rapidly and will continue to rise as the population ages.



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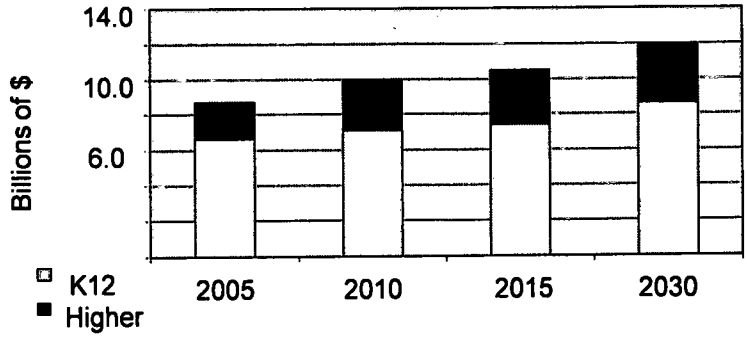
Financial Demands

The cost of higher education will rise while the cost of new schools will be concentrated in rapidly growing urban areas.



Critical Question

What are the tax policy implications of the dramatic changes facing North Carolina?

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State Revenues: Problems

- Balance Among Sources
- Narrow Bases
- High Rates
- Complex
- Volatile
- Unfair
- Inadequate

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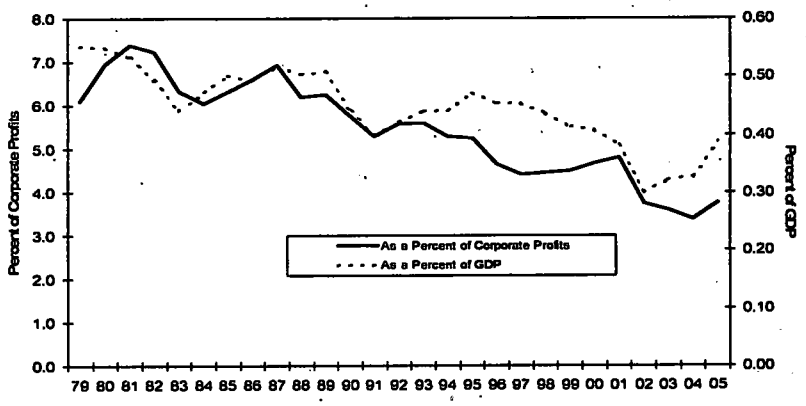
State Revenues: Corporate Income Tax



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State Revenues: Corporate Income Tax

Causes of shrinking base:

- State credits and exemptions
- Tax planning
- Federal policy (depreciation etc.)

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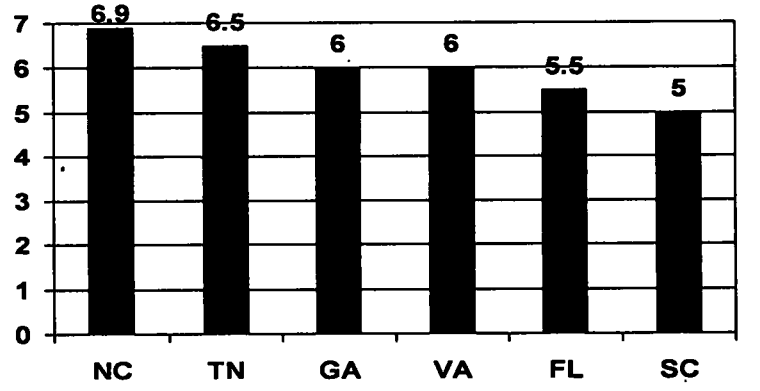
State Revenues: Corporate Income Tax

Corporate Income Tax Rate (TY 2008)



Source: Federation of Tax Administrators

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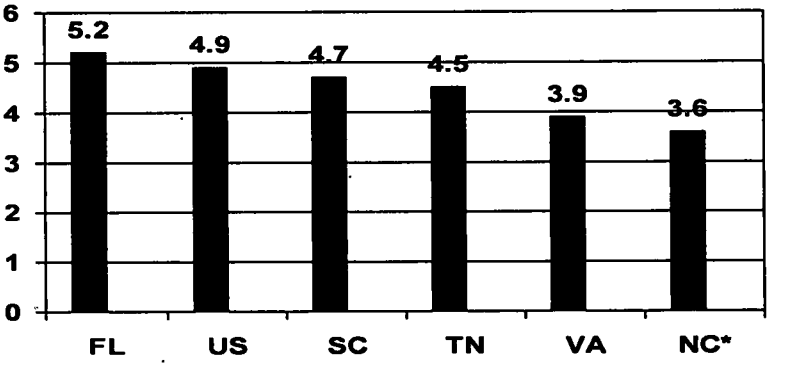
State Revenues: Corporate Income Tax

Business Tax Burden (as % of GSP)



Source: Ernst & Young. "Total State and Local Business Taxes: 50 state estimates for fiscal year 2008," January 2009.

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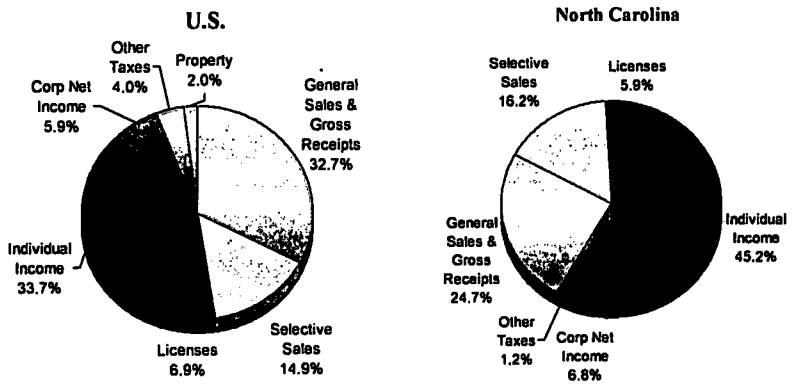
State Revenues: Personal Income Tax



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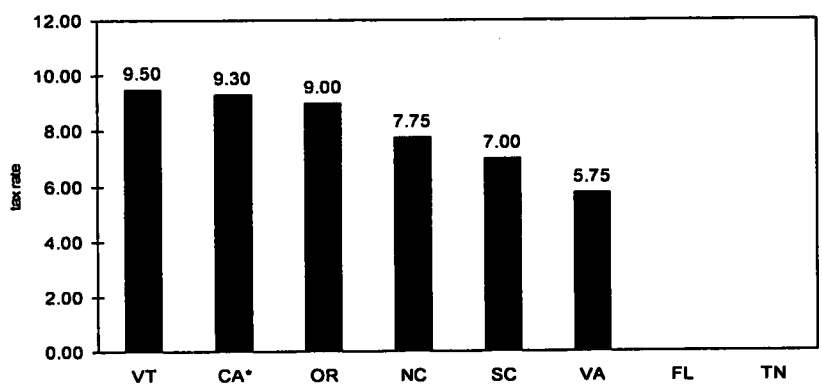
State Revenues: Personal Income Tax

Top Marginal Income Tax Rate, Selected States, 2008



Source: Federation of Tax Administrators, March 2006.

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State Revenues: Sales Tax

- Relies on a shrinking base.
- Regressive dependence on goods
- Complex
- Volatile

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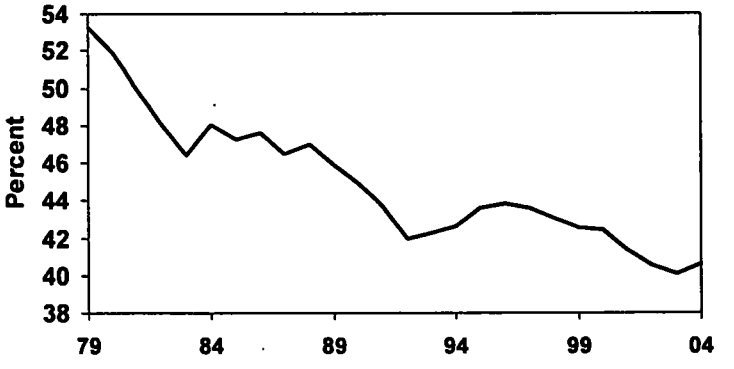
State Revenues: Sales Tax

The sales tax base is shrinking as percentage of the economy.



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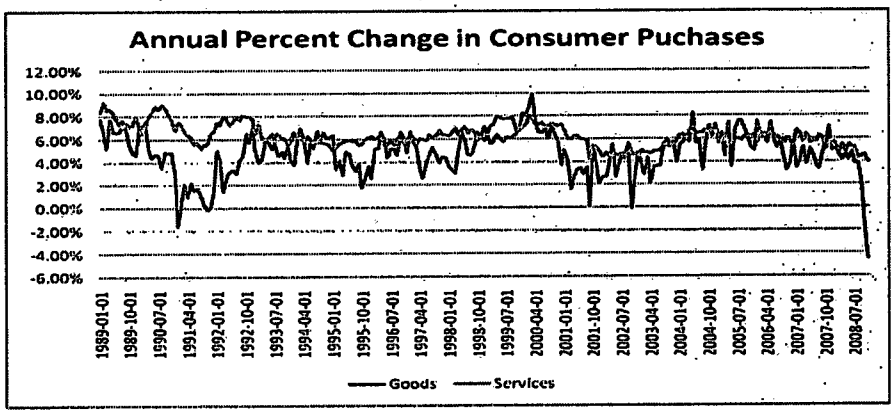
State Revenues: Sales Tax

The sales tax base rests on the more volatile component.



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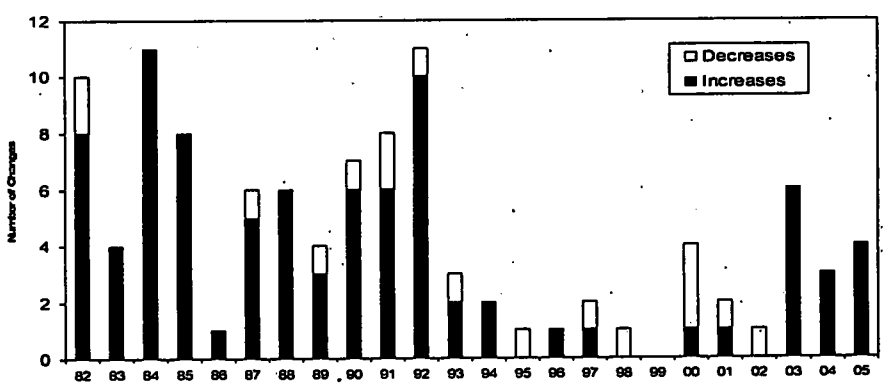
State Revenues: Sales Tax

As a result sales tax rates are constantly raised.



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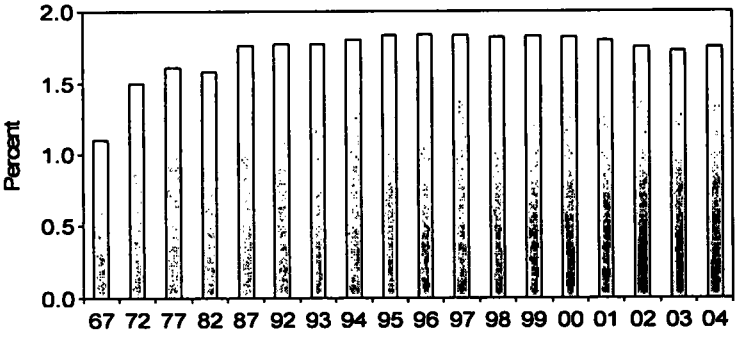
State Revenues: Sales Tax

Yet rates increases do not raise total revenues

National sales tax revenues as % GDP.



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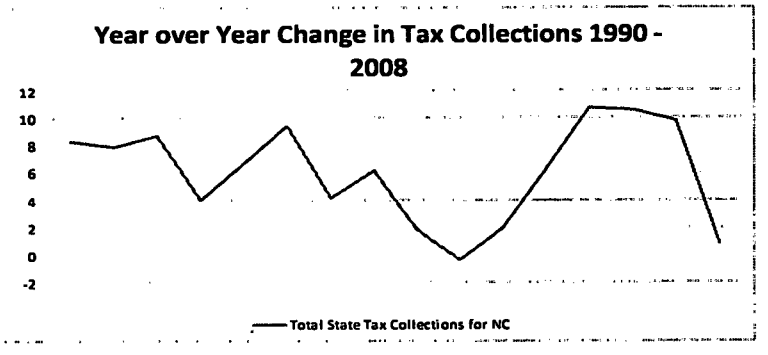
State Revenues Overall

High rates and narrow bases contribute to volatility:



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Local Revenues and Responsibilities

- Match revenues to responsibilities.
- Ensure adequate state funding for state responsibilities (schools)
- Provide local revenues for new local responsibilities (roads).

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State Revenues: Solutions

Comprehensive change to be achieved through:

- Balance among sources of revenues
- Broad base
- Low rates

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State Revenues: Solutions

BCFTF Recommendations:

- Explore alternative ways to tax corporations in the place of an income tax
- Use Federal Adjusted Gross Income for calculating personal state income taxes and reduce rates
- Extend the sales tax to many services and previously exempted tangible items and reduce rates
- Local responsibilities should have adequate and appropriate sources of funding

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"North Carolina needs a tax system that is competitive, stable, adequate and fair if we are to prosper in the 21st Century economy."

If not now, when?

If not us, who?

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EMBARGOED UNTIL
10:00 AM, APRIL 14, 2009

FOR MORE INFORMATION:
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Statewide Committee Announces Recommendations to Create Stable Financial System for North Carolina

Raleigh, N.C., April 14, 2009 – Today the Institute for Emerging Issues' (IEI) Business Committee on Financing the Future (BCFTF) released its Statement of Principles on tax modernization for North Carolina. The Principles provide a roadmap for North Carolina to address the current financial crisis and jump-start new businesses and job creation in the months and years ahead. By acting now North Carolina will take the lead as a state with a business friendly environment.

The BCFTF, co-chaired by three of the state's eminent business leaders, Jack Cecil, John McNairy, and Richard Vinroot, identified principles that can lower tax rates, decrease the state's dependence on the income tax, and preserve many state and local programs that come from volatile state revenues.

"North Carolina needs a 21st century financial system if it is going to remain competitive in the years ahead," said BCFTF co-chair Richard Vinroot. "We need comprehensive change that works well for all North Carolinians."

Recommendations include:

- Corporate and personal income tax rates should be reduced to levels that make North Carolina competitive with other states, and many exemptions and loopholes should be eliminated.
- The sales tax rate should be lowered, and the tax base should extend to many services and previously exempted tangible items.

For more information on the recommendations, other background materials, and a helpful, online tax calculator, go to www.emergingissues.org.

The BCFTF made its recommendations based on the view that a modern tax system should be characterized by three basic principles: simplicity, fairness and a minimal number of exemptions. Specifically, the committee recommends extending the sales tax base to some services and previously exempt goods, enabling North Carolina to lower sales tax rates and reduce revenue volatility. Similarly, the BCFTF also suggests expanding the income tax base – both corporate and personal – through the elimination of exemptions so that the state may lower overall income tax rates.

The committee, comprised of high-level business leaders representing the state's varied regions and industries, paid particular attention to the state's current economic crisis and believes that with comprehensive reform, North Carolina can limit the impact of future economic uncertainty. Currently, the state depends heavily on the income tax and a severely eroded sales tax base, both of which decline dramatically during periods of high unemployment and low consumer spending.

IEI's multi-year program of work on tax and finance, *Financing the Future*, has engaged leaders and citizens across the state in a multi-year program of work aimed at preparing our state for success in

the years ahead. The work of this committee represents the culmination of these efforts, and should give courage to the state's leaders as they wrestle with a very uncertain future.

About IEI

IEI is a think-and-do tank focused on tackling big issues that affect North Carolina's future growth and prosperity. From energy, to fiscal modernization, to improving our infrastructure systems, IEI takes the lead in convening state leaders in business, higher education and government to prepare for future challenges and opportunities. To learn more about IEI, please visit www.emergingissues.org.

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Business Committee on Financing the Future

Statement of Principles: Tax Modernization in North Carolina

North Carolina's existing tax system needs to be overhauled. Our state's economy and population have changed dramatically over the past century, yet our financial systems have not kept pace. As a result, while the overall tax burden is relatively low, revenues are extremely volatile due to an overdependence on the income tax and a severely eroded sales tax base. The sales tax rate is higher than it could be because the tax applies to an increasingly limited range of goods. Personal and corporate income tax rates are above those in surrounding states.

The current financial crisis makes all these problems even worse. If we act now, a comprehensive overhaul will place our state in a much better situation for the future. Other states with similar problems have made, or have proposed, reforms to meet the demands of the future. North Carolina cannot be left behind. We must create a tax system that is competitive, stable, adequate and fair if we are to prosper in the 21st Century economy.

The Business Committee on Financing the Future (BCFTF) believes that a modernized system should be characterized by three basic principles: simplicity, fairness, and a minimal number of exemptions. The goal should be comprehensive change that is revenue neutral, fundamentally pro-growth, and yet offers a variety of improvements when all elements are considered together.

Sales Tax

To decrease the volatility of revenues and to allow a substantial reduction of the tax rate, the BCFTF believes that the sales tax should extend to many services and previously exempted tangible items but not medical services and prescription drugs. The committee supports a compensation mechanism for low-income taxpayers if the sales tax is broadened to include food.

The committee believes that an important purpose of extending the sales tax to include previously exempt goods and services is a reduction in income tax rates.

Income Tax

The BCFTF supports using Federal Adjusted Gross Income as the base for calculating personal state income taxes, with minimal deductions and exemptions. At the same time, the committee also supports reducing marginal individual income tax rates to a level that

is competitive with other southeastern states, while maintaining a progressive rate structure.

The committee recognizes that there may be alternative ways to tax corporations in the place of an income tax, noting that there are other states attempting this. The Committee suggests further study of "best practices" by the appropriate public bodies.

Local Revenues and Responsibilities

The BCFTF believes that all local responsibilities, new and old, should be consistent and should have adequate and appropriate sources of funding. Funding should be provided through a suitable balance of local revenue options and state assistance designed to compensate for variations in the local tax base.

The Committee believes that local government will inevitably benefit from comprehensive tax reform.

Conclusion

The overall purpose of the changes outlined above is to prepare North Carolina for success in a 21st. century economy by providing it with a system of tax and finance that is stable, fair and adequate to needs of future generations.

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Business Committee on Financing the Future

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Biltmore Farms, Inc.

John McNairy
President
Tidewater Transit Co., Inc.

Richard Vinroot
Robinson, Bradshaw & Hinson, P.A.

Members:

David Brody
Managing Partner
Brody Associates

John Crumpler
General Partner
Hatteras Venture Partners

Don Curtis
Founder
Curtis Media Group

Sharon Decker
Founder and Principal
The Tapestry Group

Art Fields
President and CEO
Crescent Resources, LLC

Carroll Gray
President
Design Strategies

Gerry Hancock
Partner
Everett, Gaskins, Hancock & Stevens, LLP

Steve Jones
Dean, UNC Kenan-Flagler Business School
UNC-Chapel Hill

Kelly King
President and Chief Operating Officer
BB&T Corporation

Leroy Lail, Jr.
Chairman
Hickory Furniture Mart

Tom Nelson
Chief Executive Officer
National Gypsum Company

Carlos Sanchez
Director of Regulatory & External Affairs
AT&T

Lanty Smith
President and CEO
Tippet Capital

David Stevens
Regional President, Piedmont-Triad Region
Wachovia

Robert Stolz
Chief Executive Officer
The Wurth Group International

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Carolina Tractor

John Whitaker
Chairman and CEO
Inmar, Inc.

Jim "Butch" Williams, Jr.
Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP

Stephen Zelnak
Chairman and CEO
Martin Marietta Materials, Inc

Sampling of Prior Study Committee Recommendations

- **1951 Report from the Commissioner of Revenue to the Governor, the Advisory Budget Commission, and the Budget Bureau**
    - In the report, Commissioner Eugene Shaw proposed that the State's need for substantially large revenue could be met by a sweeping revision of the sales tax law and the elimination of many sales tax exemptions. While recognizing that "[E] ach of the existing exemptions has a compelling reason for its place in the law." and "There is no doubt that those seeking further exemptions could present clear, cogent, convincing, and compelling reasons why other items or transactions should not be added to the list.", he stated that "Practically speaking, an exemption in a taxing statute is the opening wedge which destroys the efficiency of enforcement. It is like a small hole in a dam and begins first with a drip, then with a trickle, then a stream, then a flow, then a gush, and finally a break which destroys the dam."
    - He proposed imposition of the sales tax on all forms of amusement and entertainment, on auto service and repairs, on all services and repairs to tangible personal property, and on all repair services to plumbing, electrical, heating, and air conditioning equipment. He reasoned that all those service and repair organizations collect tax on materials, but not on labor. It would be a logical extension to levy the sales tax on the entire invoice.

- **1967-68 Tax Study Commission**
    - Privilege license taxes should not be levied as a revenue measure. The reasons include the multiplicity of taxes; the 'hodge podge' of bases, rates, and measures; and the high cost of collection compared to the revenue yield.

- **1991 Economic Future Study Commission**
    - State's revenue structure should be modernized to reflect changes in the economic environment and to insure that sufficient revenues are generated without having to repeatedly resort to *ad hoc* revenue adjustments.
        - Sales tax should apply to goods and services purchased by individuals for personal use; service purchased primarily by businesses should not be included in the base.
        - Eliminate sales tax on tangible personal property purchased by business for use in providing good or service.
    - State corporate tax incentives are largely ineffective and undermine tax fairness and simplicity objectives.
        - Eliminate all special exemptions, deductions, and credits under the corporate income tax.

- **Governor's Commission on Tax Loopholes and Government Efficiencies, 2001**
    - Equalize tax rates on amusements and entertainments.
    - Include limited liability companies in the franchise tax base.
    - Conform to federal law on the taxation of social security benefits.
    - Expansion of the sales tax base to include repair and installation of tangible personal property and personal services.
    - Establish a corporate income tax throwback rule.

- Study whether the insurance guaranty association tax credit should be continued, capped, or eliminated.
- Evaluate elimination of the 1%/$80 sales tax on manufacturing machinery.
- Study the impact of tax policy regarding tobacco and alcoholic beverages on the low-income population in NC.

- **Governor's Commission to Modernize State Finances, 2002**
  "Move to Broader Bases and Lower Rates"
  - Eliminate sales tax exemptions.
  - Expand sales tax base to include more services.
  - Use a broader version of individual income, such as AGI.
  - Adopt strategies to help low-income taxpayers, such as an Earned Income Tax Credit.
  - Adopt a 'no-tax' threshold for those with taxable incomes below $10,000 or a reduction in the beginning marginal income tax rate from six percent to a lower number.
  - Eliminate use of corporate tax credits.
  - Retain research & development tax credit.
  - Move to combined reporting by related entities.
  - Impose the franchise tax on all types of business organizations.
  - Establish a minimum net worth threshold for payment of the franchise tax.
  - Consider the establishment of a throwout provision.
  - Consider moving back to the equal weighting of payroll, property, and sales in determining the share of income taxed by NC.
  - Recommends future tax relief be provided through one-time rebates or temporary rate reductions.
  - Clarify the Secretary of Revenue's authority to address inappropriate tax planning strategies by taxpayers.

- **State and Local Fiscal Modernization Study Commission, 2008**
  - The individual income tax base should be broadened to federal AGI with minimal exclusions and deductions.
  - The corporate income tax base should be broadened by requiring some method of combined reporting, with revenue gains used to reduce the rate.
  - The sales tax base should be broadened.
  - Tax rates should be reduced.
  - The number of low-income taxpayers should be reduced.

- **IEI Business Committee on Financing the Future, 2009**
  "Modern tax system should be characterized by three basic principles: simplicity, fairness, and a minimal number of exemptions."
  - Reduce corporate and individual income tax rates to levels that make NC competitive with other states.
  - Use federal AGI as the base for calculating personal state income taxes.
  - Eliminate many income tax exemptions and deductions.
  - Extend sales tax base to services and lower sales tax rate. Medical services and prescription drugs should continue to be exempt.

The General Assembly gave the State and Local Fiscal Modernization Study Commission a broad charge:

- To review and recommend changes in State and local fiscal responsibilities and sources of revenue.
- To study and recommend ways to modernize the State's tax system.

The 2007 General Assembly extended the life of the Commission until May 1, 2008, for further deliberations and final recommendations. This document summarizes the Commission's findings and general recommendations to date.

North Carolina's tax system is out of date and needs fixing. It was thoroughly reformed back in the 1920s and 1930s, but the State's economy has changed completely since then as it has grown more diverse, more urban and older. The State's system of revenue must be changed accordingly in order to grow with the new economy and to meet the operating and infrastructure needs of the future.

The Commission finds that:

- North Carolina's state and local tax system will be insufficient to keep pace with the operating and infrastructure needs of an effective and efficient public sector.
- The system has relatively high individual and corporate income tax rates, which negatively impact our competitive position.
- The tax system is complicated and would benefit from simplification.
- Local governments have only the property tax under their direct control as a source of revenue and growing Medicaid costs burden both state and county governments, especially low-wealth counties.

The Commission recommends the following guidelines:

- The income and sales tax bases should be broadened.
- Additional revenue from base broadening should be used to lower tax rates so that the overall changes to the state tax system are revenue-neutral.
- The number of low-income taxpayers should be reduced.
- The corporate income tax base should be broadened by requiring some method of combined reporting, with revenue gains from this change used to reduce the tax rate in a revenue-neutral fashion.
- The Medicaid challenge facing counties should be addressed with a long-term solution that is sustainable and fair for both the state and counties.
- The State should provide greater flexibility to city and county governments with respect to how they raise revenue by allowing a menu of revenue options.

As the General Assembly considers options to modernize the State and local system of taxation, the Commission respectfully encourages the members to avoid making changes

that are inconsistent with the guidelines listed above. Furthermore, the Commission believes that in order to be effective, tax reform must be comprehensive.

The Commission makes the following preliminary recommendations:

- The State should assume responsibility for the nonfederal share of Medicaid Assistance Program costs, excluding administrative costs. The shift in responsibility from the counties to the State should be accompanied by a shift in funding sources or by the State identifying new sources of revenue.
- The State should broaden the sales tax base. To the extent the sales tax base is broadened, tax rates should be reduced in a revenue neutral fashion. In addition, to the extent that base broadening results in increased tax burdens for low-income taxpayers, the State should provide a mechanism to offset this increase.
- The State should reduce individual income tax rates and broaden the individual income tax base to federal adjusted gross income with minimal exclusions and deductions as required by law or equity considerations. Increases in revenue as a result of the base broadening should be used to reduce tax rates in a revenue neutral fashion.
- The State should provide greater flexibility to city and county governments with respect to how they raise revenue by allowing a menu of options including real estate transfer fees or deed stamp taxes, impact fees, motor vehicle license fees and other vehicle use fees, taxes on prepared food and drink, general sales taxes and occupancy taxes.
- The State should broaden the corporate income tax base by requiring some method of combined reporting for affiliated groups of corporations engaged in a unitary business. Increases in revenue as a result of combined reporting should be used to reduce the corporate income tax rate in a revenue neutral fashion.
- The State should provide a mechanism to remove low-income taxpayers from tax filing and payment responsibility.
- The State should issue bonds, the proceeds of which should be used to provide funding for water and sewer infrastructure.
- The State should allow counties to reappraise real property more frequently, reappraise real property on an annual basis using annual indexing and provide local governments the option of providing property tax relief for low-income elderly and fixed income residents.
- The State should eliminate differential rates and caps in the sales tax and tax sales of motor vehicles at the combined general sales tax rate.

State and Local Fiscal Modernization Study Commission

2006-2007

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Financing the Future: Fiscal Modernization in North Carolina

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Fiscal Modernization

- In August 2006, Governor Easley and the General Assembly created the State and Local Fiscal Modernization Study Commission.

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Fiscal Modernization

- The Commission's charge was broad and included:
  - recommending ways to modernize and restructure North Carolina's tax code;
  - examining and making recommendations with respect to state and local government revenue sharing and taxing authority; and
  - examining and making recommendations with respect to the division of responsibilities between state and local governments.

General Findings

- North Carolina's state and local tax system will be insufficient to keep pace with the needs of the state.
- The system has relatively high individual and corporate income tax rates which hurt our competitive position.
- The tax system is complicated and would benefit from simplification.
- Local governments face significant challenges and must have direct access to sources of revenue other than the property tax.

General Tax Recommendations

1. Tax reform must be comprehensive in order to be successful.
2. Income and sales tax bases should be broadened and tax rates should be reduced so that overall changes at the state level are revenue neutral.
3. To the extent that base broadening results in increased burdens for low-income taxpayers, the State should provide a mechanism to offset this increase.

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Recommendations: Income Tax

- Reduce North Carolina's reliance on the individual income tax.
- Broaden the individual income tax base, reduce individual rates and eliminate tax filing and payment responsibilities for low income taxpayers.
- Reduce the corporate income tax rate and adopt combined (unitary) reporting.
- Review the corporate franchise tax.
- Eliminate the estate and gift tax.

Broaden the Income Tax Base

- Move to federal adjusted gross income as the tax base and allow minimal deductions and exemptions.
- Adjusted gross income at the federal level is income before the standard deduction or itemized deductions, and before any exemptions.
- Federal adjusted gross income may include up to 85 percent of social security benefits which North Carolina currently does not tax.

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Recommendations: Sales Tax

- Broaden sales tax base to include services.
- Lower the sales tax rate in a revenue neutral manner.
- Eliminate special rates and exemptions.
- Convert excise taxes to a tax based on dollar value rather than quantity.
- Eliminate privilege taxes.

Sales Tax on Services

- The FTA catalogs 168 separate services that states could tax.
- According to the FTA, North Carolina taxes 30 services.
- The average number of services taxed is 56.
- 18 states tax fewer services than North Carolina.
- Four states tax over 140 services.

Sales Tax on Services

- Common services taxed by many other states that North Carolina does not tax include pet grooming, landscaping, construction trade services (painting, plumbing, etc.), storage services, cleaning services, personal services (shoe repair, tanning parlors, health clubs), maintenance and janitorial services, pest extermination services, sign construction and installation, security services, automotive services and other repair services and many entertainment services.

NC STATE UNIVERSITY

Recommendations: Local Revenues and Responsibilities

- Medicaid should be assumed entirely by the state and paid for in a manner that is fair for both the state and the counties.
- The State should take over funding responsibilities for local election personnel.
- The State should provide greater flexibility to local governments by allowing a menu of revenue options consistent across the state. Options should include vehicle license taxes, land transfer taxes and local sales tax options.

NC STATE UNIVERSITY

Recommendations: Local Revenues and Responsibilities

- The State should allow counties to reappraise real property more frequently, use annual indexing and provide targeted property tax relief.
- State and local governments must work together to solve the looming infrastructure needs of the state.

Recommendations: Infrastructure and Responsibilities

- Toll roads and public private partnerships should be considered to finance transportation projects and speed completion of projects.
- The State should consider reducing reliance on the gas tax and consider using alternative proxies for road use.

DeAnne Mangum (Finance CA)

From: DeAnne Mangum (Finance CA)

Sent: Monday, April 20, 2009 9:09 PM

To: DeAnne Mangum (Finance CA); @Finance; @Senate Principal Clerk's Office; @SenateCommitteeNotice; Cindy Garrison (Sen. Goss); Cam Brawley; Chuck Neely; Dianne Beasley; GA; jeff wolfe; Jim Johnson; Judy Edwards (Sen. Rouzer); List Serve; Michael Houser; Nathan Knuffman; Rita Harris; Sabra Faires; Tom Bean; Warren Plonk; Sen. A.B. Swindell; Sen. Andrew C. Brock; Sen. Austin Allran; Sen. Bob Atwater; Sen. Bob Rucho; Sen. Charlie Albertson; Sen. Charlie Dannelly; Sen. Clark Jenkins; Sen. Daniel Clodfelter; Sen. David Hoyle; Sen. David Rouzer; Sen. David Weinstein; Sen. Don East; Sen. Eddie Goodall; Sen. Ellie Kinnaird; Sen. Fletcher Hartsell, Jr.; Sen. Floyd McKissick; Sen. Harris Blake; Sen. Harry Brown; Sen. Jean Preston; Sen. Jerry W. Tillman; Sen. Joe Sam Queen; Sen. Josh Stein; Sen. Julia Boseman; Sen. Larry Shaw; Sen. Linda Garrou; Sen. Martin Nesbitt; Sen. Neal Hunt; Sen. Phil Berger; Sen. R. C. Soles; Sen. Richard Stevens; Sen. Steve Goss; Sen. Tom Apodaca; Sen. Tony Foriest; Sen. Tony Rand; Sen. William Purcell

Subject: S. Finance notice

The Senate Finance Committee will not meet on Tuesday, April 21, 2009.

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 21, 2009	1:00 PM	544 LOB

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 21, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 97	Critical Infrastructure Assm't Parks & Rec.	Senator Hartsell
SB 576	JDIG Technical Modifications.	Senator Hoyle
SB 871	Use Pre-Stimulus FMAP for MC Hold Harmless.	Senator Clodfelter

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Tuesday, April 21, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 97	Critical Infrastructure Assm't Parks & Rec.	Sen. Hartsell
SB 576	JDIG Technical Modifications.	Sen. Hoyle
SB 871	Use Pre-Stimulus FMAP for MC Hold Harmless.	Sen. Clodfelter

Presentations

Other Business

Adjournment

SENATE FINANCE COMMITTEE
Wednesday, April 22, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 22, 2009, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator David Hoyle presided. Radhika Kshatriya of Orange County, Max Cullen of Forsyth County, and Kimberly Barnes, Kayla Brooks, and Brittny Barnes of Wake County served as pages.

H.B. 63 – Modify Onslow County Sales Tax Distribution.

Representative Cleveland was recognized to explain the bill. The bill modifies the options for distribution of the local sales tax in Onslow County. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

S.B. 750 – Turnpike GAP Funding and Debt.

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS exempts transfers of funds from the Highway Trust Fund to the North Carolina Turnpike Authority to be used for debt service on bonds issued to build Turnpike Projects from the equity formula and would enable the Turnpike Authority to issue refunding bonds that enable the restructuring and extension of bonded indebtedness. David Joyner, the Executive Director of the NC Turnpike Authority, was recognized to answer questions. Senator Goss moved for a favorable report and the motion carried. A copy of the PCS, the bill, and the summary is attached.

21st Century Tax Rate Reduction and Modernization Plan

Senator Clodfelter was recognized to outline the plan and explain the objectives of the changes to the State's revenue system. It primarily broadens the tax bases while lowering every major tax rate, stabilizes the State's tax base, provides future reliable revenue, adopts major recommendations from prior tax reform studies and commissions, and provides tax adjustments necessary to balance the Senate's 2009-2011 budget. Senator Clodfelter recognized and thanked the staff that had worked on the plan: Barry Boardman, Brian Slivka, Sandra Johnson, and Marjorie Rutherford of the Fiscal Research Division; Cindy Avrette of the Research Division; and Sabra Faires, the Senate Tax Counsel. Then Senator Clodfelter explained some of the tax details. A copy of the bulleted summary, the 21st Century Tax Rate Reduction and Modernization Plan, and the Personal Income Tax Distribution Plan is attached.

The meeting adjourned at 1:58 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	April 22, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 63	Modify Onslow County Sales Tax Distribution.	Representative Cleveland Representative Tucker Representative Grady
SB 750	Exempt GAP Funding from Equity Formula.	Senator Clodfelter

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, April 22, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 63	Modify Onslow County Sales Tax Distribution.	Rep. Cleveland Rep. Tucker Rep. Grady
SB 750	Exempt GAP Funding from Equity Formula.	Sen. Clodfelter

21st Century Tax Rate Reduction and Modernization Plan

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ed Stanley	BP
Nancy Pomeranz	NC DOR
Lennie Collins	NC DOR
AL MILAK	NCDOR
Andy Sabol	NCDOR
Linda S Millsap	NCDOR
Gene Ainsworth	A & A
Gregg Thorpe	NFIB
Nancy Thompson	weyerhaeuser
Jessi Hayes	NC HBA
Bill Martin	ACEC/NC

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tim Burgess	Progress Energy
Paul Matthews	Progress Energy
Courtney Denning	NC Bar Association
Mia Pairy	Electricities of NC
Anthony Alton	NCACC
Kelli Bukura	NCLM
Karl Knapp	NCLM
Paul Stam	NCSLA
Kristi Huff	NCHCFA
Terence Friedman	DOS
Brian Lewis	NCAE

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom BEAN	NCEDF, NCSEA
Harrison Gilbert	Governor's Office
Jennifer Sasser	Williams Mullen
Rebecca Troutman	NCACC
DAVID THOMPSON	NCACC
Mandy Ableidinger	Action for Children NC
[illegible]	Covenant w/ NC's Children
Elaine Mejia	NC Justice Center
Meg Gray Wilson	NC Justice Center
Rick Zechini	NC Assoc. of Realtors
Tim KENT	NC Assn. of Realtors

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Daniel Baum	K+L Gates
David Rice	Manning Fulton
Joanne Stevens	NCNA
Mike Mann	SSI

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Matt Wallace	ACEC, Asheville, NC
Lisa Martin	NC Home Builders
JERRY COHEN	Bell Davis
	NCDOT & LNDS
BRUCE THOMPSON	PARKER POE
	CMA
John Bowdish	AstraZeneca
Barbara Conley	BSCA
Butch Gunnells	NC Ber A
JOHN GOODMAN	NC CHAMBER
John McAlister	NC Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Phillip Rector	WSRAR
Drew Moretz	NCTA
Andy Eller	NCRMP
Johanna Reese	DOT
DREW MORETZ	RALEIGH CHAMBER
Cam Cowell	BPMNC
Eric Johnson	BPMHL
Emily Dayton	NCPAPA
Conor Brackett	NCSBA
Rob Sweeney	CIH
Dell Gaither	NFIB

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
George Ben	NCAR
Glenn Cobb	NCAR
Bill Rowe	NC Justice Center
Dana Sipes	Smith Anderson
Lee-Ann Pegram	DRC
Andy Willis	Governor's Office
Tracey Kimbrell	Parker Poe
[illegible]	NCPSS
Peg Mangum	[illegible]
TINA GORDON	NC Nurses Assoc

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Schilder	MWC
Amy McConkey	Smith Anderson
Jos Lanier	SCD Wicker
Pam Walker	NCEL
Alice Garland	NCEL
L. Andrews	NCFB
Joyce Peters	2P Assoc
ANN LARE	DUKE
Martha Ann McConnell	Carolinas HealthCare System
Marci Caldwell	Novant Health
Larry Goode	PENC
Paul Stock	NCBA
Allison Waller	Charlotte Chamber

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, April 07, 2009

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

FAVORABLE

H.B.(CS #2) **63** Modify Onslow County Sales Tax Distribution.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, April 23, 2009

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

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

S.B. **750** Exempt GAP Funding from Equity Formula.

Draft Number:	15247
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

HOUSE BILL 63
Committee Substitute Favorable 2/25/09
Committee Substitute #2 Favorable 3/26/09

Short Title: Modify Onslow County Sales Tax Distribution. (Local)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE OPTIONS FOR DISTRIBUTION OF THE LOCAL SALES TAXES IN ONSLOW COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Onslow County only.

SECTION 2. G.S. 105-472(b) reads as rewritten:

"(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located

in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

(3) Combined Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county by using both the per capita and the ad valorem methods with neither method being used to distribute less than forty percent (40%) of the net proceeds of the tax.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the ~~two~~ foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal ~~year.~~year, including the percentage of each method to be used to distribute the net proceeds of the tax if the combined method is chosen. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal ~~year~~ year, and the percentage of each method if the combined method is chosen, shall apply to every distribution made during that fiscal year."

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

HOUSE BILL 63:
Modify Onslow County Sales Tax Distribution

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 21, 2009
Introduced by:	Reps. Cleveland, Grady, Tucker	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 63 authorizes Onslow County to elect to distribute the local portion of the sales and use tax collected in that County by a combined per capita and ad valorem distribution method. In order for this change be effective for the next fiscal year, the County must adopt a resolution during the month of April.***

[As introduced, this bill was identical to S81, as introduced by Sen. Brown, which is currently in Senate Finance.]

CURRENT LAW: Under current G.S. 105-472(b), counties can elect to distribute between a county and its municipalities the local portion of the sales and use tax collected under Chapter 105 of the General Statutes by one of two methods: the *per capita* method or the *ad valorem* method.

BILL ANALYSIS: House Bill 63, applicable to Onslow County only, authorizes the County to use a combination of the two statutory methods for distribution of the local portion of the sales and use tax collected in that County. If Onslow County adopts the combined method of distribution, then at least 40% of the net proceeds of the tax would have to be distributed by either the *per capita* or the *ad valorem* method, and the rest distributed by the other method. Once the percentage of each method is determined, the percentage remains the same throughout the fiscal year.

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

BACKGROUND: The total sales and use tax rate is 6.75% in Onslow County, of which 2.25% is the local portion.

Giles Perry, counsel to House Local Government I, substantially contributed to this summary.

H63-SMTD-30(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 63 (Third Edition)

SHORT TITLE: Modify Onslow County Sales Tax Distribution.

SPONSOR(S): Representatives Cleveland, Grady, and Tucker

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	**No General Fund Impact See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Onslow County and its Municipalities

EFFECTIVE DATE: Becomes effective when bill becomes law.

BILL SUMMARY:

House Bill 63 adds a combined method for distribution of local sales tax revenue between Onslow County and its municipalities. It also allows the board of county commissioners to choose between the existing two methods of distribution, the per capita method and the ad valorem method, or use the combination of the two. The bill specifies that if this combined method is used, per capita and ad valorem must be used to distribute at least 40% of the net proceeds of the sales tax and that the same percentage split between ad valorem and per capita must be used throughout the year.

ASSUMPTIONS AND METHODOLOGY:

The fiscal impact of this bill is unknown because it is uncertain which methodology the Onslow County Board of County Commissioners will choose after the passage of this bill. Assuming the Onslow County Board of County Commissioners chooses the combined option, this option will allocate one portion of the net proceeds to be distributed to municipalities on an ad valorem basis and the other portion on a per capita basis. An ad valorem basis distributes money to a locality based on its tax revenues. A per capita basis distributes money to a locality based on its population. In order to estimate the fiscal impact of this change, the first step is to assume what

percentage split between the ad valorem and per capita methods the board will choose to distribute the net proceeds of the local sales tax.

This analysis demonstrates the potential distribution changes from the following combined options: 50% ad valorem, 50% per capita; 40% ad valorem, 60% per capita; 60% ad valorem, 40% per capita. The populations of each municipality as a percentage of the total population in Onslow County indicates how the per capita portion will be distributed each year. These populations are assumed to grow according to the average growth rate reported by the Office of State Budget and Management for the past 7 years.

According to the Department of Revenue, Onslow County collected $45 million in local sales tax revenue in FY 2006-7. Based on the first month of distribution for 2009, which were around $4 million, this analysis assumes the total net distributions for 2009 will be $48 million. This amount is assumed to grow each year by inflation estimates. This analysis also assumes that current shares each locality receives from ad valorem distributions will remain unchanged.

Assuming that Onslow County chooses to distribute its net proceeds based on 50% Ad Valorem and 50% per capita distributions, the first step in calculating the receipts of each municipality is to divide the total net proceeds into two equal shares. This means $24 million will be distributed using an ad valorem basis, and $24 million will be distributed using a per capita basis in FY 2009-10. Adding the receipts that each municipality receives under the two bases results in their total receipts for FY 2009-10. The chart below summarizes this result.

Distributions by Municipality, 50% Ad Valorem, 50% Per Capita

Fiscal Year 2009-2010

Municipality	Current Distribution Method	Combined Distribution Method	Gain/ (Loss) from Switch	% Change
Onslow	$34,176,772	$33,174,939	$(1,001,832)	-2.93%
Holly Ridge	$694,656	$427,326	$(267,329)	-38.48%
Jacksonville	$9,958,814	$12,391,790	$2,432,975	24.43%
North Topsail Beach	$1,472,179	$819,965	$(652,213)	-44.30%
Richlands	$200,846	$205,791	$4,945	2.46%
Surf City(Part)	$862,785	$460,318	$(402,467)	-46.65%
Swansboro	$633,945	$519,868	$(114,077)	-17.99%
Total	$48,000,000	$48,000,000	$0.00	0.00%

Changes in Distributions: FY 2010-14

Municipality	FY 2010-11 Changes in Distribution	FY 2011-12 Changes in Distribution	FY 2012-13 Changes in Distribution	FY 2013-14 Changes in Distribution
Onslow	$(1,137,092)	$(1,474,293)	$(1,910,844)	$(2,357,830)
Holly Ridge	$(272,137)	$(283,792)	$(298,810)	$(314,169)
Jacksonville	$2,439,505	$2,418,459	$2,384,687	$2,350,614
North Topsail Beach	$(661,401)	$(686,023)	$(718,185)	$(751,067)
Richlands	$4,966	$3,949	$2,448	$929
Surf City(Part)	$(407,780)	$(422,359)	$(441,458)	$(460,982)
Swansboro	$(110,059)	$(110,388)	$(112,481)	$(114,222.)
Total	$0.00	$0.00	$0.00	$0.00

Assuming that Onslow County chooses to distribute its net proceeds based on 40% Ad Valorem and 60% per capita distributions, the first step in calculating the receipts of each municipality is to divide the total net proceeds into one 40% share and one 60% share. This means $19.2 million will be distributed using an ad valorem basis, and $28.8 million will be distributed using a per capita basis in FY 2009-10. Adding the receipts that each municipality receives under the two bases results in their total receipts for FY 2009-10. The chart below summarizes this result.

Distributions by Municipality, 40% Ad Valorem, 60% Per Capita

Fiscal Year 2009-10

Municipality	Current Distribution Method	Combined Distribution Method	Gain/(Loss) from Switch	% Change
Onslow	$34,176,772	$32,974,573	$(1,202,199)	-3.52%
Holly Ridge	$694,656	$373,860	$(320,795)	-46.18%
Jacksonville	$9,958,814	$12,878,385	$2,919,570	29.32%
North Topsail Beach	$1,472,179	$689,522	$(782,656)	-53.16%
Richlands	$200,846	$206,780	$5,934	2.95%
Surf City(Part)	$862,785	$379,824	$(482,960)	-55.98%
Swansboro	$633,945	$497,052	$(136,892)	-21.59%
Total	$48,000,000	$48,000,000	$0.00	0.00%

Changes in Distributions: FY 2010-14

Municipality	FY 2010-11 Changes in Distribution	FY 2011-12 Changes in Distribution	FY 2012-13 Changes in Distribution	FY 2013-14 Changes in Distribution
Onslow	$(1,241,475)	$(1,529,217)	$(1,981,251)	$(17,132,087)
Holly Ridge	$(324,064)	$(335,673)	$(352,236)	$(319,807)
Jacksonville	$2,963,258	$2,972,066	$2,952,469	$3,640,710
North Topsail Beach	$(788,381)	$(812,892)	$(848,393)	$(780,066)
Richlands	$6,682	$6,149	$4,770	$17,652
Surf City(Part)	$(486,231)	$(500,774)	$(521,880)	$(482,140)
Swansboro	$(129,789)	$(128,015)	$(129,195)	$(84,870)
Total	$0.00	$0.00	$0.00	$0.00

Assuming that Onslow County chooses to distribute its net proceeds on based on 60% Ad Valorem and 40% per capita distributions, the first step in calculating the receipts of each municipality is to divide the total net proceeds into one 60% share and one 40% share. This means $28.8 million will be distributed using an ad valorem basis, and $19.2 million will be distributed using a per capita basis in FY 2009-10. Adding the receipts that each municipality receives under the two bases results in their total receipts for FY 2009-10. The chart below summarizes this result.

Distributions by Municipality 60% Ad Valorem, 40% Per Capita

Fiscal Year 2009-10

Municipality	Current Distribution Method	Combined Distribution Method	Gain/(Loss) from Switch	% Change
Onslow	$34,176,772	$33,375,306	$(801,466)	-2.35%
Holly Ridge	$694,656	$480,792	$(213,863)	-30.79%
Jacksonville	$9,958,814	$11,905,194	$1,946,380	19.54%
North Topsail Beach	$1,472,179	$950,408	$(521,770)	-35.44%
Richlands	$200,846	$204,802	$3,956	1.97%
Surf City(Part)	$862,785	$540,811	$(321,973)	-37.32%
Swansboro	$633,945	$542,683	$(91,261)	-14.40%
Total	$48,000,000	$48,000,000	$0.00	0.00%

Changes in Distribution FY 2010-14

Municipality	FY 2010-11 Changes in Distribution	FY 2011-12 Changes in Distribution	FY 2012-13 Changes in Distribution	FY 2013-14 Changes in Distribution
Onslow	$(827,650)	$(1,337,345)	$(1,337,345)	$(2,355,262)
Holly Ridge	$(216,042)	$(230,243)	$(230,243)	$(260,868)
Jacksonville	$1,975,505	$1,888,753	$1,888,753	$1,743,829
North Topsail Beach	$(525,587)	$(555,620)	$(555,620)	$(621,055)
Richlands	$4,455	$2,231	$2,231	$(2,012)
Surf City(Part)	$(324,154)	$(341,874)	$(341,874)	$(380,625)
Swansboro	$(86,526)	$(91,239)	$(91,239)	$(100,077)
Total	$0.00	$0.00	$0.00	$0.00

SOURCES OF DATA: NC Department of Revenue, Office of State Budget and Management, Congressional Budget Office

TECHNICAL CONSIDERATIONS: None

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 750
PROPOSED COMMITTEE SUBSTITUTE S750-CSTDx-17 [v.4]

4/21/2009 7:36:11 PM

Short Title: Turnpike GAP Funding and Debt. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT TRANSFERS OF FUNDS FROM THE HIGHWAY TRUST FUND TO THE NORTH CAROLINA TURNPIKE AUTHORITY TO BE USED FOR DEBT SERVICE ON BONDS ISSUED TO BUILD TURNPIKE PROJECTS FROM THE EQUITY FORMULA AND TO ENABLE THE TURNPIKE AUTHORITY TO ISSUE REFUNDING BONDS THAT ENABLE THE RESTRUCTURING AND EXTENSION OF BONDED INDEBTEDNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-176(b2) reads as rewritten:

"(b2) There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of twenty-five million dollars ($25,000,000) to be used to service debt on bonds issued for the construction of the Triangle Expressway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations ~~set forth in this act~~ made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A.

SECTION 2. G.S. 136-89.189 reads as rewritten:

"**§ 136-89.189. Turnpike Authority revenue bonds.**

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond

Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

Except as provided in this section, the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

(1) The term of a lease between the Turnpike Authority and the Department for all or any part of a Turnpike Project may exceed 40 years, as agreed by the Authority and the Department.

(2) The maturity date of a refunding bond may extend to the earlier of the following:

a. Forty years from the date of issuance of the refunding bond.

b. The date the Turnpike Authority determines is the maturity date required for the Turnpike Project funded with the refunding bonds to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for that Project. The Authority's determination of the appropriate maturity date is conclusive and binding. In making its determination, the Authority may take into account appropriate financing terms and conventions."

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

SENATE BILL 750:
Turnpike GAP Funding and Debt.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 21, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S750-CSTDx-17		

SUMMARY: ***Senate Bill 750 would exempt gap funding from the equity distribution formula for Highway Trust Fund revenues expended on Intrastate System and TIP projects. The proposed committee substitute would allow the Turnpike Authority to issue refunding bonds that mature beyond the initial 40-year life of the project. This authority is needed to secure a financial guaranty policy on the bonds. A longer refinancing term may be needed if the toll road project revenues underperform their projections. The bill would become effective when it becomes law.***

CURRENT LAW: In 2002, the General Assembly decided to utilize toll funding to help finance critical transportation needs of the State. It established the North Carolina Turnpike Authority as in independent agency responsible for toll roads and designated the toll road projects. The current Turnpike Projects include: Triangle Expressway[1], Monroe Connector/Bypass[2], Mid-Currituck Bridge[3], and the Garden Parkway[4]. The legislation authorized the Turnpike Authority to issue revenue bonds, payable from tolls imposed by the Authority, under the State and Local Revenue Bond Act.

Every toll project begins with a gap – the difference between the private financing that projected toll revenue can support and the total cost of the project. Once private financing has been secured, the revenue generated from tolls, coupled with the gap funds, allows the Turnpike Authority to repay its debt to the bond holders. In 2008, the General Assembly provided the funding necessary to enable the Turnpike Authority to issue additional bonds to cover the funding gap. S.L. 2008-107 annually appropriated funds from the Highway Trust Fund to the Authority to be used to service debt on bonds issued for specified Turnpike Projects:

- $25,000,000 for the Triangle Expressway, effective July 1, 2008.
- $15,000,000 for the Mid-Currituck Bridge, effective July 1, 2009.
- $35,000,000 for the Garden Parkway, effective July 1, 2010.

Funds expended in the Highway Trust Fund for the Intrastate System and TIP projects are distributed throughout the State using the "equity distribution formula." This formula divides the State into 7 distribution regions and limits the allocation of funds to each region based on factors including the population of the area (50%), unfinished miles in Intrastate System projects (25%), and equal share (25%). G.S. 136-89.192 specifies that revenue from the sale of the Turnpike Authority's bonds or notes, project loans, or toll collections are not included in the equity distribution formula. But funds applied to a Turnpike Project from the Highway Trust Fund are included in the formula.

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[1] Located in Wake and Durham counties. It is a new-location roadway from the NC 55 Bypass near Holly Springs to I-40 at NC 147. It is comprised of three projects and is approximately 18.8 miles in length.

[2] Located in Mecklenburg and Union counties. It combines two projects and encompasses a 21.1 mile corridor from US 74 near I-485 Mecklenburg County to US 74 west of Marshville in Union County.

[3] Located in Currituck County. It is a new facility project, approximately 7 miles in length, from US 158 on the Currituck county mainland to NC 12 on the Currituck County Outer Banks.

[4] Located in Gaston and Mecklenburg counties. It is also known as the Gaston East-West Connector. It is a new roadway from I-85 west of Gastonia to I-485/NC 160 in Mecklenburg County. The project is approximately 21.5 miles long.

GAP FUNDING: Section 1 of the bill specifies that the funds appropriated from the Highway Trust Fund to the Turnpike Authority to service the debt on bonds issued for specified Turnpike Projects are not subject to the equity distribution formula. Under the current law, it is unclear how the gap funds should be treated since they are appropriated to service Turnpike Authority bonded indebtedness, and revenue from bonds is excluded from the equity distribution formula. This language clarifies how the revenue should be treated and insures that a region's share of funds distributed under the equity formula is not diminished. Currently, funds allocated from the Trust Fund for the outer loop projects listed in G.S. 135-180 are not subject to the equity formula.[5] This section provides similar treatment for gap funding.

REFUNDING BONDS: Under the Local Government Bond Act, refunding bonds may be issued to provide funds to retire the obligations being refunded. The Act limits the refunding of debt beyond the initial 40-year life of the project. It also limits the lease of any revenue bond project to a period of 40 years. The ***proposed committee substitute*** adds Section 2 to the bill. Section 2 would allow a refunding bond issued by the Turnpike Authority to have a longer maturity date if one is necessary to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for the financed Turnpike Project. It also makes a corresponding change to allow a lease of the Project property to DOT for a period longer than 40 years.

The September 2008 plan of finance for the Triangle Expressway project anticipated selling a single series of BBB investment grade bonds backed by a combination of State appropriations (the gap funding) and toll revenues. After the collapse of the municipal markets, there is no market for BBB investment grade bonds. The Turnpike Authority restructured the original single series bond offering into two bond offerings: an Appropriation Bond and a Toll Revenue Bond. The Turnpike Authority plans to purchase bond insurance on the Toll Revenue Bond portion of the offering, which would allow both of the bonds to sell in the AA range. The ability to obtain bond insurance is key to being able to market the bonds.

Assured Guaranty advised the Authority that it could not insure the Toll Revenue Bonds because NC statutes limit refinancing to the original maturity date of the project bonds.[6] To be insurable, the financing structure needs to allow the Authority to refinance the bonds in the event that the toll road is performing significantly below the projections on which the financing structure has been based. In other similar instances, toll road projects that have underperformed their projections have been corrected through debt restructuring and extensions. Section 2 of the bill removes the current statutory limitation to enable the Turnpike Authority to restructure its Toll Revenue Bond indebtedness in the event an extension of time is necessary to generate sufficient revenues to retire the indebtedness. It also permits a longer lease term to go with the longer bond life if the refunding provision is utilized.

S750-SMTD-29(CSTDx-17) v3

[5] G.S. 136-17.2A.

[6] The Turnpike Authority considered other alternatives such as offering the Toll Revenue Bonds at a higher return or insuring only the Capital Appreciation portion of the Toll Road Bonds, but it concluded that bond insurance on the Toll Revenue Bonds offered the best financial opportunity. The cost of the bond insurance would allow a substantial interest cost savings.

SENATE BILL 750

Short Title:	Exempt GAP Funding from Equity Formula.	(Public)
Sponsors:	Senators Clodfelter; Stein and Stevens.	
Referred to:	Finance.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT TRANSFERS OF FUNDS FROM THE HIGHWAY TRUST FUND TO THE NORTH CAROLINA TURNPIKE AUTHORITY TO BE USED FOR DEBT SERVICE ON BONDS ISSUED TO BUILD TURNPIKE PROJECTS FROM THE EQUITY FORMULA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-176(b2) reads as rewritten:

"(b2) **(Effective until July 1, 2009)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of twenty-five million dollars ($25,000,000) to be used to service debt on bonds issued for the construction of the Triangle Expressway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this section shall not be subject to the equity formula.

(b2) **(Effective July 1, 2009, until July 1, 2010)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of sixty-four million dollars ($64,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, and fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in

connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this section shall not be subject to the equity formula.

(b2) **(Effective July 1, 2010)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of ninety-nine million dollars ($99,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, fifteen million dollars ($15,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid-Currituck Bridge, and thirty-five million dollars ($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations set forth in this act at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this section shall not be subject to the equity formula."

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

21st Century Tax Rate Reduction and Modernization Plan

- Broadens the tax bases, lowers every major tax rate
- Stabilizes State's tax base
- Provides a reliable revenue stream for the future
- Adopts the comprehensive tax reform recommendations of numerous study committees charged with developing a 21st Century tax policy for the State. The last study committees to recommend tax policy changes include the Governor's Commission to Modernize State Finances, the Institute for Emerging Issues, the State and Local Fiscal Modernization Committee, and the Joint Select Committee on Economic Development Incentives. Their recommendations include:
  - Expand sales tax base by including more services.
  - Expand the personal income tax base to federal adjusted gross income.
  - Reduce the individual income tax burden of low-income taxpayers.
  - Eliminate tax exemptions, deductions, and credits in the individual income, corporate and franchise, and sales tax bases.
  - Expand franchise tax base to include all types of business organizations with limited liability protection.
- Provides tax adjustments necessary to balance the Senate's 2009-2011 budget.

- **Personal Income Tax Changes**
  - Expands tax base to federal adjusted gross income
    - 27 states begin their tax calculation with AGI
    - Applies a means test to social security income, same as federal law
  - Reduces every rate for each tax bracket
    - Establishes a zero tax rate bracket that would eliminate many low income taxpayers from filing requirements. ($10,000 for MFJ)
    - Eliminates the marriage penalty in the tax brackets.
  - Limits tax credits to family expenses
    - Credit for mortgage interest expense (limited to primary residence)
    - Credit for children
      - Increases the credit for children from $100 to $125 and increases the AGI limitation from $100,000 to $125,000 (MFJ)
      - Retains the current dependent care credit
    - Credit for charitable giving
    - Credit for medical expenses
  - Temporarily suspends, for taxable years 2009 and 2010, State income tax on the first $4,800 of unemployment benefits received

- **Sales Tax Changes**
  - Expands base to include more services with varying effective dates
  - Reduces State sales tax rate effective May 1, 2010, for a combined rate of 6% rather than 6.75%
  - Caps sales tax refund for nonprofits

- **Business Tax Changes**
  - Simplifies business tax structure and puts the State in a better competitive position
  - **Franchise and Privilege License Tax Changes**
    - Applies franchise tax to all types of business organizations with limited liability protection
    - Repeals State and local privilege license taxes
    - Repeals annual report fees and report fee credit
    - Simplifies franchise tax base to owners' equity
  - **Corporate Income Tax Changes**
    - Adopts throwout requirement
    - Reduces tax rate over 2 years: 5.8% and 4.5%
  - **Tax Credit Changes**
    - Repeals Article 3J credits
    - Repeals credit for payment to Insurance Guaranty Association
    - Repeals other credits EXCEPT
      - Research & Development
      - Refundable financing credits (low-income housing and film)
      - Credits granted as part of an incentive package, such as the major recycling facility credit
  - **Sales tax changes**
    - Limits equipment exemptions to depreciable property
      - Manufacturing equipment (repeals 1%/$80 category and exempts depreciable equipment)
      - Farming equipment
      - Telephone, cable, broadcasting, laundry equipment
    - Limits farm exemptions to small farmers (100% exemption for gross receipts < $1 million; 50% exemption for gross receipts < $2.5 million)
    - Repeals railroad diesel fuel exemption

- **Excise Tax Changes**
  - Increases cigarette tax 15-cents a pack
  - Increases tax on other tobacco products by 3%
  - Increases excise tax on alcohol

- **Revenue Balance between State and Local Governments**
  - Sales tax base expansion improves the stability and revenue of local governments
  - Transfers 0.1% of the local sales tax rate to the State
  - Repeals local sales tax refunds
  - State retains local beer & wine distributions
  - Eliminates corporate income tax earmark for Public School Capital Building Fund
  - Adjusts hold harmless distributions based upon sales tax revenue

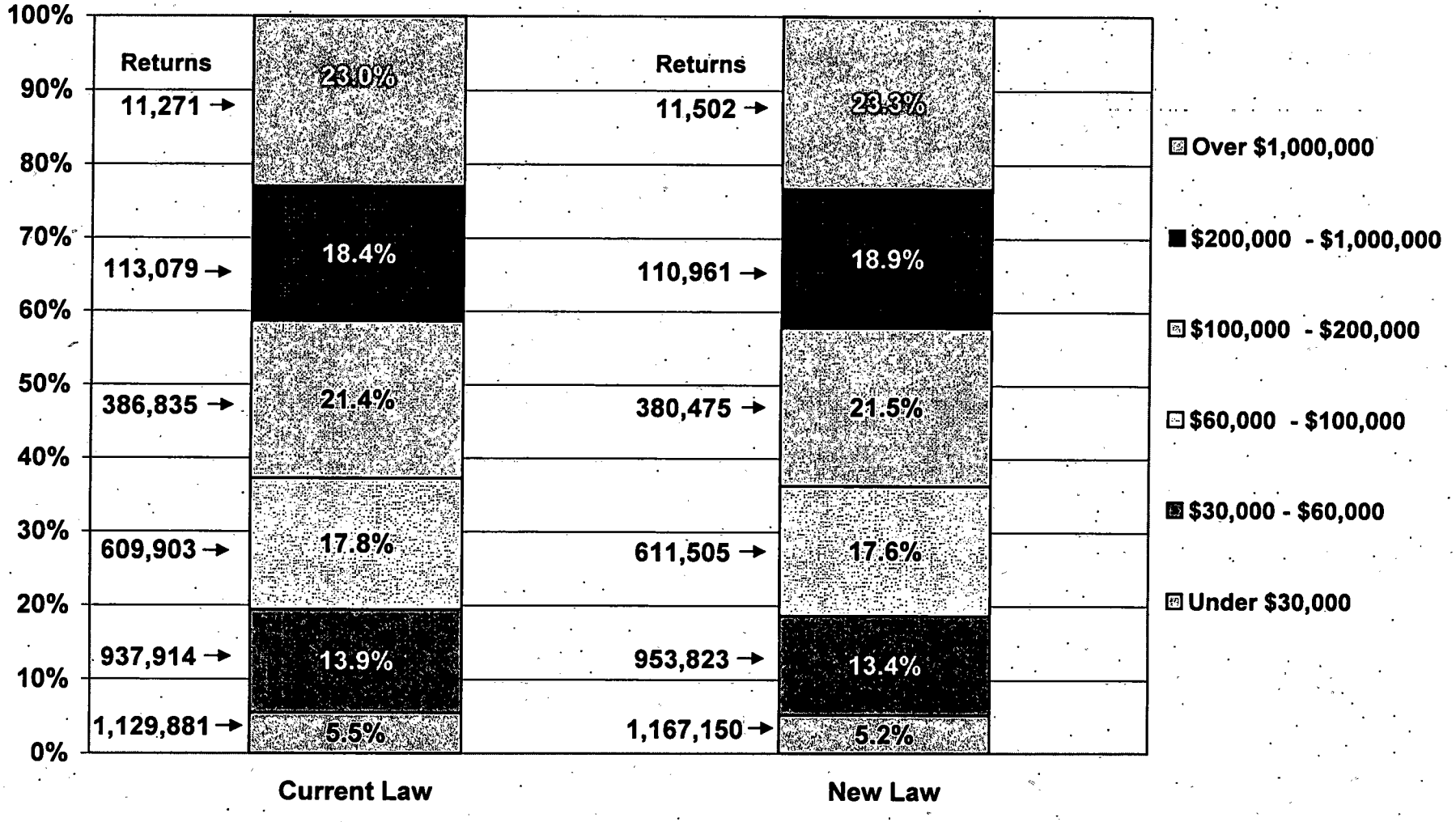
21st Century Tax Rate Reduction and Modernization Plan (in Millions)

	Effective Date	STATE FY 09-10	STATE FY 10-11	STATE FY 11-12	LOCAL FY 09-10	LOCAL FY 10-11	LOCAL FY 11-12
Reduce All Personal Income Tax Rates and Simplify	**01/01/2010**						
Start Calculation with AGI as in 27 states		1,884.4	4,718.2	4,784.3			
Reduce current rates of 6.0%, 7.0%, 7.75% to 5.25%, 6.5%, and 7.5%		(418.9)	(1,054.8)	(1,077.0)			
Create new zero bracket (0% up to $10,000, Married Filing Jointly) and eliminate the "marriage penalty"		(695.9)	(1,746.8)	(1,764.2)			
AGI Excludes Only:							
Exempt $4800 of Unemployment Benefits, 2009 and 2010 tax years		(84.6)	(71.9)				
Earned Income Tax Credit		(35.0)	(71.1)	(72.5)			
6% Mortgage Credit, 10,000 cap		(181.7)	(454.8)	(456.8)			
6% Charitable Credit, 20% AGI cap		(214.9)	(542.6)	(559.1)			
Per Child Credit, $125		(102.6)	(255.9)	(253.9)			
6% Medical Credit, Federal eligibility		(69.9)	(176.7)	(182.4)			
Existing Refundable Credits: Low-Income Housing, Film Production		(18.1)	(38.6)	(40.6)			
Other Credits: R&D, Dependent Care Expenses		(13.6)	(40.4)	(34.3)			
Subtotal: Personal Income Tax Changes		**49.1**	**264.7**	**343.5**			
Reduce State Sales Tax Rate from 4.75% to 4%							
Digital products & click throughs	01/01/2010	8.3	15.0	15.8	3.6	7.5	7.9
Warranties, installations, & repairs to tangible personal property	10/01/2009	178.1	222.1	233.8	77.6	111.0	116.9
Convert amusement/movies privilege tax to sales tax	10/01/2009	22.7	26.6	28.0	9.9	14.2	14.9
Recreation and entertainment	01/01/2010	57.8	105.3	110.9	25.2	56.2	59.2
Home and real property, some personal services	05/01/2010	42.3	175.1	184.4	18.4	93.4	98.3
Storage and moving	01/01/2010	19.4	35.3	37.1	8.4	18.8	19.8
Building repairs & alterations, not including new construction	05/01/2010	10.7	74.6	75.5	3.4	23.7	26.3
Web-based and other information services	01/01/2010	6.2	11.3	11.9	2.7	6.0	6.3
Sub-state government sales tax refund	01/01/2010	-	67.8	71.4	-	(67.8)	(71.4)
Limit nonprofit refund for all institutions at $5M	07/01/2009	13.7	60.3	63.5	6.3	32.1	33.9
		359.2	793.3	832.4	155.6	295.0	312.2
Reduce State Rate on Existing Base to 4%	**05/01/2010**	(129.7)	(777.9)	(799.7)			
Transfer 0.1% of Existing and Expanded Local Base to the State (Combined 6%)		25.1	118.5	122.2	(25.1)	(118.5)	(122.2)
Subtotal: Sales and Use Tax Changes		**254.6**	**133.9**	**155.0**	**130.6**	**176.5**	**189.9**

21st Century Tax Rate Reduction and Modernization Plan (in Millions)

	Effective Date	STATE			LOCAL		
		FY 09-10	FY 10-11	FY 11-12	FY 09-10	FY 10-11	FY 11-12
Business Tax Changes	**01/01/2010**						
Franchise and Privilege License Taxes							
Apply franchise tax to all limited liability businesses		59.0	131.1	134.7			
Repeal state and local privilege license taxes		(42.8)	(38.2)	(38.9)	-	(54.7)	(55.7)
Repeal annual report fee and report fee credit		(20.2)	(25.5)	(26.0)			
Corporate Income							
Adopt throwout		5.5	11.9	12.5			
Reduce rate over 2 yrs; 5.8% to 4.5%		(55.4)	(201.2)	(325.5)			
Eliminate Public School Building Capital Fund		60.5	64.5	72.9	(60.5)	(64.5)	(72.9)
Tax Credits and Exemptions							
Repeal Article 3J credits		3.0	9.2	16.5			
Repeal other credits except R&D, refundable credits, and targeted incentives		8.4	20.9	14.5			
Repeal credit for payments to Insurance Guaranty Association			17.0	17.0			
Repeal railroad diesel fuel exemption		8.3	16.1	17.0	3.9	8.6	9.1
Sales Tax							
Exempt depreciable equipment; tax supplies and accessories at general rate; repeal 1%, $80		57.0	110.8	116.7	26.5	59.1	62.2
Limit farm exemption to small farms (100% of farms with gross reciepts <$ 1M, 50% of farms w/ gross receipts < $2.5M)		27.5	53.4	56.2	12.8	28.5	30.0
Subtotal: Business Tax Changes		**110.7**	**170.0**	**67.5**	**(17.4)**	**(23.0)**	**(27.3)**
Increase Excise Taxes	**08/01/2009**						
Increase cigarette excise tax 15-cents per pack		63.6	72.4	71.0			
Increase OTP by 3%		7.5	7.7	8.1			
Increase alcohol excise tax (based on alcohol content)		35.8	43.0	44.4			
Subtotal: Excise Tax Changes		**106.9**	**123.2**	**123.5**			
Adjust Revenue Distributions	**07/01/2009**						
Certain Local Distributions Substitute		11.2	11.2	10.5			
Retain Beer & Wine Distribution		33.2	34.1	35.1	(33.2)	(34.1)	(35.1)
Subtotal: Distribution Changes		**44.4**	**45.3**	**45.6**	**(33.2)**	**(34.1)**	**(35.1)**
Conform in Part to IRC	**07/01/2009**						
2008 IRC/ESSA		(30.4)	(22.1)	(8.0)			
2009 IRC/ARRA (85% AB)		8.6	17.8	5.3			
Subtotal: IRC Update Changes		**(21.8)**	**(4.3)**	**(2.7)**			
Department of Revenue Implementation Costs		**($5.0)**					
2009-2011 Budget Requirement		**(500.4)**	**(667.1)**				
Remainder		**$38.6**	**$65.7**	**$732.4**	**$80.0**	**$119.4**	**$127.5**

21st Century Tax Rate Reduction Plan
Personal Income Tax Distribution, 2012



North Carolina tax after credits by AGI for Tax Year 2012

SINGLE	Current Returns	New Returns	Current Law (Millions)	New Law (Millions)	Tax Change (Millions)	Average Tax Change (Dollars)	Change in Tax Liability
0 < 9999	191,076	161,523	29.25	19.79	(9.46)	(30.56)	-20.0%
9999 < 19999	264,417	267,252	130.07	123.88	(6.19)	(28.38)	-5.8%
19999 < 29999	228,861	230,262	239.46	229.52	(9.94)	(49.53)	-4.7%
29999 < 39999	169,344	170,793	272.59	263.51	(9.08)	(66.82)	-4.2%
39999 < 49999	115,980	117,342	249.44	244.81	(4.63)	(64.42)	-3.0%
49999 < 59999	74,325	75,330	196.11	198.82	2.71	0.77	0.0%
59999 < 69999	46,350	46,872	145.20	151.73	6.53	104.43	3.3%
69999 < 79999	29,871	30,210	108.66	115.52	6.86	186.26	5.1%
79999 < 89999	19,710	19,704	79.39	85.79	6.40	326.03	8.1%
89999 < 99999	13,200	13,206	60.14	65.48	5.34	402.29	8.8%
99999 < 124999	19,017	18,873	102.47	111.88	9.41	539.71	10.0%
124999 < 149999	9,348	9,309	63.58	69.85	6.27	702.04	10.3%
149999 < 174999	5,169	5,157	42.45	46.17	3.72	740.46	9.0%
174999 < 199999	3,342	3,282	32.37	34.98	2.61	972.32	10.0%
199999 < 499999	8,979	8,670	140.84	147.39	6.55	1,314.51	8.4%
499999 < Infinity (+)*	3,228	3,327	371.72	396.52	24.80	4,027.55	3.5%
TOTALS:	1,202,217	1,181,112	2,263.74	2,305.64	41.90	69.12	3.7%

MARRIED FILING JOINTLY	Current Returns	New Returns	Current Law (Millions)	New Law (Millions)	Tax Change (Millions)	Average Tax Change (Dollars)	Change in Tax Liability
0 < 39999*	243,873	281,103	173.35	184.90	11.55	(53.05)	-7.5%
39999 < 49999	121,461	124,746	175.69	179.46	3.77	(7.87)	-0.5%
49999 < 59999	127,296	129,243	252.35	255.45	3.10	(5.88)	-0.3%
59999 < 69999	129,462	130,479	327.35	329.88	2.53	(0.32)	0.0%
69999 < 79999	124,182	125,031	382.52	385.58	3.06	3.56	0.1%
79999 < 89999	109,809	109,287	392.32	393.96	1.64	32.07	0.9%
89999 < 99999	92,730	92,124	382.51	387.25	4.74	78.59	1.9%
99999 < 124999	162,213	159,615	828.67	823.96	(4.71)	53.64	1.1%
124999 < 149999	91,263	89,577	585.62	613.78	28.16	435.14	6.8%
149999 < 174999	53,286	52,260	415.86	440.21	24.35	619.16	7.9%
174999 < 199999	32,532	31,935	301.44	319.53	18.09	739.68	8.0%
199999 < 499999	84,435	82,986	1,284.10	1,362.86	78.76	1,214.62	8.0%
499999 < 999999	14,970	14,640	557.23	586.93	29.70	2,867.73	7.7%
999999 < Infinity (+)*	9,288	9,402	2,175.86	2,248.77	72.91	4,914.24	2.1%
TOTALS:	1,396,800	1,432,428	8,234.87	8,512.52	277.65	47.20	0.8%

* Collapsed Federal Adjusted Gross Income ranges due to minimum number of returns necessary.

North Carolina tax after credits by AGI for Tax Year 2012

MARRIED FILING SEPARATELY	Current Returns	New Returns	Current Law (Millions)	New Law (Millions)	Tax Change (Millions)	Average Tax Change (Dollars)	Change in Tax Liability
0 < 9999	4,233	5,046	0.67	0.70	0.03	(19.56)	-12.4%
9999 < 19999	12,714	13,218	5.96	5.91	(0.05)	(21.66)	-4.6%
19999 < 29999	16,968	17,115	16.26	16.06	(0.20)	(19.92)	-2.1%
29999 < 39999	14,574	14,751	20.86	21.16	0.30	3.16	0.2%
39999 < 49999	10,284	10,314	19.38	20.01	0.63	55.60	3.0%
49999 < 59999	6,177	6,144	14.73	15.12	0.39	76.28	3.2%
59999 < 69999	3,900	3,948	16.43	17.34	0.91	179.28	4.3%
69999 < 79999	2,442	2,454	8.75	9.37	0.62	235.13	6.6%
79999 < 89999	1,584	1,545	6.09	6.55	0.46	394.79	10.3%
89999 < 99999	1,143	1,128	5.14	5.44	0.30	325.76	7.2%
99999 < 124999	1,536	1,494	7.64	8.32	0.68	594.98	12.0%
124999 < Infinity (+)*	2,961	2,946	132.51	156.38	23.87	8,330.37	18.6%
TOTALS:	78,516	80,103	254.42	282.36	27.94	284.60	8.8%

HEAD OF HOUSEHOLD	Current Returns	New Returns	Current Law (Millions)	New Law (Millions)	Tax Change (Millions)	Average Tax Change (Dollars)	Change in Tax Liability
0 < 29999*	281,916	311,502	139.99	144.80	4.81	(31.72)	-6.4%
29999 < 39999	102,093	103,281	119.75	113.75	(6.00)	(71.59)	-6.1%
39999 < 49999	52,020	52,407	90.50	86.54	(3.96)	(88.41)	-5.1%
49999 < 59999	29,463	29,601	67.17	65.02	(2.15)	(83.26)	-3.7%
59999 < 69999	16,734	16,821	47.09	46.16	(0.93)	(69.84)	-2.5%
69999 < 79999	9,579	9,621	31.93	31.66	(0.27)	(42.62)	-1.3%
79999 < 89999	5,637	5,550	22.40	21.40	(1.00)	(117.89)	-3.0%
89999 < 99999	3,570	3,525	15.82	15.70	(0.12)	22.53	0.5%
99999 < 124999	4,089	4,032	21.92	22.86	0.94	308.92	5.8%
124999 < Infinity (+)*	5,529	5,433	99.85	102.43	2.58	793.98	4.4%
TOTALS:	510,630	541,773	656.42	650.32	(6.10)	(85.15)	-6.6%

* Collapsed Federal Adjusted Gross Income ranges due to minimum number of returns necessary.

North Carolina tax after credits by AGI for Tax Year 2012

Federal Adjusted Gross Income	Current Returns	New Returns	Current Law (Millions)	New Law (Millions)	Tax Change (Millions)	Average Tax Change (Dollars)	Change in Tax Liability
0 < 9999	199,680	170,136	39.96	20.70	(19.26)	(78.45)	-39.2%
9999 < 19999	413,946	467,196	170.55	174.37	3.82	(38.78)	-9.4%
19999 < 29999	516,255	529,818	417.67	418.32	0.65	(19.48)	-2.4%
29999 < 39999	400,188	408,696	520.02	510.59	(9.43)	(50.12)	-3.9%
39999 < 49999	299,745	304,809	535.02	530.82	(4.20)	(43.43)	-2.4%
49999 < 59999	237,261	240,318	530.35	534.41	4.06	(11.54)	-0.5%
59999 < 69999	196,446	198,120	536.08	545.11	9.03	22.52	0.8%
69999 < 79999	166,074	167,316	531.86	542.14	10.28	37.67	1.2%
79999 < 89999	136,740	136,086	500.20	507.70	7.50	72.69	2.0%
89999 < 99999	110,643	109,983	463.60	473.87	10.27	118.52	2.8%
99999 < 124999	186,855	184,014	960.69	967.02	6.33	113.78	2.2%
124999 < 149999	103,302	101,520	668.28	702.44	34.16	450.04	7.0%
149999 < 174999	59,901	58,815	469.27	498.19	28.92	636.37	8.1%
174999 < 199999	36,777	36,126	342.11	363.38	21.27	756.40	8.1%
199999 < 499999	95,877	94,068	1,462.22	1,549.83	87.61	1,224.64	8.0%
499999 < 999999	17,202	16,893	638.88	672.69	33.81	2,680.77	7.2%
999999 < 1499999	4,443	4,416	292.88	303.24	10.36	2,749.05	4.2%
1499999 < Infinity (+)	6,828	7,086	2,329.78	2,436.04	106.26	2,572.38	0.8%
TOTALS:	3,188,163	3,235,416	11,409.42	11,750.86	341.44	53.27	1.5%

Tax Brackets

Single		Married Filing Jointly		Married Filing Separately		Head of Household	
0 - 5,000	0.00%	0 - 10,000	0.00%	0 - 5,000	0.00%	0 - 8,000	0.00%
5,000 - 18,500	5.25%	10,000 - 37,000	5.25%	5,000 - 18,500	5.25%	8,000 - 29,600	5.25%
18,500 - 50,000	6.50%	37,000 - 100,000	6.50%	18,500 - 50,000	6.50%	29,600 - 80,000	6.50%
50,000 and above	7.50%	100,000 and above	7.50%	50,000 and above	7.50%	80,000 and above	7.50%

SENATE FINANCE COMMITTEE
Wednesday, April 28, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 28, 2009, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator Clark Jenkins presided. Michael Horton of Cumberland County, Caleb Pletcher of Catawba County, and Brandon Crady of Forsyth County served as pages.

S.B. 405 – Real Property Sales Information.

Senator Hartsell was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS assist counties and the Department of Revenue in obtaining accurate real property sales information needed for property tax appraisals by requiring a report of sales information when real property is transferred. Senator Dannelly moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 632 – Treasurer's Governance & Transparency Act.

Senator Nesbitt was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS enacts the Treasurer's Governance and Transparency Act of 2009. Treasurer Cowell was recognized to speak in favor of the bill and answer questions. Senator Weinstein moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 691 – Tax Information Disclosure to State Treasurer.

Senator Dorsett was recognized to explain the bill which permits disclosure of certain tax information of local governments to the Department of State Treasurer. Treasurer Cowell spoke in favor of the bill and was available to answer questions. Senator Goodall moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 703 – State Treasurer Investments.

Senator Rand was recognized to explain the bill which concerns investments of the State Treasurer and offered a technical amendment. He moved to adopt the amendment and the motion carried. Treasurer Cowell was available to answer questions. Pat Gerrick, Chief Investment Officer, Office of the State Treasurer, was recognized to answer questions. Senator East moved to adopt the bill as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 754 – Statutory Changes for ARRTA Funds.

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS amends the North Carolina General Statutes

to allow the State to take full advantage of the expansion of existing bond programs and the creation of new bond programs under the American Recovery and Reinvestment Tax Act of 2009 (ARRTA). Senator Clodfelter offered a clarifying amendment and moved for its adoption. The motion carried. Vance Holloman, Deputy State Treasurer, was recognized to answer questions. Trina Griffin, a staff attorney with the Research Division, was recognized to answer questions. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 871 – Use Pre-Stimulus FMAP for MC Hold Harmless.

Senator Clodfelter was recognized to explain the bill which clarifies the calculation of the Medicaid swap hold harmless. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:54 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 28, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 405	Real Property Sales Information.	Senator Hartsell
SB 632	Treasurer's Governance & Transparency Act.	Senator Nesbitt, Jr.
SB 691	Tax Info Disclosure to State Treasurer.	Senator Dorsett
SB 703	State Treasurer Investments.	Senator Rand
SB 754	Statutory Changes for ARRTA Funds.	Senator Clodfelter
SB 871	Use Pre-Stimulus FMAP for MC Hold Harmless.	Senator Clodfelter

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, April 28, 2009

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

FAVORABLE

S.B. **691** Tax Info Disclosure to State Treasurer.
Sequential Referral: None
Recommended Referral: None

S.B. **871** Use Pre-Stimulus FMAP for MC Hold Harmless.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **703** State Treasurer Investments.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, April 29, 2009

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

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

S.B. **632** Treasurer's Governance & Transparency Act.

Draft Number:	15250
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **754** Statutory Changes for ARRTA Funds.

Draft Number:	55347
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **405** Real Property Sales Information.

Draft Number:	75240
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	DHGR
Katherine W. Joyce	NCASA
Leanne Winner	NCSBA
Nancy Thompson	Weyerhaeuser
Susan Harrison	NCPSS
Alice Garland	NCEL
[illegible]	NCHB
Mandy Ahlerding	Action for Children NC
Daniel Baum	K+L GATES
Patrick Bulk	NMRG
Zeb Alley	"
John Bowdish	Cristia Jenecc

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steven Waters	Living Streets
Gretchen Kelly	FirstHealth
B Nash	WM
L Perryman	NCPA
Cam Cline	BPMH
Marci Wild	Novant
ANN LOVE	DUKE
Angie Harris	Williams Mullen
Mia Bailey	Electricities of NC, Inc.
STEVE TAYLOR	NCDPI
Kim Crouch	NCBA
BRUCE THOMPSON	PARKER POE

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Johns	BSA

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pat Goldsmith	Johnston County
David Baker	NCDOR
Bill Wilkes	NCDOR
Andy Sabol	NCDOR
Karl Knapp	NCLM
David Starling	NCDST
Janet Cowell	NCDST
Pat Gerrick	NCDST
Ashley G. Bell	American Cancer Society
Betsy Vetter	American Heart Assn.
Dave Stone	NCRLA

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT SMITH	LEAFLIGHT POB 16081 CH NC 27516
David Heinen	NC Center for Nonprofits
Vance Holloman	St. Treasurer
Reid McMillan	Moore & Van Allen
[signature]	Sen. Goss's office
Britt Eller	Sen. Goss's office
Meg Gray	NC Justice Ctr
Elaine Mejia	NC Justice Ctr
[signature]	School of Gov.
Michael Houser	NC DOR
[signature]	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
J. Schari	DST
Amy Schilder	MWC
David Borup	MWC
Scott Mowry	The Insider
Joe McCleese	McCleese Consultants
Rob Schofield	NCPW
Gene Ainsworth	A & A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 405*
Commerce Committee Substitute Adopted 4/1/09
PROPOSED COMMITTEE SUBSTITUTE S405-CSLAf-11 [v.2]

4/24/2009 9:24:14 AM

Short Title: Real Property Sales Information. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS BY REQUIRING A REPORT OF SALES INFORMATION WHEN REAL PROPERTY IS TRANSFERRED.

Whereas, the Constitution of North Carolina requires that property must be taxed by uniform rule and that every classification must be made by general law uniformly applicable in every county, city and town, and other unit of local government; and

Whereas, the North Carolina General Statutes require that all property, real and personal, must so far as practicable be appraised or valued at its true value which is interpreted as meaning market value; and

Whereas, taxes levied by all counties and municipalities must be levied uniformly on assessments determined by the true value of most property; and

Whereas, to help ensure that tax values of real property reflect fair market value when the counties value their property for property tax purposes, the North Carolina Department of Revenue must conduct annual studies of the ratio of the appraised value of real property to its true value and establish for each county the median ratio as determined by the study for each calendar year; and

Whereas, one of the most accurate and cost-efficient methods of producing a fair revaluation of property based on the true value of the property is to require that sales information reports be filed with the county whenever property changes hands; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-317.2. Report on transfers of real property.**

To facilitate the accurate appraisal of real property for taxation, the information listed in this section must be reported on a form developed by the Department of Revenue. G.S. 161-32 requires that the report be recorded with the deed transferring the real property. The following information is required:

(1) The name of each grantor and grantee and the address of each grantee.

(2) A brief description of the property.

(3) The total sales price.

(4) Whether the transaction involves relatives or related businesses.

(5) Whether personal property was conveyed with the transaction.

(6) Whether the transaction is the result of an auction or foreclosure sale."

SECTION 2. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-32. Report on transfer of real property.**

The register of deeds may not accept for registration a deed transferring real property unless a sales information report required by G.S. 105-317.2 is recorded with the deed. Failure to comply with this section does not affect the validity of a duly recorded deed."

SECTION 3. This act becomes effective January 1, 2010.

SENATE BILL 405:
Real Property Sales Information

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 27, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Martha Walston Committee Counsel
Analysis of:	Second Edition S405-CSLAf-11		

SUMMARY: ***SB 405, a recommendation of the Revenue Laws Study Committee, would prohibit a register of deeds from accepting for registration a deed transferring real property unless certain sales information is also recorded with the deed. The purpose of filing the sales information would be to facilitate the accurate appraisal of real property for taxation. The 2nd Edition of SB 405 was given a favorable report in Senate Commerce.***

The Proposed Committee Substitute would further simplify and clarify the sales information form as follows:

- ***It would require a yes/no answer to whether the transaction involves relatives or related businesses (instead of requiring a yes/no answer to whether the transaction involves family members or affiliated businesses).***
- ***It would require a yes/no answer to whether personal property was conveyed as a part of the transaction (instead of requiring a listing of personal property conveyed as a part of the transaction).***
- ***It requires a yes/no answer to whether the transaction is the result of an auction or foreclosure sale (instead of whether the transaction is the result of a forced sale).***

CURRENT LAW: Real property must be appraised for property tax purposes at least every eight years. The appraisal value must be its market or true value as of January 1 of the year of the general reappraisal.[1] Market or true value is the price at which property would change hands between a willing and financially able buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the uses to which property is adapted and for which it is capable of being used. To assist the counties in determining the true value, the Department of Revenue conducts yearly sales assessment ratio studies for each county. These studies compare the appraised value of parcels with the sales price. The closer the comparison is to 100%, the closer the property's appraised value is to the fair market value. Consequently, more frequent reappraisal schedules lessen the discrepancy between the appraised value of the property and the true value of the property.

Prior to the 2008 Session, the Revenue Laws Study Committee adopted a proposal to change the eight year appraisal cycle to a four year cycle. The version of this proposal ratified in S.L. 2008-146 requires advancement of the eight year schedule only for a county with a population of 75,000 or greater and when the sales assessment ratio for that county drops below .85 or becomes greater than 1.15.[2] For these counties, new values must be implemented by January 1 of the third year following notice by the Department of the sales assessment ratio study. All other counties retain the eight-year schedule.

[1] The following types of property are appraised at their use value: farmland, working waterfront property, and wildlife conservation property.

[2] Based upon the 2007 population estimates and 2008 sales ratios, only ten counties are affected by the 2008 legislation.

BILL ANALYSIS: This bill would require that the following sales information be provided in a report before a deed transferring property may be accepted by the county's register of deeds:

1. The name of each grantor and grantee.
2. A brief description of the property.
3. The total sales price.
4. Whether the transaction involves relatives or related businesses.
5. Whether personal property was conveyed with the transaction.
6. Whether the transaction is the result of an auction or foreclosure sale.

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

EFFECTIVE DATE: This proposal would become effective January 1, 2010.

BACKGROUND: The proposal is similar to a recommendation of the 2007-2008 Revenue Laws Study Commission Report to the 2009 General Assembly. This proposed statewide sales information report was supported by comments made during meetings with tax assessors from large urban counties and smaller rural counties. Based upon information compiled by the Department of Revenue, 50 counties are already sending out letters requesting information to confirm a property transfer and six counties are requiring a transfer affidavit.

S405-SMLA-22(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 632*
PROPOSED COMMITTEE SUBSTITUTE S632-CSTD-18 [v.1]

4/27/2009 9:57:33 AM

Short Title: Treasurer's Governance & Transparency Act. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE TREASURER'S GOVERNANCE AND TRANSPARENCY ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b1) reads as rewritten:

"(b1) With respect to investments authorized by subsections ~~(b)(8)~~(b)(7), (b)(8), and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of ~~five~~ seven members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and ~~two~~ four members selected from the general public. The ~~two~~ four public members must have experience in areas relevant to the administration of a large, diversified investment program, including but not limited to, ~~one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies.~~investment management, securities law, real estate development, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1."

SECTION 2. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-69.7. Discharge of duties to Retirement Systems.**

(a) The Treasurer shall discharge his or her duties with respect to the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems) as follows:

(1) Solely in the interest of the participants and beneficiaries.

(2) For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the Retirement Systems.

(3) With the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
(4) Impartially, taking into account any differing interests of participants and beneficiaries.
(5) Incurring only costs that are appropriate and reasonable.
(6) In accordance with a good-faith interpretation of the law governing the Retirement Systems.

(b) In investing and managing assets of the Retirement Systems pursuant to subsection (a) of this section, the Treasurer:
(1) Shall consider the following circumstances:
a. General economic conditions.
b. The possible effect of inflation or deflation.
c. The role that each investment or course of action plays within the overall portfolio of the Retirement Systems.
d. The expected total return from income and the appreciation of capital.
e. Needs for liquidity, regularity of income, and preservation or appreciation of capital.
f. The adequacy of funding for the Retirement Systems based on reasonable actuarial factors.
(2) Shall diversify the investments of the Retirement Systems unless the Treasurer reasonably determines that, because of special circumstances, it is clearly prudent not to do so.
(3) Shall make a reasonable effort to verify facts relevant to the investment and management of assets of the Retirement Systems.
(4) May invest in any kind of property or type of investment consistent with the provisions of Article 6 of Chapter 146.
(5) May consider benefits created by an investment in addition to investment return only if the Treasurer determines that the investment providing these collateral benefits would be prudent even without collateral benefits.

(c) Compliance by the Treasurer with this section must be determined in light of the facts and circumstances existing at the time of the Treasurer's decision or action and not by hindsight.

(d) The Treasurer's investment and management decisions must be evaluated not in isolation but in the context of the portfolio of the Retirement Systems as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Retirement Systems."

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

SENATE BILL 632:
Treasurer's Governance & Transparency Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 28, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S632-CSTD-18		

SUMMARY: ***Senate Bill 632 is an agency bill that would increase the membership of the State Treasurer's Investment Advisory Committee from five to seven members, by adding two public members. The bill also changes the experience requirements of the public members.***

The Proposed Committee Substitute adds a new section to the bill which describes the duties and the standards to be applied to the State Treasurer with regard to the discharge of her duties in connection with the Retirement Systems administered by the Treasurer's office.

[As introduced, this bill was identical to H556, as introduced by Reps. Folwell, McGee, Owens, Randleman, which is currently in House Pensions and Retirement, if favorable, Finance.]

CURRENT LAW: Under current law, The State Treasurer is authorized to invest the assets of the all of the State administered retirement systems. The law includes several limitations on the amount and types of investments that can be made with these funds.

The law also authorizes the State Treasurer to appoint an Investment Advisory Committee. The Committee consists of five members: The State Treasurer, two members from the board of trustees of the Retirement System, and two public members. The public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The committee has only advisory powers.

BILL ANALYSIS: Senate Bill 632 amends the law to increase the membership of the Investment Advisory Committee from five to seven members, with the two additional members to be appointed by the Treasurer as public members. The bill also changes the experience requirements for the public members by removing the requirement for experience in real estate investment trusts and venture capital investments, and substituting experience in securities law.

The new section added by the PCS is entitled "Discharge of duties to Retirement Systems." The section provides that with respect to the Retirement Systems administered by the Treasurer, the Treasurer shall discharge his or her duties as follows:

- Solely in the interest of participants and beneficiaries.
- For the exclusive purpose of providing benefits and paying reasonable administrative expenses.
- With the care, skill, and caution under the circumstances that a prudent person who was familiar with the matters would use in a like situation.
- Impartially, taking into account the differing interests of participants and beneficiaries.
- Incurring only appropriate and reasonable costs.
- In accordance with a good-faith interpretation of the law governing the Retirement Systems.

The new section also sets standards to be used by the Treasurer in investing and managing the assets of the Retirement Systems, including that the Treasurer:

- Shall consider the following circumstances:
  - General economic conditions.
  - The possible effects of inflation or deflation.
  - The role of each investment in the overall portfolio.
  - The expected total return and the appreciation of capital.
  - Needs for liquidity, regular income, and preservation or appreciation of capital.
  - The adequacy of funding based on reasonable actuarial factors.
- Shall diversify the investments unless the Treasurer determines it is clearly not prudent to do so.
- Shall make reasonable efforts to verify relevant facts.
- May invest in any kind of real property which the State is authorized to acquire under Article 6 of Chapter 146.
- May consider other benefits created by an investment in addition to return on the investment, only if the investment would be prudent even without the collateral benefit.

The Treasurer's compliance with this standard must be determined based on the facts and circumstances at the time the decision was made, not using hindsight. In addition, the Treasurer's investment and management decisions must be evaluated in light of the portfolio as a whole and as part of an overall investment strategy.

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

Karen Cochrane-Brown substantially contributed to this summary.

S632-SMTD-31(CSTD-18) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 691

Short Title:	Tax Info Disclosure to State Treasurer.	(Public)
Sponsors:	Senator Dorsett.	
Referred to:	Finance.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT DISCLOSURE OF CERTAIN TAX INFORMATION OF LOCAL GOVERNMENTS TO THE DEPARTMENT OF STATE TREASURER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(39) To furnish the Department of State Treasurer with information it requests about whether a unit of local government has timely filed a withholding report, has been charged a penalty, or has paid a penalty, as such information may be helpful in auditing local government accounts pursuant to G.S. 159-34 and determining compliance with the Local Government Finance Act."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2009.

SENATE BILL 691:
Tax Info Disclosure to State Treasurer

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 27, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 691 is an agency bill that would permit the Department of Revenue to disclose certain tax information concerning local governments to the Treasurer's office.***

[As introduced, this bill was identical to H649, as introduced by Rep. Fisher, which is currently in House State Government/State Personnel, if favorable, Finance.]

CURRENT LAW: The disclosure of tax information is prohibited unless the disclosure is for one of the purposes enumerated by statute. There are currently over 35 purposes for which disclosure is permitted. Individuals that disclose tax information in violation of the statute are guilty of a Class 1 misdemeanor; public officials and employees that disclose tax information in violation of the statute are dismissed from office or employment and may not hold public office or public employment for 5 years after the violation.

BILL ANALYSIS: Senate Bill 691 would authorize the release of tax information to the Treasurer's office concerning whether a local government has timely filed a withholding report, has charged a penalty, or has paid a penalty for failure to file the report. This information may be used by the Treasurer to determine compliance with the Local Government Finance Act.

EFFECTIVE DATE: This act is effective for taxable years beginning on or after January 1, 2009.

S691-SMTD-32(e1) v2

SENATE BILL 703

Short Title:	State Treasurer Investments.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING INVESTMENTS OF THE STATE TREASURER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2 reads as rewritten:

"**§ 147-69.2. Investments authorized for special funds held by State Treasurer.**

(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

(1) The Teachers' and State Employees' Retirement System.
(2) The Consolidated Judicial Retirement System.
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan.
(4) The General Assembly Medical and Hospital Care Plan.
(5) The Disability Salary Continuation Plan.
(6) The Firemen's and Rescue Workers' Pension Fund.
(7) The Local Governmental Employees' Retirement System.
(8) The Legislative Retirement System.
(9) The Escheat Fund.
(10) The Legislative Retirement Fund.
(11) The State Education Assistance Authority.
(12) The State Property Fire Insurance Fund.
(13) The Stock Workers' Compensation Fund.
(14) The Mutual Workers' Compensation Fund.
(15) The Public School Insurance Fund.
(16) The Liability Insurance Trust Fund.
(16a) The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1.
(17a) North Carolina Veterans Home Trust Fund.
(17b) North Carolina National Guard Pension Fund.
(17c) Retiree Health Premium Reserve Account.
(17d) The Election Fund.
(17e) The North Carolina State Lottery Fund.
(17f) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
(17g) The Local Government Other Post-Employment Benefits Fund.

(17h) The Local Government Law Enforcement Special Separation Allowance Fund.
(17i) The North Carolina Conservation Easement Endowment Fund.
(17j) The Conservation Grant Fund.
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.
(19) The Swain County Settlement Trust Fund.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).
(2) General obligations of other states of the United States.
(3) General obligations of cities, counties and special districts in North Carolina.
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United ~~States~~ States, including obligations that are convertible into equity securities, if the obligations either (i) when acquired, bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular ~~security.~~security or (ii) when acquired, bear the fifth highest rating of at least one nationally recognized rating service and do not bear a rating below the fifth highest rating by any nationally recognized rating service which rates the particular security, provided that the obligations are additional securities that are identical to obligations previously acquired pursuant to sub clause (i).
(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.
(6) Asset-backed securities (whether considered debt or equity) ~~provided they~~if the securities either (i) when acquired, bear ratings by nationally recognized rating services as provided in ~~G.S. 147-69.2(b)(4)~~subdivision (4) of this subsection and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular ~~securities.~~security or (ii) when acquired, bear the fifth highest rating of at least one nationally recognized rating service and do not bear a rating below the fifth highest rating by any nationally recognized rating service which rates the particular security, provided that the securities are additional securities that are identical to securities previously acquired pursuant to sub clause (i).
(6a) In addition to the limitations and requirements with respect to the investments of the Retirement Systems set forth in subsection (b) of this section, the State Treasurer shall select investments of the assets of the Retirement Systems such that investments made pursuant to subdivisions (b)(1) through (6) of this section shall at all times equal or exceed twenty percent (20%) of the market value of all invested assets of the Retirement Systems.
(6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may be made directly by the State Treasurer or through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by subdivisions (b)(1) through (6) of this section, provided for each indirect investment, the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

(6c) With respect to Retirement Systems' assets referred to in subdivision (b)(8), they may be invested in obligations and other debt securities, including debt securities convertible into other securities, that do not meet the requirements of any of subdivisions (b)(1) through (6) of this section nor subdivision (b)(7) of this section, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(7) With respect to Retirement Systems' assets referred to in ~~G.S. 147-69.2(b)(8),~~subdivision (8) of this subsection, (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, ~~and~~ (v) investment companies registered under the Investment Company Act of 1940, and (vi) limited partnerships, ~~whether described as~~ limited liability ~~partnerships~~ companies, or other limited liability ~~companies;~~investment vehicles; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the ~~investment~~ investments authorized by this ~~subsection~~ subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in ~~preferred or common stocks~~equity securities traded on a public securities exchange or market organized and regulated pursuant to the laws of the jurisdiction of such exchange or market and issued by any company incorporated or otherwise created or located within or outside the United ~~States~~ States; provided the investments meet the conditions of this subdivision:

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. ~~Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total~~ So long as each

investment manager has assets under management of at least ~~fifty million dollars ($50,000,000).~~one hundred million dollars ($100,000,000), the ~~The~~ assets authorized under this subdivision can be invested through (i) investment companies registered under the Investment Company Act of 1940; (ii) individual, common, or collective trust funds of ~~banks,~~ banks and trust companies, ~~and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).~~(iii) group trusts, and (iv) contractual arrangements in which investment managers have full and complete discretion and authority to invest assets specified in such contractual arrangements.

The assets authorized under ~~this subdivision~~subdivision (8) of this subsection can also be invested directly~~, if all of the following conditions are met:~~

~~a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.~~

~~b. The corporation has paid a cash dividend on its common stock in each year of the 5 year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.~~

~~c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.~~ by the State Treasurer in any equity securities represented in the S&P 500 Index or that have been publicly announced to be included in the S&P 500 Index. No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested directly under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

~~g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.~~

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in ~~limited partnership interests in a partnership or in interests in a limited liability company~~interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded if the primary purpose of the ~~partnership or limited liability company~~limited partnership, limited liability company, or other limited liability investment vehicle is to invest in public or private ~~debt, public or private~~ equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision (b)(9) shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(9a) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in inflation-linked bonds, timberlands, commodities, and other assets that are acquired for the primary purpose of providing protection against risks associated with inflation, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars ($100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems. Notwithstanding anything in this subsection to the contrary, the investments authorized by this subdivision shall not be included in any subdivision other than this subdivision for purposes of the percentage investment limitations therein or otherwise.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than October 1, 2009. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this ~~subsection,~~subsection (b), up to twenty percent (20%) of such assets may be invested in the investments authorized under subdivisions (7) through (9) of this

~~subsection,~~subsection (b) notwithstanding the percentage limitations imposed on the ~~retirement funds~~Retirement Systems' investments under those subdivisions.

(b1) With respect to investments authorized by ~~subsections~~ subdivisions (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17f) of this section in any of the investments authorized under subdivisions (1) through ~~(6)~~(6), subdivision (6c) and subdivision ~~(8) of subsection (b)~~ (8)(b) of this ~~section.~~section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess ~~a~~ reasonable ~~fee,~~fees, not to exceed 15 basis ~~points,~~points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subdivision.

(b3) The State Treasurer may invest funds deposited pursuant to subdivision (a)(16a) of this section in any of the investments authorized under subdivisions (1) through ~~(6)~~(6), subdivision (6c) and ~~subdivision (8) of subsection (b)~~ subdivision (b)(8) of this ~~section.~~section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess ~~a~~ reasonable ~~fee~~fees, not to exceed 15 basis ~~points,~~points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by the University of North Carolina Hospitals at Chapel Hill shall remain the funds of the University of North Carolina Hospitals at Chapel Hill, and interest or other investment income earned thereon shall be prorated and credited to the University of North Carolina Hospitals at Chapel Hill on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subdivision.

(b4) In addition to the investments authorized under subdivisions(b)(1) through ~~(b)~~(6) of this section, the State Treasurer may invest funds deposited in the Local Government Other Post-Employment Benefits Fund in any of the investments authorized under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this ~~section.~~section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess ~~a fee~~fees of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(b5) In addition to the investments authorized under subdivisions (b)(1) through ~~(b)~~(6) of this section, the State Treasurer may invest funds deposited in the Local Government Law Enforcement Special Separation Allowance Fund in any of the investments authorized under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this ~~section.~~section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess ~~a fee~~fees of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(c) Repealed by Session Laws 1995, c. 501, s. 2.

(d) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17i) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection shall remain the funds of the North Carolina Conservation Easement Endowment Fund, and interest or other investment income earned thereon shall be prorated and credited to the North Carolina Conservation Easement Endowment Fund on the basis of the amounts thereof contributed, figured according to sound accounting principles."

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

SENATE BILL 703:
State Treasurer Investments

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 27, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 703 makes several changes related to the investment authority of the State Treasurer.

[As introduced, this bill was identical to H1507, as introduced by Rep. Gibson, which is currently in House Pensions and Retirement, if favorable, Finance.]

CURRENT LAW: Article 6 of Chapter 147 outlines the authority and responsibilities of the State Treasurer. One of the responsibilities of the Treasurer is to invest funds held by the Treasurer as authorized by statute. G.S. 147-69.2 outlines the investment authority of the Treasurer for the following special funds:

(1)	The Teachers' and State Employees' Retirement System.
(2)	The Consolidated Judicial Retirement System.
(3)	The Teachers' and State Employees' Hospital and Medical Insurance Plan.
(4)	The General Assembly Medical and Hospital Care Plan.
(5)	The Disability Salary Continuation Plan.
(6)	The Firemen's and Rescue Workers' Pension Fund.
(7)	The Local Governmental Employees' Retirement System.
(8)	The Legislative Retirement System.
(9)	The Escheat Fund.
(10)	The Legislative Retirement Fund.
(11)	The State Education Assistance Authority.
(12)	The State Property Fire Insurance Fund.
(13)	The Stock Workers' Compensation Fund.
(14)	The Mutual Workers' Compensation Fund.
(15)	The Public School Insurance Fund.
(16)	The Liability Insurance Trust Fund.
(16a)	The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
(17)	Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1.
(17a)	North Carolina Veterans Home Trust Fund.
(17b)	North Carolina National Guard Pension Fund.
(17c)	Retiree Health Premium Reserve Account.
(17d)	The Election Fund.
(17e)	The North Carolina State Lottery Fund.
(17f)	Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
(17g)	The Local Government Other Post-Employment Benefits Fund.
(17h)	The Local Government Law Enforcement Special Separation Allowance Fund.
(17i)	The North Carolina Conservation Easement Endowment Fund.
(17j)	The Conservation Grant Fund.
(18)	Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.
(19)	The Swain County Settlement Trust Fund.

BILL ANALYSIS: Senate Bill 703 amends investment authority of the State Treasurer regarding these funds by amending the following subdivisions of G.S. 147-69.2:

- (b)(4) Authorizes the investment of funds in obligations that are convertible into equity securities. These newly authorized investments, and the currently authorized investments in obligations must meet either of the following:
    - (i) When acquired, bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four

highest by any nationally recognized ratings service which rates the particular security.

- (ii) When acquired, bear the fifth highest rating of at least one nationally recognized rating service and do not bear a rating below the fifth highest rating by any nationally recognized rating service which rates the particular security, provided that the obligations are additional securities that are identical to obligations previously acquired pursuant to (i).

- (b)(6) Amends the authorization to invest in asset-backed securities to require that the securities meet either of the following:
  - (i) When acquired, bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized ratings service which rates the particular security.
  - (ii) When acquired, bear the fifth highest rating of at least one nationally recognized rating service and do not bear a rating below the fifth highest rating by any nationally recognized rating service which rates the particular security, provided that the obligations are additional securities that are identical to obligations previously acquired pursuant to (i).
- (b)(6a) The assets of the Teachers' and State Employees' Retirement System (TSERS), the Consolidated Judicial Retirement System (CJRS), the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System (LGERS), the Legislative Retirement System, and the North Carolina National Guard Pension Fund, are collectively referred to as Retirement Systems. Limits the authority to invest assets of the Retirement Systems so that no more than 20% of the assets may be invested in investments authorized by G.S. 147-69.2(b)(1)-(b)(6).
- (b)(6b) Authorizes the Treasurer to make investments authorized by G.S. 147-69.2(b)(1)-(b)(6) directly, or indirectly through contractual arrangements provided that indirect investments must be managed by an investment manager that has assets under management of at least $100,000,000.
- (b)(6c) Permits the Retirement Systems assets may be invested in obligations and other debt securities, including debt securities convertible into other securities, that do not meet the requirements of subdivisions (b)(1)-(6) and (7) as long as the investments meet all of the following:
  - The investments must be made through the following: investment companies registered under the Investment Company Act of 1940, individual, common collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by the subdivision.
  - The investment manager for each investment must have assets under management of at least $100,000,000.
  - The investments may not exceed 5% of the market value of all invested assets of the Retirement Systems.
- (b)(8) Removes the allowance that up to 5% of the Retirement Systems may be invested in the stocks or shares of a diversified investment company registered under the Investment Company Act of 1940 that has total assets of $50,000. As long as each investment manager

has assets under management of at least $100,000,000, the assets authorized under the subdivision can be invested through the following:

- o Investment companies registered under the Investment Company Act of 1940.
- o Individual, common, or collective trust funds of banks and trust companies.
- o Group trusts.
- o Contractual arrangements in which investment managers have full and complete discretion and authority to invest assets specified in such contractual arrangements.

- (b)(8) Authorizes the investment of Retirement Systems assets may be invested directly by the State Treasurer in any equity securities represented, or publicly announced to be included, in the S&P 500 Index. Removes certain requirements related to Retirement Systems assets being invested directly in common or preferred stock.
- (b)(9) Permits the Retirement Systems assets to be invested in interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded if the primary purpose is to invest in public or private equity or corporate buyout transactions within or outside the US.
- (b)(9a) Permits the Retirement Systems assets to be invested in inflation-linked bonds, timberlands, commodities, and other assets that are acquired for the primary purpose of providing protection against risks associated with inflation. The investments must be made as previously prescribed in other subdivision changes and the investments may not exceed 5% of the market value of all invested assets of the Retirement Systems. The investments authorized by this subdivision can not be included in any other subdivision for purposes of the percentage investment limitations.
- (b2) and (b3) Make technical clarifications to the provisions related to public hospitals and UNC Hospitals.
- (b4) and (b5) Make technical clarifications to provisions related to the OPEB and Local Government Law Enforcement Separation Allowance Fund.

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

S703-SMTD-33(e1) v5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 703

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

S703-ATD-8 [v.2]

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

Date _____,2009

Senator _____

moves to amend the bill on page 2 lines 39-40, by deleting the phrase "subsection (b) of this subsection," and substituting the phrase "this subsection,";

and on page 4 lines 12-13, by rewriting the lines to read:
"The assets authorized under this subdivision can also be invested directly~~, if all of the following conditions are~~";

and on page 5, line 49, by rewriting the line to read:
"authorized by subdivisions (1) through (6) of this subsection,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 754
PROPOSED COMMITTEE SUBSTITUTE S754-CSSVx-11 [v.4]

4/28/2009 12:13:30 PM

Short Title: Changes for Bonds Authorized under ARRTA. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA GENERAL STATUTES TO ALLOW THE STATE TO TAKE FULL ADVANTAGE OF THE EXPANSION OF EXISTING BOND PROGRAMS AND THE CREATION OF NEW BOND PROGRAMS UNDER THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009 (ARRTA).

The General Assembly of North Carolina enacts:

SECTION 1. Article 34B of Chapter 115C of the General Statutes reads as rewritten:

"Article 34B.

"Qualified Zone Academy ~~Bonds.~~Bonds and Qualified School Construction Bonds.

"**§ 115C-489.5. Qualified zone academy ~~bonds;~~ bonds and qualified school construction bonds; findings.**

The General Assembly finds:

(1) Section 226 of the Taxpayer Relief Act of 1997, as codified at ~~26 U.S.C. § 1397E,~~26 U.S.C. § 54E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.

(2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.

(2a) Section 1521 et seq., of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted as 26 U.S.C. § 54F, provides a new source of funds for construction, rehabilitation, or repair of public school facilities or for acquisition of land for public school facilities through the issuance of qualified school construction bonds.

(3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy ~~bonds.~~bonds or qualified school construction bonds. It is intended that the qualified zone academy bonds and qualified school construction bonds be sold at ~~par value~~ a price so that the tax credits received ~~are instead~~ produce the economic equivalent of interest that

otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds or qualified school construction bonds are obligated to repay the principal amount of the qualified zone academy bonds or qualified school construction bonds but need not make interest payments.

(4) Applicable federal law limits the amount of qualified zone academy bonds and qualified school construction bonds that may be issued in North Carolina in a calendar year. The amount of qualified school construction bonds that may be issued in the State is divided between amounts specifically designated for identified local school districts pursuant to ARRTA ("local allocation") and amounts allocated to the entire State for use throughout the State ("statewide allocation").

"§ 115C-489.6. Administration; consultation; issuance of bonds.

(a) ~~State Board of Education to Administer~~ QZAB Program. – The State Board of Education is designated the State education agency responsible for administering the qualified zone academy bond program in North Carolina for the purposes of ~~26 U.S.C. § 1397E.~~26 U.S.C. § 54E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

...

(a1) Qualified School Construction Bond Program. – The State Board of Education is designated the State education agency responsible for administering the statewide allocation of authority to issue qualified school construction bonds under 26 U.S.C. § 54F. The State Board of Education shall perform all activities required to implement and carry out the statewide allocation for the qualified school construction bond program in North Carolina. Those activities include:

(1) Designing an application process under which proposals may be solicited from issuers wishing to issue qualified school construction bonds pursuant to the statewide allocation.

(2) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions may include:

a. Requiring that the bond proceeds be used for purposes permitted under 26 U.S.C. § 54F.

b. Conditions designed to assure that the allocation is used in a timely manner and that the allocations are made in accordance with the requirements of federal statutes, regulations, and rulings.

(3) Confirming that the terms of any qualified school construction bonds issued in accordance with this program are consistent with the terms of the federal program.

(4) Acting as the State entity designated to receive notice from any local school district that it will not utilize its local allocation so that the unused resource will become part of the statewide allocation. Local school districts receiving a local allocation are hereby directed to coordinate the use of such allocation with the State Board of Education so that any local allocation that will not be used by the local school district becomes eligible for use as part of the statewide allocation.

(b) Assistance. – The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. – In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a

prospective issuer of qualified zone academy bonds or qualified school construction bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. – Any ~~bonds designated as~~ qualified zone academy bonds or qualified school construction bonds may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), ~~bonds designated as~~ qualified zone academy bonds or qualified school construction bonds to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale."

SECTION 2. G.S. 143-433.6 is amended by adding two new subsections to read:

"(c) The General Assembly further finds and determines that section 1400U-3 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt facility bond called "recovery zone facility bonds" to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in AARTA, and a new type of governmental bond called "recovery zone economic development bonds." The AARTA provides a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states, and by which the authority is to be reallocated by the State to counties and large municipalities within the State.

(d) The General Assembly further finds and determines that section 54D of the Internal Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy conservation purposes enumerated in section 54D. Section 54D and ARRTA provide a national bond limitation for the issuance of QECBs, and the Treasury Department has allocated that authority among the states. Under section 54D, the United States is required to reallocate the authority to issue QECBs to the counties and large local governments within the states based on population, in accordance with the guidelines provided by the Treasury Department, and to assure that not more than 30% of the QECBs issued in a state are used for private activity bonds, as defined in section 54D."

SECTION 3. G.S. 143-433.8 reads as rewritten:

"**§ 143-433.8. Duties.**

The Committee shall perform the following duties:

(1) Manage the allocation of private activity bonds, low-income housing credits, ~~and~~ qualified public educational facility ~~bonds~~ bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds, and receive advice from bond issuers, elected officials, and the General Assembly.

(2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.

(3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, ~~and~~ qualified public educational facility ~~bonds~~ bonds, recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds.

(4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year."

SECTION 4. G.S. 143-433.9(a) reads as rewritten:

"(a) To provide for the orderly and prompt issuance of ~~private activity bonds and qualified public educational facility bonds, there are hereby proclaimed~~ bonds the allocation of which is managed under this Article, the Committee must follow formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, ~~and~~ (iii) the annual aggregate limitation on the face amount of qualified public educational facility ~~bonds.~~bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance of qualified energy conservation bonds. The unified volume limitation for all issues of private activity bonds, other than qualified public educational facility ~~bonds,~~bonds and recovery zone facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, ~~and~~ (iii) allocations and reallocations of the aggregate limitation on the face amount of qualified public educational facility ~~bonds.~~bonds, (iv) allocation and reallocation of the authority for issuance of recovery zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for issuance of recovery zone economic development bonds allocated to the State, (vi) allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed by the Governor. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development, school facility needs, energy conservation, green initiatives, and general prosperity of the people of North Carolina. In making the initial allocations for recovery zone facility bonds and recovery zone economic development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3) of ARRTA. In making the initial allocation for qualified energy conservation bonds, the Committee shall follow the guidelines provided in Section 54D. The Committee shall make all elective carryforwards of the unused unified volume ~~limitation and~~ limitation, the annual aggregate limitation on the face amount of qualified public educational facility ~~bonds on behalf of the State.~~ bonds, recovery zone facility bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it has allocation authority on behalf of the State. The Committee shall monitor the issuance of qualified energy conservation bonds to ensure that not more than 30% of such bonds are used for purposes that would be treated as private activity bonds under the Internal Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to monitor whether the initial allocations of recovery zone facility bonds or recovery zone economic development bonds to counties and large municipalities pursuant to ARRTA will be utilized, for an allocation that will not be utilized to be waived by notice to the Committee and for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA."

SECTION 5. G.S. 159-123(b) reads as rewritten:

"(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(6) Bonds ~~designated as qualified zone academy bonds pursuant to G.S. 115C-489.6,~~ the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(7) Project development financing debt instruments.

(8) General obligation bonds issued pursuant to the Local Government Bond Act and not described in subdivisions (1) through (7) of this subsection that are sold prior to December 31, 2010."

SECTION 6. G.S. 159C-3 reads as rewritten:

"**§ 159C-3. Definitions.**

The following definitions apply in this Chapter:

...

(3a) Code. – The Internal Revenue Code of 1986, as amended.

...

(6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or manufactured products.

...

(15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:

...

m. Facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds pursuant to the American Recovery and Reinvestment Tax Act of 2009."

SECTION 7. G.S. 159C-6 is amended by adding a new subsection to read:

"(a1) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate any authority as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 8. G.S. 159D-3 is amended by adding the following new subdivision to read:

"**§ 159D-3. Definitions.**

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

...

(3a) "Code" means the Internal Revenue Code of 1986, as amended.

...

(13) "Project" ~~shall mean~~ means any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial ~~project for industry which project may be any~~ project, which may be an industrial or manufacturing factory, mill, assembly ~~plant or~~ plant,

fabricating plant, ~~or~~ freight terminal, ~~or~~ industrial research, development or laboratory ~~facility or~~ facility, industrial processing facility for industrial or manufactured products, a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

..."

SECTION 9. G.S. 159D-45 is amended by adding the following new subsection:

"(g) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate the agency as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 10. This act is effective when it becomes law.

SENATE BILL 754:
Statutory Changes for ARRTA Funds

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 28, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to First Edition S754-CSSVx-11		

SUMMARY: The Proposed Committee Substitute for Senate Bill 754 authorizes local governments to issue several types of government bonds established under the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) and authorizes the private sale of general obligation bonds issued prior to December 31, 2010. The new bond programs under the ARRTA are:

- ***Qualified school construction bonds***
- ***Recovery zone facility bonds***
- ***Recovery zone economic development bonds***
- ***Qualified energy conservation bonds***

[As introduced, this bill was identical to H841, as introduced by Rep. Owens, which is currently in House Finance, if favorable, Appropriations.]

CURRENT LAW: State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are primarily used to finance governmental functions and are repaid with governmental funds. Interest on these bonds is generally exempt from federal and State income tax. Private activity bonds are bonds that allow the state or local government to serve as a conduit for providing financing to nongovernmental entities. Interest on private activity bonds is not excluded from gross income for federal income tax purposes unless the bonds fall within certain defined categories.

Federal law limits the amount of certain types of tax-exempt bonds that may be issued each year in the State. North Carolina has established the North Carolina Federal Tax Reform Allocation Committee (Committee) to manage the federal allocation and to decide which of the local bonds may be issued if the demand exceeds the supply. The Committee consists of the Secretary of the Department of Commerce, the Executive Assistant to the Governor for Budget Management, and the Treasurer.

A recent alternative to traditional tax-exempt bonds are tax credit bonds. Tax credit bonds are not interest-bearing obligations. Instead, a taxpayer holding a tax credit bond is allowed a credit against federal income tax equivalent to the interest that the bond would otherwise pay. The bondholder must include the amount of the credit in gross income and treat it as interest income. The credit effectively replaces the interest that would be paid on an exempt bond, allowing the issuer to borrow interest-free.

The ARRTA provides bond authority to states and local governments for school infrastructure through two primary tax credit bond programs: a new Qualified School Construction Bonds program and the extension of the Qualified Zone Academy Bonds (QZABs) program. North Carolina's QZAB program is administered by the State Board of Education. There is an annual cap allocated among the states based on their respective populations of individual's below the poverty line. North Carolina's QZAB allocation for 2009 is $44.1 million.

The Industrial and Pollution Control Facilities Financing Act authorizes the issuance of tax-exempt industrial development and pollution control bonds. Under this Act, a local political subdivision issues bonds, the proceeds of which are used to finance the acquisition and construction of industrial, pollution control, or other capital facilities to be used by a private company. The bonds are secured by and are

sold exclusively on the basis of the company's obligation to make payments under a financing agreement entered into between the company and the political subdivision. Because the interest on the bonds is exempt from North Carolina and federal income taxes, the interest payments (made indirectly by the private company) are considerably lower than would be required in an ordinary taxable financing. The type and size of facilities that may be financed by industrial development and pollution control bonds are limited by both federal and state law.

BILL ANALYSIS:

Section 1: Authorize Qualified School Construction Bonds

The ARRTA authorized a new category of tax credit bonds for issue in 2009 and 2010. The national volume cap for these bonds is $11 billion for 2009 and another $11 billion for 2010. The bond proceeds must be used to fund the construction, rehabilitation, or repair of a public school, or for the purchase of land on which a funded school will be built. A bond is a qualified school construction bond if all of the following conditions are met:

- 100% of the available project proceeds of the issue of which it is a part are to be used for the construction, rehabilitation, or repair of a public school facility or to acquire land on which a facility funded by the same issue is to be built.
- The bond is issued by a state or local government within the jurisdiction of which the school is located.
- The issuer designates the bond as a qualified school construction bond under Code section 54F.

Section 1 of the bill amends Article 34B of Chapter 115C, which currently authorizes the issuance of QZABs, by adding authority for the issuance of qualified school construction bonds. The State Board of Education will administer the statewide allocation of bonds, which are to be issued in the same manner and under the same guidelines as the QZABs. The statewide allocation to North Carolina under ARRTA for these bonds is approximately $187.2 million and the local allocations[1] are as follows:

- Mecklenburg - $25.96 million
- Cumberland - $15.95 million
- Forsyth - $12.24 million
- Guilford - $17.15 million
- Wake - $17.30 million

Sections 2-4: Expand Authority of Federal Tax Reform Allocation Committee

Sections 2 through 4 of the bill amend the Article governing the Allocation Committee to reflect the addition of recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds (QCEBs) under ARRTA. Under this section, the Committee would be authorized to manage the allocation of these new bonds and continue to study the ways in which these bonds can be utilized.

Recovery zone facility bonds are a type of qualified private activity bond, the interest income of which is tax-exempt. The national limitation on the amount of these bonds that may be issued before January 1, 2011 is $15 billion. The IRS will allocate the national amount to the States based on an amount that bears the same ratio to the total limitation that its employment decline for 2008 bears to the aggregate of the 2008 employment declines for all of the States.

[1] The ARRTA provided that the 100 largest school districts in the United States are to receive a percentage of the total amount of bonds authorized. The above-mentioned North Carolina counties will receive a part of this special allocation.

A recovery zone facility bond is any bond issued before January 1, 2011, designated as such, and where 95% or more of the net proceeds of the issue are to be used for recovery zone property. Recovery zone property is depreciable property constructed, reconstructed, renovated, or acquired by purchase by the taxpayer after the date on which the recovery zone designation took effect where substantially all of the use of the property is in a recovery zone and is in the active conduct of a qualified business by the taxpayer in the zone. A recovery zone is (1) any area designated as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation; and (3) any area for which a designation as an empowerment zone or renewal community is in effect.

Recovery zone economic development bonds are a type of qualified bond, which entitles the county or municipal issuer to elect to receive a 45% tax credit for the interest paid on the bond. Up to $10 billion in these bonds may be issued nationally before January 1, 2011. It is estimated that $351.7 million will be allocated to North Carolina. The proceeds of the bonds are to be used for qualified economic development purposes defined as expenditures for promoting development or other economic activity in a recovery zone.

Qualified energy conservation bonds are a new type of tax credit bond authorized under the Emergency Economic Stabilization Act of 2008. These bonds provide a federal subsidy to assist state and local governments in financing energy conservation projects with respect to capital expenditures, research expenditures, expenses for mass commuting facilities, demonstration projects that promote green building technology and other technologies that promote energy efficiency. The ARRTA expands the program by increasing the national cap from $800 million to $3.2 billion. North Carolina's allocation is $95.7 million.

Section 5: Authorize Certain General Obligation Bonds to be Sold at Private Sale

Bonds issued by units of local government must be sold by the Local Government Commission after advertisement and upon sealed bids, unless it meets one of the statutory exceptions. Under current law, the following types of bonds may be sold at private sale:

- Bonds that a State or federal agency has previously agreed to purchase.
- Any bonds for which no legal bid is received within the time allowed for submission of bids.
- Revenue bonds and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
- Refunding bonds issued pursuant to G.S. 159-78.
- Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Bonds designated as qualified zone academy bonds pursuant to G.S. 115C-489.6, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Project development financing debt instruments.

Section 5 would add general obligation bonds issued pursuant to the Local Government Bond Act that are sold prior to December 31, 2010. It also makes a conforming change so that all tax credit bonds are covered under this provision.

Sections 6 & 7: Conform Industrial and Pollution Control Facilities Financing Act

These sections make conforming changes to the Industrial and Pollution Control Facilities Financing Act to take into account the recovery zone facility bonds authorized under ARRTA. It authorizes a county or city to designate an Industrial Facilities and Pollution Control Financing Authority as a governmental entity authorized to issue recovery zone facility bonds. It would allow facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds to

qualify as "special purpose projects" under the Act. Finally, it would allow facilities used in the production of tangible or intangible personal property to qualify as "industrial projects" under the Act.

Sections 8 & 9: Conform North Carolina Capital Facilities Financing Act

These sections make changes similar to those made in Sections 6 and 7, but to the North Carolina Capital Facilities Financing Act. It would allow facilities used in the production of tangible or intangible personal property to qualify as "projects" under the North Carolina Capital Facilities Financing Act.

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

S754-SMSV-27(CSSVx-11) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 754 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Clodfelter
Sen.)

moves to amend the bill on page 5, line 10

( ) WHICH CHANGES THE TITLE

by inserting between the words "bonds" and "issued" the following:

"rated below AA grade"

SIGNED Mitchell S. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 871

Short Title:	Use Pre-Stimulus FMAP for MC Hold Harmless.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Appropriations/Base Budget.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CALCULATION OF THE MEDICAID SWAP HOLD HARMLESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-523(b)(2) reads as rewritten:

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

...

(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars ($500,000). A county's Medicaid service costs for fiscal years 2008-2009, 2009-2010, and 2010-2011 are determined without regard to the changes made to the Federal Medical Assistance Percentage by Section 5001 of the American Recovery and Reinvestment Act of 2009."

SECTION 2. This act is effective when it becomes law and applies to distributions for months beginning on or after October 1, 2008.

SENATE BILL 871:
Use Pre-Stimulus FMAP for MC Hold Harmless

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 21, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 871 would disregard the changes in the FMAP made in the ARRA in determining the hold harmless payment made to counties as a result of the Medicaid swap.***

CURRENT LAW: Prior to 2007, counties were responsible for 15% of the nonfederal share of Medicaid costs. In 2007, the State began to assume the counties' share of these costs over a three year period. To provide the financial resources to assume these costs, a portion of local sales taxes were phased out and the State sales tax was correspondingly increased. Changes were also made to the distribution of a portion of the local sales tax. The distribution of the second one-half cent local sales tax, authorized by Article 40 of Chapter 105, was changed from per capita to point of origin. The State's assumption of the counties' share of Medicaid costs and the phase out of the third one-half cent local sales tax will be complete on July 1, 2009.

The act authorizing the State assumption of the Medicaid costs contained two separate hold harmless provisions. The first required counties to hold cities harmless with respect to the reduction in sales tax revenue. The second required the State to make hold harmless payments to the counties to ensure that each county would benefit by at least $500,000 as a result of the loss of the sales tax revenue and the State assuming the county's share of Medicaid costs. The amount of the hold harmless payment is based on both the counties' lost sales tax revenue and the counties' share of Medicaid payments assumed by the State.

The federal share of Medicaid is determined using a formula. The formula compares each states' per capita income relative to U.S. per capita income and provides federal funding based on income. The result of the formula, the "Federal Medicaid Assistance Percentage" (FMAP), provides states with lower incomes higher federal reimbursement, while providing states with higher incomes a lower federal reimbursement.

The America Recovery and Reinvestment Act of 2009 (ARRA) authorized additional federal funding for states in the form of temporary increases in the funds the Federal government contributes toward Medicaid. The ARRA provides this money to the States through an increase in the FMAP.[1]

BILL ANALYSIS: Senate Bill 871 would disregard the changes in the FMAP made in the ARRA in determining the hold harmless payment made to counties as a result of the Medicaid swap. The counties' hold harmless amount would be artificially inflated if the higher FMAP was used in determining the hold harmless payment amount.

EFFECTIVE DATE: This act is effective when it becomes law and applies to distributions beginning on or after October 1, 2008.

S871-SMTD-25(e1) v4

[1] The AARA increases FMAP for all states by 6.2%.

SENATE FINANCE COMMITTEE
Wednesday, April 29, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on April 29, 2009, in Room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator David Hoyle presided. Reem Hadi of Garner and Olena Serpukhouitina of Mooresboro served as pages.

S.B. 967 – Yadkin River Trust.

Senator Hartsell was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS create the Yadkin River Trust in order to: (1) develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation; (2) acquire and operate the Yadkin Project, an existing hydroelectric facility, and to authorize issuance of bonds and notes by the Trust for that purpose; and (3) produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities. Gene Ellis, Alcoa's Licensing and Property Manager; Larry Jones, President of the High Rock Lake Association, and Len Strong, a High Rock Lake resident, was recognized to speak in opposition to the bill. Roger Dick, NC Water Rights Committee, June Mabbry, 8th Democratic Party Chair, and Bruce Thompson, Stanly County lobbyist, spoke in favor of the bill. Vance Holloman, NC Deputy Treasurer, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 97 – Critical Infrastructure Assm't Changes.

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS aligns the authorized purposes for special assessments for critical infrastructure needs with the purposes of project development financing, clarifies the law concerning financing a project for which assessments may be pledged, and exempts private entities that implement projects for which assessments may be pledged from the competitive bidding requirements of local governments. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 99 – Internet Ticket Sales.

The meeting adjourned before this bill was taken up.

The meeting adjourned at 3:34 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	April 29, 2009	Fifteen minutes after session adjourns	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 97	Critical Infrastructure Assm't Parks & Rec.	Senator Hartsell
SB 99	Internet Ticket Resale Amendments.	Senator Hartsell
SB 967	Creation of Yadkin River Trust.	Senator Hartsell

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Monday, May 04, 2009

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

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

S.B. **97** Critical Infrastructure Assm't Parks & Rec.

Draft Number:	85204
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **967** Creation of Yadkin River Trust.

Draft Number:	15253
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 29, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
K. Paul Williams	WGR
Joe McClees	McClees Consulting
Anthony Ronchetti	NRA
LEE SETTLE	SQUARE 1 BANK
DOUG PARIS	CITY OF SALISBURY
DAVID TREME	" "
Becki Gray	John Locke Foundation
Paul Hoglund	Infum Inc.

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 29, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mike Watson	NCRPA
[illegible]	WM
[illegible]	K&L Gates
[illegible]	K&L Gates
Doug Heron	Womble Mayfield
Patrick Bakke	NMRS
Doug Miskew	Capstrat
John Goodman	NC Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

April 29, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Scott Gamoner	Duke Energy
Bruce Thompson	Parker Poe
Len Strong	Private Citizen, Davidson Co.
Mel Wafford	High Rock Lake Assn.
Mark Oden	High Rock Lake Business Owners Group
Larry Jones	High Rock Lake Association, Inc.
Robert Brown	Fitzpatrick Communications
Angie Harris	William Mullen
Sonya Harden	Alcoa, Inc.
Jorge Zamarripa	Fitzpatrick Communications Inc
Gene Ellis	Alcoa Power Generating Inc

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 29, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Vance Hallman	St. Treasurer
Jennifer Sasser	Williams Mullen
Linda Andrews	NCFB
[signature]	S.A.
Sandy Sands	WCSR
Amy McConkey	Smith Anderson
Debra DeCamillis	UNC. IOG
Cady Thomas	NC Assn of Realtors
[signature]	Baptist Ch of NC
Will Culpepper	Moore + Van Allen

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 29, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Lucas	Stanly County
Lindsey Dunevant	Stanly County; NCRPA
Jann Lowder	Stanly Co. BOC
Tamara Singletary	Stanly County citizen
June Mabry	8th Dist DEC
Nancy McFarlane	NC water Rights
Roger L. Dick	NC Water Rights
Bill Spencer	NCDOR
Lennie Collins	NC DOR
Jason Walser	Land Trust for Central NC
Jimmy Dick	Stanly County Citizen

VISITOR REGISTRATION SHEET

Senate Finance Committee — April 29, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Dick	Stanly County
Beverly Morgan	Stanly County
Kathy Valentine	NC Water Rights Committee Concord, NC
Nadine Bowers	NC Water Rights Albemarle, NC
Phil Morgan	Piedmont Natural Gas
Mike Massey	N.C. Water Rights Com.
Bill Lawhon, Jr.	Stanly County
Jerry Long	Stanly County
Christopher Bramlett	N.C. Water Rights Committee Albemarle NC
Amy Schulder	MWC
Michael Houser	NC DOR

Senate Finance Committee
Wednesday, April 29, 2009, Fifteen minutes after adjournm
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 97	Critical Infrastructure Assm't Parks & Rec.	Sen. Hartsell
SB 99	Internet Ticket Resale Amendments.	Sen. Hartsell
SB 967	Creation of Yadkin River Trust.	Sen. Hartsell

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 97
PROPOSED COMMITTEE SUBSTITUTE S97-CSTDx-14 [v.12]

4/29/2009 8:45:41 AM

Short Title: Critical Infrastructure Assm't Changes. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO THE ALIGN THE AUTHORIZED PURPOSES FOR SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS WITH THE PURPOSES OF PROJECT DEVELOPMENT FINANCING, CLARIFY THE LAW CONCERNING FINANCING A PROJECT FOR WHICH ASSESSMENTS MAY BE PLEDGED, AND EXEMPT PRIVATE ENTITIES THAT IMPLEMENT PROJECTS FOR WHICH ASSESSMENTS MAY BE PLEDGED FROM THE COMPETITIVE BIDDING REQUIREMENTS OF LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-210.2(a) reads as rewritten:

"(a) Projects. – The board of commissioners of a county may make special assessments as provided in this Article against benefited property within the county for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103. ~~bonds may be issued under any of the following:~~

~~(1) G.S. 159-48(b)(17), sanitary sewer systems.~~

~~(2) G.S. 159-48(b)(19), storm sewers and flood control facilities.~~

~~(3) G.S. 159-48(b)(21), water systems.~~

~~(4) G.S. 159-48(b)(23), public transportation facilities.~~

~~(5) G.S. 159-48(c)(4), school facilities.~~

~~(6) G.S. 159-48(d)(5), streets and sidewalks.~~"

SECTION 1.(b) G.S. 153A-210.4 reads as rewritten:

"**§ 153A-210.4. Financing a project for which an assessment is imposed.**

(a) Financing Sources. – A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues~~. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from ~~revenue bonds and any other financing source.~~each respective financing source.

(1) Revenue bonds issued under G.S. 153A-210.6.

(2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.

(3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
(4) General revenues.

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the board of commissioners must covenant to enforce the payment of the assessments. "

SECTION 1.(c) Article 9A of Chapter 153A is amended by adding a new section to read:

"**§ 153A-210.7. Project Implementation.**

A county may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. A private agency that enters into a contract with a county for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

SECTION 2.(a) G.S. 160A-239.2(a) reads as rewritten:

"(a) Projects. – The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103. ~~bonds may be issued under any of the following:~~

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~~(2) G.S. 159-48(b)(19), storm sewers and flood control facilities.~~
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~~(4) G.S. 159-48(b)(23), public transportation facilities.~~
~~(5) G.S. 159-48(c)(4), school facilities.~~
~~(6) G.S. 159-48(d)(5), streets and sidewalks.~~"

SECTION 2.(b) G.S. 160A-239.4 reads as rewritten:

"**§ 160A-239.4. Financing a project for which an assessment is imposed.**

(a) Financing Sources. – A city council may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues.~~ The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from ~~revenue bonds and any other financing source.~~the respective financing source.

(1) Revenue bonds issued under G.S. 160A-239.6.
(2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
(3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
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(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments. "

SECTION 2.(c) Article 10A of Chapter 160A is amended by adding a new section to read:

"**§ 160A-239.7. Project Implementation.**

A city may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. A private agency that enters into a contract with a city for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

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

SENATE BILL 97:
Critical Infrastructure Assm't Parks & Rec

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 20, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S97-CSTDx-14		Committee Counsel

SUMMARY: ***The proposed committee substitute to Senate Bill 97 aligns the purposes for which cities and counties may issue bonds payable from special assessments with the purposes for which project development financing may be used, clarifies what financing my be used to pay the costs of these projects, provides that assessments may be used to secure other financing, and exempts private entities that implement projects financed in this manner from the local government competitive bidding requirements.***

CURRENT LAW: S.L. 2008-165 gave cites and counties the authority to use assessments as a financing tool for long-term capital projects related to water and sewer infrastructure, stormwater infrastructure, schools, and roads.

For both counties and cities, the governing body may not impose assessments under this authority unless it receives a petition for the project to be financed through assessments signed by at least a majority of the owners of property to be assessed, who represent 66% of the assessed value of the property to be assessed.

The board of commissioners or city council must establish an assessment method that will most accurately assess property according to the benefits conferred upon it by the project for which the assessment is made. Unlike assessments imposed under Article 9 of Chapter 153A and Article 10 of Chapter 160A, the costs of assessments imposed for these infrastructure projects may include any expenses allowed under the State and Local Government Revenue Bond Act. The primary expense allowed under the Revenue Bond Act that is not considered under the assessments law is interest on the bonds or notes issued in anticipation of the revenue bond issuance during construction and an establishment of debt service reserves.

Unlike assessments the county or city may impose under Article 9 of Chapter 153A and Article 10 of Chapter 160A, assessments issued for long-term infrastructure projects must be paid in annual installments, in which the number of years may not exceed 30. And the annual payments are due on the date when property taxes are due.

Unlike assessments the county or city may impose under Article 9 of Chapter 153A and Article 10 of Chapter 160A, the governing body may not adopt a final assessment resolution immediately after the public hearing on the preliminary assessment resolution. The governing body must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting the final one. A final resolution may not be adopted if the petition is withdrawn within 10 days after the public hearing. A petition may be withdrawn if a notice of petition withdrawal is submitted to the governing body. The notice of petition withdrawal must be signed by at least 50% of the landowners who signed the original petition representing at least 50% of the property to be assessed.

In addition to the other financing tools available for infrastructure projects, an infrastructure project for which an assessment may be imposed under this authority may be considered a 'revenue bond project' for purposes of the State and Local Government Revenue Bond Act, and that the assessments imposed under this new Article may be considered 'revenues' for purposes of the Act.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 97 aligns the purposes for which cities and counties may issue bonds payable from special assessments with the purposes for which project development financing may be used, clarifies what financing my be used to pay the costs of these projects, provides that assessments may be used to secure other financing, and exempts private entities that implement projects financed in this manner from the local government competitive bidding requirements.

Sections 1.(a) and 2.(a): Aligns the purposes for which this financing may be used to include the current purposes for which project development financing may be used. These purposes are:

- Airport facilities.
- Auditoriums, coliseums, arenas, stadiums, civic centers, and convention centers.
- Hospital facilities.
- Art galleries, museums, and art centers.
- Parking facilities.
- Redevelopment through the acquisition of land.
- Sanitary sewer systems.
- Storm sewers and flood control facilities.
- Water systems.
- Public transportation facilities.
- Industrial parks.
- Preservation of railroad corridors.
- Community college facilities.
- Improvements to streets.
- Providing school facilities.
- Providing improvements to subdivision and residential streets.
- Low and moderate income housing.
- Electric systems.
- Providing streets and sidewalks.
- Gas systems
- Improving existing telephone systems.
- Park and recreation facilities excluding stadiums, arenas, golf courses, swimming pools, wading pools, or marinas.

Section 1.(b) and 2.(b): Clarifies the language concerning financing of projects for which an assessment may be imposed. The costs of these projects may covered by using any combination of the following financing sources:

- Revenue bonds issued under G.S. 153A-210.6.
- Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
- General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
- General revenues.

Assessments may be pledged as additional security for project development financing. If the assessment is pledged, the entity must covenant to enforce the payment of assessments.

Section 1.(c) and 2.(c): Clarifies that these projects can be implemented using public or private entities. Private entities that undertake these projects are not subject to the competitive bidding requirements of Article 8 of Chapter 143.

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

S97-SMTD-26(CSTDx-14) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 97
PROPOSED COMMITTEE SUBSTITUTE S97-CSTDx-14 [v.12]

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Short Title: Critical Infrastructure Assm't Changes. (Public)

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SECTION 1.(b) G.S. 153A-210.4 reads as rewritten:

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(a) Financing Sources. – A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues~~. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from ~~revenue bonds and any other financing source.~~each respective financing source.

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SECTION 1.(c) Article 9A of Chapter 153A is amended by adding a new section to read:

"**§ 153A-210.7. Project Implementation.**

A county may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. A private agency that enters into a contract with a county for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

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Critical Infrastructure Assm't Parks & Rec

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 20, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S97-CSTDx-14		Committee Counsel

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The board of commissioners or city council must establish an assessment method that will most accurately assess property according to the benefits conferred upon it by the project for which the assessment is made. Unlike assessments imposed under Article 9 of Chapter 153A and Article 10 of Chapter 160A, the costs of assessments imposed for these infrastructure projects may include any expenses allowed under the State and Local Government Revenue Bond Act. The primary expense allowed under the Revenue Bond Act that is not considered under the assessments law is interest on the bonds or notes issued in anticipation of the revenue bond issuance during construction and an establishment of debt service reserves.

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In addition to the other financing tools available for infrastructure projects, an infrastructure project for which an assessment may be imposed under this authority may be considered a 'revenue bond project' for purposes of the State and Local Government Revenue Bond Act, and that the assessments imposed under this new Article may be considered 'revenues' for purposes of the Act.

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Sections 1.(a) and 2.(a): Aligns the purposes for which this financing may be used to include the current purposes for which project development financing may be used. These purposes are:

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Assessments may be pledged as additional security for project development financing. If the assessment is pledged, the entity must covenant to enforce the payment of assessments.

Section 1.(c) and 2.(c): Clarifies that these projects can be implemented using public or private entities. Private entities that undertake these projects are not subject to the competitive bidding requirements of Article 8 of Chapter 143.

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

S97-SMTD-26(CSTDx-14) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 99
PROPOSED COMMITTEE SUBSTITUTE S99-CSRBx-5 [v.1]

4/27/2009 7:19:24 PM

Short Title: Internet Ticket Resale Amendments. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND AND AMEND AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET, AND TO IMPOSE A PRIVILEGE LICENSE TAX ON GROSS RECEIPTS RECEIVED TO THE EXTENT THEY EXCEED FACE VALUE OF THE TICKET.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2008-158 reads as rewritten:

"**SECTION 4.** This act becomes effective August 1, 2008, and expires ~~June 30, 2009.~~ June 30, 2011. ~~The expiration of this act does not relieve a person's liability to file the report required under G.S. 14-344.1(e) for gross receipts received in June 2009.~~ Liability for acts or omissions before the expiration date of this act are not abated or affected by the expiration. Section 3 of this act applies to offenses committed on or after that date."

SECTION 2. G.S. 14-344.1(e) is repealed effective June 30, 2009, but the repeal does not relieve a person's liability to file the report required by that subsection for gross receipts received in June 2009.

SECTION 3. G.S. 14-344.1(a) reads as rewritten:

"(a) Internet Resale. – A person may resell an admission ticket under this section on the Internet at a price greater than the price on the face of the ticket unless the venue where the event will occur prohibits the Internet ticket resale as provided under subsection (b) of this section. To resell an admission ticket under this section, the person reselling the ticket must offer the ticket for resale on a Web site with a ticket guarantee that meets the requirements of subsection (c) of this section. A prospective purchaser must be directed to the guarantee before completion of the resale transaction. A person who resells an admission ticket under this section acknowledges liability for the ~~informational report required under subsection (e) of this section.~~tax under G.S. 105-37.1."

SECTION 4. G.S. 105-37.1(a) and (b) read as rewritten:

"(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(4) Reselling or offering to resell admission tickets on the Internet under G.S. 14-344.1.

(b) Rate and Payment. – The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this section. For taxes imposed under subdivision (a)(4) of this section, gross receipts exclude the price printed on the face of the ticket. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month."

SECTION 5. Sections 1, 2, and 5 of this act are effective when they become law. Sections 3 and 4 of this act becomes effective July 1, 2009.

SENATE BILL 99:
Internet Ticket Resale Amendments

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 28, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S99-CSRBx-5		

SUMMARY: Senate Bill 99 does two things:

- ***It would extend the sunset on S.L. 2008-158 for two years, from June 30, 2009, to June 30, 2011.***
- ***It would replace the current informational reporting requirement for the Internet sale of admission tickets in excess of face value with a 3% gross receipts privilege tax. The gross receipts tax would be imposed on the difference between the price sold and the face price on the ticket. The Senate passed this provision last session, but the House removed it. (SB 1407, 4th Edition, 2007 Session)***

The proposed committee substitute makes a conforming change to G.S. 14-344.1. (Section 3)

CURRENT LAW: Reselling tickets online is a new and growing business. Last session, the General Assembly enacted S.L. 2008-158 to provide an exception to the prohibition against admission tickets being resold on the Internet at a price greater than the price printed on the face of the ticket. The law provided protections for both the consumer and the venue:

- The act required a person who resells admission tickets online to provide a ticket guarantee and to provide a purchaser with a full refund of the amount paid for the ticket if the event is cancelled, the purchaser is denied admission through no fault of the purchaser, or the ticket is not delivered to the purchaser and the failure to receive the ticket results in the purchaser's inability to attend the event.
- The act made it an unfair and deceptive trade practice for a person to knowingly sell or possess software that is primarily designed or produced for the purpose of interfering with the operation of a ticket seller who, pursuant to a written agreement with the venue, sells admission tickets over the Internet.[1]

These changes will sunset June 30, 2009. If the changes sunset, it will become a Class 2 misdemeanor for a seller or reseller of an admission ticket to charge more than the face price of the ticket, plus an authorized service fee.[2] And there will not be a prohibition on ticket purchasing software.

BILL ANALYSIS: Senate Bill 99 would delay the sunset by two years and it would expand the privilege license tax to include the reselling of admission tickets on the Internet in excess of face value. G.S. 105-37.1 currently imposes a gross receipts tax on a person who sells the initial ticket to an entertainment event. The rate of tax is 3% of the admission price. The 3% gross receipts privilege tax on ticket resellers would be imposed on the difference between the price of the ticket sold and the face price on the ticket.

The 4th Edition of Senate Bill 1407, introduced by Sen. Hartsell in the 2007 Session, provided for the imposition of a 3% gross receipts privilege tax on the difference between the price of the ticket sold and

[1] If a person is found to have violated the Unfair and Deceptive Trade Practice Act, the aggrieved person is entitled to treble the amount of damages fixed by the verdict.

[2] The service fee is limited to no more than $3.00 unless the promoter of the event and the ticket sales agency, in writing, agree to and make known to the public a different amount.

the face price on the ticket. This provision was deleted from the bill when the bill was in the House Finance Committee. The conference report, as enacted last session, removed the tax provision and replaced it with a reporting requirement. A person who resells admission tickets via the Internet in excess of the face value of the ticket must report to the Department of Revenue by the 10th day after the end of each month on the gross receipts received during the previous month from reselling admission tickets for events in the State. The report must include the total amount of gross receipts derived from resell activity (minus the face value on the tickets), the event and venue for which each ticket was sold, the entity from which the reseller purchased each ticket, the amount the reseller paid for each ticket, the price received by the reseller for each ticket, the name and address of reseller-purchasers of each ticket, and any other information required by the Department. As of April 28, 2009, only 16 monthly reports had been filed by eight ticket resellers.[3]

EFFECTIVE DATE: The expansion of the gross receipts tax to ticket resellers would become effective July 1, 2009. The remainder of the act would become effective when it becomes law.

BACKGROUND: House Bill 309, introduced by Representatives Glazier, Gibson, Tillis, and Harrell, would remove the sunset on S.L. 2008-158. It would not impose a tax on the transaction. House Bill 309 is in the Senate Commerce Committee.

S99-SMRB-4(CSRBx-5) v1

[3] Those 16 reports showed the original cost of the tickets resold was $429,198. The ticket resellers received $722,613, for a net proceeds total of $293,415.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: April 28, 2009

TO: Senator Hartsell

FROM: Brian Slivka
Fiscal Research Division

RE: PCS to S99 First Edition

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	**$11,700**	**$12,200**	**$13,200**	**$14,100**	**$14,700**
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue

EFFECTIVE DATE: The expansion of the gross receipts tax to ticket resellers would become effective July 1, 2009. The remainder of the act would become effective when it becomes law.

BILL SUMMARY:

Senate Bill 99 extends the expiration date for SL 2008-158, which enacted GS 14-344.1 (Internet sale of admission tickets in excess of printed price) and GS 14-344.2 (Prohibition on ticket purchasing software), from June 30, 2009, to June 30, 2011.

Effective on June 30, 2009, the bill repeals GS 14-344.1(e), which required a person who resells or offers to resell admission tickets to report each month to the Department of Revenue on gross receipts received in the previous month. It also specifies that liability remains for filing a report for gross receipts received in June 2009.

Effective on July 1, 2009, Senate Bill 99 amends GS 105-37.1 (dances, athletic events, shows, exhibitions, and other entertainments) to include reselling or offering to resell admission tickets on the Internet, under GS 14-344.1, to the list of activities for which a 3% privilege tax is imposed on the gross receipts. And it provides that gross receipts exclude the price printed on the face of the ticket.

The proposed committee substitute makes a conforming change to G.S. 14-344.1. (Section 3).

ASSUMPTIONS AND METHODOLOGY:

The 3% gross receipts privilege tax on ticket resellers would be imposed on the difference between the price of the ticket sold and the face price on the ticket. From August 1, 2008 through April 28, 2009, the North Carolina Department of Revenue received 16 reports from 8 ticket resellers. They reported the original cost of the resold tickets as $429,198, with a resold price of $722,613, and net proceeds of $293,415.

Assuming the same rate of filings, grown by the Moody's Economy.com leisure and hospitality portion of North Carolina's gross state product, a 3% privilege tax would yield $11,700 in FY2009-10.

SOURCES OF DATA: North Carolina Department of Revenue, Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 967
Judiciary II Committee Substitute Adopted 4/15/09
PROPOSED COMMITTEE SUBSTITUTE S967-CSRBx-6 [v.2]

4/29/2009 12:46:11 PM

Short Title: Creation of Yadkin River Trust. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE YADKIN RIVER TRUST IN ORDER TO: (1) DEVELOP THE YADKIN RIVER IN DAVIDSON, MONTGOMERY, ROWAN, AND STANLY COUNTIES AS AN INSTRUMENTALITY OF INTRASTATE, INTERSTATE, AND FOREIGN COMMERCE AND NAVIGATION; (2) ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING HYDROELECTRIC FACILITY, AND TO AUTHORIZE ISSUANCE OF BONDS AND NOTES BY THE TRUST FOR THAT PURPOSE; AND (3) PRODUCE, DISTRIBUTE, AND SELL HYDROELECTRIC POWER FROM EXISTING OR NEW HYDROELECTRIC FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9.
"Yadkin River Trust.

"**§ 77-120. Yadkin River Trust.**

There is established the Yadkin River Trust as a public agency and instrumentality of the State. The purpose of the Trust is to benefit the people of the State as follows:

(1) To develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power.
(2) To ensure the equitable distribution of water for public purposes.
(3) To maintain recreational facilities associated with the Yadkin River.

"**§ 77-121. Definitions.**

The following definitions apply in this Article:

(1) Board. – The Board of Directors of the Yadkin River Trust.
(2) Trust. – The Yadkin River Trust as established by this Article.
(3) Yadkin Project. – Project No. 2197 as described in a license issued by the Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter amended and otherwise subject to the regulation of the Federal Energy Regulatory Commission.
(4) Yadkin Project License. – The license issued by the Federal Energy Regulatory Commission as of May 1, 1958, which expired on April 30,

2008, the year-to-year annual licenses that have been issued since that time, and any future renewal license for Project No. 2197.

"**§ 77-122. Board of Directors.**

(a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of seven directors who shall be appointed by the Governor upon the advice of the Speaker of the House of Representatives and the President Pro Tempore of the Senate and subject to confirmation by the General Assembly by joint resolution. Two of the directors shall have substantial work experience within the operations of electric cooperatives or investor-owned utilities or substantial experience on an electric cooperative board or investor-owned utility board but must not serve as an employee or board member of an electric cooperative or investor-owned utility during their term as a director of the Yadkin River Trust. The names of directors to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before June 1 of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names by that date, the President Pro Tempore of the Senate and Speaker of the House of Representatives jointly shall submit the names of a like number of directors to the General Assembly on or before June 15 of the same year for confirmation by the General Assembly. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to adjournment of the then current session of the General Assembly. The Governor may remove any director of the Board for misfeasance, malfeasance, or nonfeasance.

(b) Terms. – The term of office of directors of the Board is four years. A director may be reappointed to any number of successive four-year terms. A director in office continues to serve until the director's successor is duly confirmed and qualified, but the holdover does not affect the expiration date of the succeeding term.

(c) Chair; Vice-Chair. – Upon confirmation of the directors by the General Assembly as provided in subsection (a) of this section, the Governor shall designate one of the directors to serve as chair of the Board for the succeeding four years and until the director's successor is duly confirmed and qualified. Upon death or resignation of the director appointed as chair, the Governor shall designate the chair from the remaining directors and appoint a successor in accordance with this section to fill the vacancy on the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a vice-chair of the Board.

(d) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any director prior to the expiration of the director's term of office, the name of the director's successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to the adjournment of the then current session of the General Assembly. If a vacancy arises in the office of director when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the Governor may appoint a director to serve on an interim basis pending confirmation by the General Assembly.

(e) Organization of the Board. – The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum consists of a majority of the members of the Board. No vacancy in the membership of the Board impairs the right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

(f) Compensation of the Board. – No part of the revenues or assets of the Trust shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

"**§ 77-123. Authority to acquire Yadkin Project and Yadkin Project License.**

The Trust may acquire the Yadkin Project License and the Yadkin Project, including all associated facilities and land and water rights. If the Trust acquires the Yadkin Project License, it shall pursue transfer of the license at the Federal Energy Regulatory Commission and other transfer of title for property or permits and may enter into negotiations, execute agreements, file an application for a new license, amend the existing license, and take any other actions necessary to become the licensee for the Yadkin Project on behalf of the State. Any terms of acquisition must be approved by the Board prior to completion of the acquisition. If acquired, the Trust cannot agree to voluntarily surrender, terminate, transfer, or sell the Yadkin River License or the Yadkin Project unless an act of the General Assembly approves the action.

"**§ 77-124. Operation of the Trust.**

(a) Management. – The Board shall determine the policies of the Trust by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board must communicate it to the executive director who shall have the sole and exclusive authority to execute the policy of the Trust. No member of the Board has the responsibility or authority to give operational directives to any employee of the Trust other than the executive director.

(b) Employees. – The Board shall appoint an executive director, whose salary is fixed by the Board, to serve at its pleasure. The executive director or a person designated by the executive director shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary. During any fiscal year, the Trust may not expend funds for merit and performance-based salary increases in excess of the funds that would have been expended had the employees of the Trust received the same across-the-board salary increases granted by the General Assembly to State employees subject to the State Personnel Act. These merit and performance-based salary increase may be awarded on an aggregated average basis according to rules adopted by the Trust. Except as to the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the employees of the Trust are exempt from the State Personnel Act.

(c) Consultants. – The Board may employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants as needed.

"**§ 77-125. Powers of the Trust.**

The Trust has all the powers necessary to execute the provisions of this Article, including the following:

(1) To adopt, alter, or repeal its bylaws and adopt, amend, or repeal rules to implement the provisions of this Article. The Trust and its activities are not subject to review or approval by the North Carolina Utilities Commission.

(2) To sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(3) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business and to facilitate the business of the Trust.

(4) To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or dispose of any property, real, personal, or mixed, or any interest therein.

(5) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with

the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required.

(6) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Trust and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Trust.

(7) To establish, finance, purchase, construct, operate, and regulate hydroelectric facilities on the Yadkin River to implement the provisions of this Article.

(8) To manufacture, produce, and generate hydroelectric power using the waters of the Yadkin River and to sell the hydroelectric power to utilities within and without the State of North Carolina.

(9) To set rates, services, and practices, or participate in any organized power sales market with one or more entities for the sale, transmission, or distribution of the power generated by the hydroelectric facility, and to charge and collect fees for the use of power generated.

(10) To acquire, purchase, establish, build, construct, maintain, equip, and operate any structure or facilities necessary, useful, or customarily used and employed in generation of hydroelectric power.

(11) To seek enforcement of environmental laws and contribution to environmental cleanup costs, consistent with its obligations under this Article.

(12) To fix, charge, collect, pledge, or assign revenues of the Trust.

(13) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

"**§ 77-126. Responsibilities to local governments.**

If the Trust acquires the Yadkin Project and Yadkin Project License as provided in this Article, the Trust must provide the following services for the local governmental units in the Yadkin River area:

(1) Conduct environmental testing and assessment of all properties located in Stanly County currently or formerly owned and operated by Alcoa Power Generating, Inc., or Alcoa, Inc., or its subsidiaries, in order to evaluate danger to public health or the environment.

(2) Pursue remediation of contamination at the Badin Works site located in Stanly County to levels over and above the minimum levels required in order to restore the contaminated land and water to multiple use purposes.

(3) Establish a remediation fund to perform necessary environmental testing and remediation of hazardous waste sites in the Yadkin River Basin, excluding properties owned or under the control of Alcoa Power Generating, Inc., Alcoa, Inc., or its subsidiaries.

(4) Install aeration technology in association with the Yadkin Project to increase dissolved oxygen levels and improve water quality in the Yadkin River.

(5) Institute operational changes to the Yadkin Project that will retain more water in Badin, Falls, High Rock, and Tuckertown lakes and provide a consistent flow of water to downstream water users.

(6) Extend the recreation seasons at Badin, Falls, High Rock, and Tuckertown lakes by three months from April 1 to October 31.

(7) Implement a comprehensive drought management plan, or "Low Inflow Protocol," that requires the Trust to reduce power generation and send less water downstream when certain drought-related triggers are reached.

(8) Develop and maintain new or expanded public recreation facilities across the Yadkin River, including a new public swim area in Rowan County, new tailwater fishing access areas, two new reservoir fishing piers, and 10 new campsites.

(9) Allow the City of Albemarle to increase water withdrawals from the Yadkin River up to 30 million gallons per day.

(10) Utilize a portion of the proceeds from power generation to fund a Yadkin River Basin Clean Water Trust Fund to be created in order to acquire land for water quality improvements, implement innovative stormwater strategies, state-of-the art wastewater improvements, and aquatic habitat improvements and to provide funding mechanisms to assist local governments to make water quality improvements throughout the Yadkin River Basin.

(11) Apportion a percentage of electricity from the Yadkin Project output for use by a regional economic development entity to be designated by the Department of Commerce. To the extent that there are renewable energy credits attributable to the output, the Trust must transfer the credits to the designated entity.

(12) Use proceeds from power generation for the following recreational and conservation projects:

a. To acquire and donate land to the Town of Badin for a new public park.

b. To acquire and donate land to Rowan County for the continued protection and public access to the Eagle Point Nature Preserve.

c. To acquire other land for conservation purposes.

d. To donate forty thousand dollar ($40,000) to the Yadkin-Pee Dee River Trail Fund.

(13) Review the proposed Water Infrastructure Mitigation license condition proposed by the City of Salisbury and determine what the Yadkin River Trust can do to assure an adequate, clean future water supply for the region.

"**§ 77-127. Revenue bonds.**

The Trust is a municipality under Article 5 of Chapter 159 of the General Statutes, the State and Local Revenue Bond Act. The provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Trust. The Trust may issue revenue bonds pursuant to Chapter 159 of the General Statutes to pay all or a portion of the cost of the Yadkin Project.

"**§ 77-128. Use of revenues.**

Revenues from the Yadkin River Project must be used to pay the obligations listed in this section. Any revenues remaining after the payment of these listed obligations must be remitted to the State Treasurer and credited to the General Fund. The State may use all or a portion of the revenue remitted to it to provide funds for the replacement of the Yadkin River Bridge on Interstate 85. The obligations are:

(1) To operate the Yadkin Project.

(2) To pay the debt service on any revenue bonds, notes, or other evidences of indebtedness or obligation.

(3) To fulfill the local responsibilities under G.S. 77-126.

(4) To make payments to taxing units under G.S. 77-129.

"**§ 77-129. Exemption from taxation; payments in lieu of taxes.**

(a) Exemption. – Property owned by the Trust is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution.

(b) Payments to Taxing Units. – The Trust must pay an amount to a taxing unit in which the Trust is the listed owner of property in the unit on January 1. The amount the Trust must remit to the taxing unit is the amount of property tax payable on the property in the year preceding the date the Trust acquired the property.

"**§ 77-130. Report; audit.**

(a) Report. – The Trust must submit a report regarding its operations and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 of each year. The annual report must include the following information:

(1) The amount of power and energy produced by the Trust.

(2) The Trust's financial statements for the preceding fiscal year, prepared in accordance with generally accepted accounting principles.

(3) The price of power and energy sold by the Trust.

(4) The amount of water distributed to each entity or water user.

(5) The status of environmental testing, assessment, and remediation of contamination at the Badin Works and other sites located in Stanly County.

(b) Audit. – The operations of the Trust are subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 77-131. Conflicts of interest.**

A director, officer, or employee of the Trust who has a conflict of interest in a contract with the Trust must disclose this interest to the Board and the Board must note the conflict of interest in its minutes. The director, officer, or employee who has a conflict of interest may not participate on behalf of the Trust in the authorization of that contract. Failure to take the actions required by this section does not affect the validity of any bonds or notes issued by the Trust.

A director, officer, or employee of the Trust has a conflict of interest if any one or more of the following applies:

(1) The director, officer, or employee has a direct or indirect interest in a contract with the Trust.

(2) The director, officer, or employee is an officer or employee of a firm or corporation, not including a unit of local government, that has a direct or indirect interest in a contract with the Trust.

(3) The director, officer, or employee has an ownership interest in a firm or corporation that has a direct or indirect interest in a contract with the Trust."

SECTION 2. Notwithstanding G.S. 77-122, as enacted by Section 1 of this act, in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River Trust, the terms of the initial appointments of the directors made by the Governor shall be made as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three years; and (iii) three shall be for a period of four years.

SECTION 3. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(26) The Yadkin River Trust, established in G.S. 77-120."

SECTION 4. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...

(29) Employees of the Yadkin River Trust."

SECTION 5. G.S. 150B-1(c) reads as rewritten:

(c) Full Exemptions. – This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.
(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
(7) The North Carolina State Lottery.
(8) The Yadkin River Trust, established in G.S. 77-120."

SECTION 6. G.S. 159-81 reads as rewritten:

"**§ 159-81. Definitions.**

~~The words and phrases defined in this section shall have the meanings indicated when used in this Article:~~The following definitions apply in this Article:

(1) ~~"Municipality" means~~ Municipality. – One or more of the following:
a. ~~a~~ A county, city, town, or incorporated ~~village, sanitary~~ village.
b. A sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, or water and sewer ~~authority, hospital authority,~~ authority.
c. A hospital authority or hospital ~~district, parking~~ district.
d. A parking ~~authority, special~~ authority.
e. An airport ~~district, regional~~ district, an airport authority, or a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56.
f. A public transportation ~~authority,~~ authority or regional transportation ~~authority, regional~~ authority.
g. A natural gas ~~district, regional~~ district.
h. A regional sports ~~authority, airport authority, joint~~ authority.
i. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General ~~Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the~~ Statutes.
j. The North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General ~~Statutes, but not any other forms of State or local government.~~Statutes.
k. The Yadkin River Trust created pursuant to Article 9 of Chapter 77 of the General Statutes.

(2) ~~"Revenue bond" means a~~ Revenue bond. – A bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) ~~"Revenue bond project" means any~~ Revenue bond project. – Any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the revenue-producing utility or public service enterprise facilities or systems listed in this subdivision, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by or on the behalf of either the State or a municipality to pay the costs of the undertaking.

A revenue bond project shall be (i) owned or leased as lessee by the issuing unit or (ii) owned by one or more of the municipalities participating

in an undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes. If the revenue bond project is owned by one or more municipalities as provided in (ii) of this subdivision, any one or more of the participating municipalities may each be an issuing unit consistent with their agreement to establish a joint undertaking. In addition, any joint agency established by participating municipalities pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes may be an issuing unit without owning the revenue bond project or leasing it as lessee.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with the undertaking; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which the structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

The following facilities or systems may be revenue bond projects under this subdivision:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.

d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

l. Repealed by Session Laws 2001-474, s. 36, effective November 29, 2001.

m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.

n. Facilities for the use of any agency or agencies of the government of the United States of America.

o. Structural and natural stormwater and drainage systems of all types.

p. In the case of the North Carolina Turnpike Authority, a Turnpike Project, as defined in G.S. 136-89.181, including the planning and design of a Turnpike Project, that is designated by the Authority to be a revenue bond project.

(4) ~~"Revenues" include all~~ Revenues. – All moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project."

SECTION 7. This act becomes effective when it becomes law.

SENATE BILL 967:
Creation of Yadkin River Trust

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 29, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S967-CSRBx-6		

SUMMARY: ***Senate Bill 967 would authorize the creation of the Yadkin River Trust as an entity that could hold the federal hydro license in trust for the benefit of the people of North Carolina. The license is currently held by Alcoa Power Generating, Inc. The bill would authorize the Trust to produce, distribute, and sale power from the Yadkin River Project should the Trust acquire the Yadkin Project license.***

The proposed committee substitute removes the independent revenue bond provisions from the bill. It substitutes the revenue bond provisions of the State and Local Government Revenue Bond Act. It also makes other changes to conform the administration of the Trust to similar entities, such as the North Carolina Turnpike Authority: it exempts the Yadkin River Trust from rule-making and it exempts its employees from the State Personnel Act (with the exception of Articles 6 and 7). It also reorganizes some provisions and removes others that are unnecessary.

CURRENT LAW: Under the authority of the Federal Power Act, the Federal Energy Regulatory Commission (FERC) has the exclusive authority to license most nonfederal hydropower projects located on navigable waterways or federal lands, or connected to the interstate electric grid. FERC may issue an original license for up to 50 years for constructing, operating, and maintaining jurisdictional projects. At the end of a stated term of an original license, a licensee must undertake the relicensing process. In response, FERC can issue a new license (relicense) to either the existing licensee or a new licensee for a period of 30 to 50 years, the federal government can take over a project, or a project may be decommissioned.[1]

With regard to federal takeover of a project, 16 USC § 807 provides that the United States, upon or after the expiration of any license may take over, maintain, and operate any project, or may take over upon mutual agreement with the licensee all property owned and held by the licensee. The section further provides that the United States shall pay the net investment of the licensee in the project taken, not to exceed its fair value, plus such reasonable damages, if any, to property of the licensee – such value to be determined by FERC. Under the section, the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under the chapter at any time by condemnation proceedings upon payment of just compensation is expressly reserved.

BACKGROUND[2]: In 1958, the Federal Power Commission, predecessor to FERC, issued a 50 year license to Carolina Aluminum Company (a wholly-owned subsidiary of Alcoa, Inc.) to operate and

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[1] *Handbook for Hydroelectric Project Licensing and 5 Mw Exemptions From Licensing*, Federal Energy Regulatory Commission, Washington, DC, April 2004. See http://www.ferc.gov/industries/hydropower/gen-info/handbooks/licensing_handbook.pdf

[2] Additional background on the Project and FERC proceedings is available at:

- http://www.ferc.gov/industries/hydropower/enviro/eis/2008/04-18-08.asp#skipnavsub, and
- at the ERC website -- http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=12&sFolderName=\Alcoa%20-%20Stanley%20County%20-%20FERC%20Re-licensing

maintain the Yadkin Project. The Yadkin Project is comprised of four hydroelectric stations, dams, and reservoirs located along a 38-mile stretch of the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly counties. The Project has an installed capacity of 210 megawatts. Alcoa Power Generating Inc (APGI, a wholly-owned subsidiary of Alcoa) filed a license application with FERC for the Yadkin Project on April 25, 2006, and filed a Relicensing Settlement Agreement with FERC on May 7, 2007.

In 2008, the General Assembly directed the Environmental Review Commission (ERC) to study the impacts on the State of the potential issuance by FERC of a new fifty-year license to APGI for the Yadkin Project (S.L. 2008-137). The study authorized the ERC to consider and develop proposals regarding all of the following issues:

- The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.
- Assurance of an adequate, clean future water supply for the region.
- The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

To facilitate the study, representatives of APGI and Stanly County submitted various materials to the ERC for consideration, and several meetings were held between the parties and staff to the ERC. No formal report or proposals on the matter were issued.

BILL ANALYSIS: Senate Bill 967 would authorize creation of the Yadkin River Trust. The Trust would have a Board of Directors consisting of seven members to be appointed by the Governor upon the advice of the House Utilities Committee and the Senate Commerce Committee. Created as a body politic and corporate, completely owned by and to be operated for the benefit of the people of the State, the Trust would have all powers necessary and convenient to: (i) develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation; (ii) acquire the Yadkin Project and the associated license issued by FERC; (iii) produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities; and (iv) issue bonds or notes to finance acquisition and operation of the Project. In addition to other powers and duties, the bill provides that the Trust would honor aspects of the Relicensing Settlement Agreement negotiated by local government and environmental groups with Alcoa. The bill accomplishes this objective by specifically requiring the Trust to provide the services listed in G.S. 77-126, as enacted by this bill, for the local governmental units in the Yadkin River area.

The bill provides that revenues derived from the Yadkin River Project through the distribution and sale of hydroelectric power must be used as follows:

- To operate the Yadkin Project.
- To pay debt service on any revenue bonds, notes, or other indebtedness. The bill authorizes the Yadkin River Trust to issue revenue bonds under the State and Local Government Revenue Bond Act based on the guaranteed income stream from the hydro dams.[3] Other obligations may include one arising under a finance agreement with the United States. If FERC recaptures the project license from Alcoa, federal law requires payment of net investment and severance damages to the prior license holder. If FERC grants the license to the Yadkin River Trust, the Trust would assume this payment.

[3] Dr. Steve Scroggin, an Assistant Professor of Economics at Virginia Tech, estimates that the net annual cash from the Project could be $35 million or more.

- To fulfill the financial commitments made to local government and environmental groups under GS 77-126 of the bill.
- To make payments in lieu of taxes to the taxing units in which the Trust owns property. The amount of the payment would be the amount of property taxes payable on the property in the year preceding the date the Trust acquired the property.

Any revenues remaining after the payment of these obligations must be remitted to the State Treasurer and credited to the General Fund. The bill specifies that the State may use all or a portion of the revenues remitted to it by the Trust to provide funds for the replacement of the Yadkin River Bridge on Interstate 85.

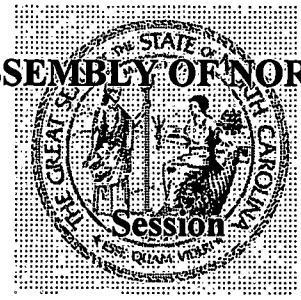
The bill would require the Yadkin River Trust to submit a financial report regarding its operation and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 each year. It would also be subject to oversight by the State Auditor.

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

Jennifer McGinnis, counsel to the Senate JII Committee, substantially contributed to this summary.

S967-SMRB-5(CSRBx-6) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: April 29, 2009

TO: Senate Finance Chairs

FROM: Kristin Walker
Rodney Bizzell
Jim Klingler
Fiscal Research Division

RE: PCS to Senate Bill 967 (Second Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
Local Governments		* See Assumptions and Methodology*			
General Fund		* See Assumptions and Methodology*			
EXPENDITURES:					
General Fund		* See Assumptions and Methodology*			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local government districts in which the Yadkin River Trust acquires property; State General Fund

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY:

The proposed committee substitute for SB 967 would authorize the creation of the Yadkin River Trust. The Trust would have a Board of Directors consisting of seven members to be appointed by the Governor upon the advice of the House Utilities Committee and the Senate Commerce Committee. Created as a body politic and corporate, completely owned by and to be operated for the benefit of the people of the State, the Trust would have all powers necessary to:

- develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation;
- acquire the Yadkin Project and the associated license issued by the Federal Energy Regulatory Commission (FERC);
- produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities; and
- issue bonds or notes to finance acquisition and operation of the Project.

In addition to other powers and duties, the PCS provides that the Trust would be required to:

- conduct environmental testing on properties owned, or formerly owned by Alcoa or its subsidiaries;
- pursue remediation of contamination at the Badin Works site in Stanly County to levels over and above minimum levels that Alcoa and its subsidiaries would be required to perform under current law to restore contaminated land and water to multiple use purposes;
- install aeration technology to improve water quality in the Yadkin River;
- institute operational changes to retain more water in several lakes, extend recreational seasons at those lakes, and develop new or expanded public recreation facilities across the Yadkin River;
- implement a "Low Inflow Protocol" (comprehensive drought management plan);
- allow the City of Albemarle to increase water withdrawals from the Yadkin River;
- use a portion of the proceeds of power generation to fund a Yadkin River Basin Clean Water Trust Fund, and to acquire and donate land for various conservation purposes;
- apportion a percentage of electrical output from the Project for use by a regional economic development entity; and
- submit a budget for the upcoming fiscal year and a report regarding its operation and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 each year.

The PCS provides that the property of the Trust would be exempt from taxation. The Trust would be required to make payments in lieu of taxes to affected counties, municipalities, and school districts after payments for necessary operating expenses, annual debt requirements, and discharge annual obligations from finance agreements.

BACKGROUND[1]:

The Yadkin Project is comprised of four hydroelectric stations, dams, and reservoirs located along a 38-mile stretch of the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly counties. The Project has an installed capacity of 215 megawatts. In 1958, the Federal Power Commission, predecessor to FERC, issued a 50 year license to Carolina Aluminum Company (a wholly-owned subsidiary of Alcoa, Inc.) to operate and maintain the Yadkin Project. Alcoa Power Generating Inc (APGI, a wholly-owned subsidiary of Alcoa) filed a license application with FERC for the Yadkin Project on April 25, 2006, and filed a Relicensing Settlement Agreement with FERC on May 7, 2007.

Under the authority of the Federal Power Act, FERC has the exclusive authority to license most nonfederal hydropower projects located on navigable waterways or federal lands, or connected to the interstate electric grid. FERC may issue an original license for up to 50 years for constructing, operating, and maintaining jurisdictional projects. At the end of a stated term of an original license, a licensee must undertake the relicensing process. In response, FERC can issue a new license (relicense) to either the existing licensee or a new licensee for a period of 30 to 50 years, the federal government can take over a project, or a project may be decommissioned.[2]

With regard to federal takeover of a project, 16 USC § 807 provides that the United States, upon or after the expiration of any license may take over, maintain, and operate any project, or may take over upon mutual agreement with the licensee all property owned and held by the licensee. The section further provides that the United States shall pay the net investment of the licensee in the project taken, not to exceed its fair value, plus such reasonable damages, if any, to property of the licensee – such value to be determined by FERC. Under the section, the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under the chapter at any time by condemnation proceedings upon payment of just compensation is expressly reserved.
(Jennifer McGinnis, Research Division)

ASSUMPTIONS AND METHODOLOGY:

Expenditures

Section 1 of the PCS creates the Yadkin River Trust as a "body politic and corporate" "to benefit the people of the State." Further, the PCS is permissive as to the Yadkin Trust acquiring the Yadkin Project; new G.S. 77-123 states that "The Yadkin River Trust *may acquire* the Yadkin Project." If the Trust were to not acquire the Project, then there would be no potential costs nor

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[1] Additional background on the Project and FERC proceedings is available at:

- http://www.ferc.gov/industries/hydropower/enviro/eis/2008/04-18-08.asp#skipnavsub, and
- at the ERC website -- http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=12&sFolderName=\Alcoa%20-%20Stanley%20County%20-%20FERC%20Re-licensing

[2] *Handbook for Hydroelectric Project Licensing and 5 Mw Exemptions From Licensing*, Federal Energy Regulatory Commission, Washington, DC, April 2004. See http://www.ferc.gov/industries/hydropower/gen-info/handbooks/licensing_handbook.pdf

revenue. Revenues, after all other obligations are fulfilled, are directed to the State General Fund. As the PCS is written, it is not clear that the State would incur any costs related to this PCS. However, in recognition of the potential for the Trust to acquire the Project, Fiscal Research offers the following estimates. **It should be noted that these estimates are provided with the qualification that Fiscal Research does not have the staff resources to conduct a thorough, independent analysis of the costs at this time. Thus, Fiscal Research has relied on data from the various parties involved in these proceedings (mainly Alcoa/APGI and Stanly County) to form a range of estimates.**

Cost of Acquiring the Yadkin Project

There is some dispute as to what basis should be used to determine the value of the Yadkin Project were the Yadkin Trust to attempt to acquire it. The FERC relicensing guidelines allow for federal takeover of a project and stipulate that the value of such a takeover would be determined as "net investment...not to exceed the fair value of the property taken, plus such reasonable damages, if any."[3] Fiscal Research notes that this section also states that FERC would ultimately determine this value. Per Alcoa's 2006 License Application, the "net investment" amount is $24,158,903 (2005 dollars).[4] Lobbyists for Stanly County contend that $24.2 million is thus the fair value and further contend that reasonable severance damages would be minimal, if any.

Lobbyists for Alcoa contend that severance damages would be "hundreds of millions of dollars" including the costs of replacing the assets in Alcoa's energy portfolio as well as compensation to shareholders for loss of assets and associated revenue stream. However, Stanly County contends that future potential revenues beyond the original 1958 license term should not be included in the calculation of severance damages.

Additionally, Alcoa states that it has invested approximately $67 million in the Yadkin Project since the license application was submitted in 2006. Alcoa contends that its "net investment" is now closer to $91.2 million. A breakout and/or supporting documentation for the $67 million in additional investments was not provided to Fiscal Research.

Setting aside the issue of "net investment," Alcoa contends that Federal recapture of the license is no longer possible, and thus the only way for the Yadkin Trust to acquire the project would be through direct purchase from Alcoa or condemnation. Under either of these scenarios (although it should be noted that Alcoa has stated that it does not wish to sell the Yadkin Project), "fair market value" could be used to determine the purchase price. Alcoa acknowledges that it has not had an independent appraisal conducted, but it estimates the fair market value to be in excess of $500 million. Proponents of the Yadkin River Trust refute the notion that recapture is not possible.

Based on the assessed values reported by the five counties in which the Yadkin River Project is located, the total tax value is $140.5 million. The assessed value is divided by the sales assessment ratio for each county to determine the estimated market value. The sales assessment ratio is an estimate of how close assessed values are to market values. The estimated market value for the Yadkin River Project based on these calculations is $176 million.

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[3] Federal Power Act, 16 U.S.C § 807(a)

[4] Alcoa, *Yadkin Hydroelectric Project FERC No.2197 Application for License*, Volume 1, Exhibit D, 2006. Available online at http://www.alcoa.com/yadkin/en/relicensing/FERC_application.asp.

Compiling all of these data, Fiscal Research anticipates that the cost of acquiring the Yadkin Project would fall somewhere within the range of $24.2 million to over $500 million, with the most likely estimate being something closer to the estimated market value of $176 million which is based on the tax values provided below.

County	Tax Value of Alcoa Property	Sales Assessment Ratio	Estimated Market Value
Stanly	$49,122,910	0.82	$59,905,988
Montgomery	$62,929,298	0.72	$87,401,803
Davidson	$26,567,135	0.99	$26,835,490
Davie	$1,472,349	0.91	$1,617,966
Rowan	$495,697	0.97	$511,028
Total	$140,587,389		$176,272,274
Note: Tax values are based on all property owned by Alcoa in each county, some of which may not be included in the Yadkin Project.			

Cost of Assuming the FERC License

The PCS stipulates that if the Yadkin Trust acquires the Yadkin Project, it shall pursue transfer of the license. It is not clear if transfer of the license would require a completely new application for the license or if materials prepared by Alcoa could simply be modified. Alcoa spent five years working on the license application and the relicensing settlement agreement. They had 23 environmental technical studies conducted and held meetings with various stakeholder groups. In its 2006 License Application, Alcoa stated that preparation of the license application cost approximately $20 million.

Cost of Capital and Other Improvements to the Yadkin Project

Alcoa contends that extensive capital improvements are needed at the Yadkin Project to insure compliance with the Relicensing Settlement Agreement. As of April 24, 2009, Alcoa estimates that such improvements will cost $194.5 million and asserts that these costs would need to be assumed by whomever operates the Project. In the original License Application, Alcoa stated that $130.5 million (2005 dollars) and $1.5 million in annual costs were needed for capital investments.

Lobbyists for Stanly County agree that "major maintenance" may be necessary. They cite an estimate by Dr. Steve Scroggin, a visiting assistant professor of economics at Virginia Tech, that new enhancements may cost $1.5 million annually with $4 million in one-time costs.

New G.S. 77-124(c) requires that the Yadkin River Trust conduct a variety of activities if it acquires the Yadkin Project. These activities include

- conducting environmental testing and assessments,
- remediating contamination,
- establishing a remediation fund,
- installing aeration technology to increase dissolved oxygen levels,

- instituting operational changes that will retain more water in High Rock Lake and Badin Lake,
- extending the recreation season at High Rock Lake and Badin Lake,
- implementing a comprehensive drought management plan,
- developing and maintaining public recreation facilities,
- allowing the city of Albemarle to increase water withdrawals,
- creating a Yadkin River Basin Clean Water Trust fund to acquire land and other activities,
- apportioning a percentage of electricity to a regional economic development entity, and
- using proceeds from power generation to
    - acquire and donate land to Badin for a public park,
    - acquire and donate land to Rowan County for the Eagle Point Nature Preserve,
    - acquire other land for conservation purposes, and
    - make a $40,000 donation to the Yadkin-Pee Dee River Trail Fund.

Some of the listed powers and duties overlap with costs Alcoa has described under its capital improvements estimate, including $2.6 million one-time and $480,000 annually to meet dissolved oxygen requirements. However, Fiscal Research does not have an estimate for the cost of all of these activities. Expenditures are likely to be substantial. For example, the first two items of conducting environmental testing and remediating contamination could cost millions of dollars depending on the extent of remediation needed.

The range for capital improvement costs provided by the two parties is quite broad - $4 million in one-time costs and $1.5 million in annual costs compared to $194.5 million one-time and $1.5 million annually – and is most likely not an apples-to-apples comparison. Moreover, it is not clear how much these estimates correspond to the requirements specified in the PCS. Further study and independent analysis would be needed for Fiscal Research to be able to provide an estimate of these costs.

Cost of Operating the Yadkin Project

New G.S. 77-124(a) describes the powers and duties of the Yadkin River Trust including producing, distributing, and selling hydroelectric power.

Alcoa asserts that annual expenses, including salaries and benefits for 32 employees, and depreciation costs are approximately $28.3 million. A breakdown of these expenses is provided by Alcoa as Table D.4-1 in its License Application and is as follows:

Cost of Capital (equity and debt)	$8,615,579
Property Taxes	$849,043
Depreciation	$9,083,141
Operation & Maintenance	$9,296,093
FERC Administrative Fee	$466,241

The Yadkin Trust, as an entity operated by and for the people of the State would most likely be exempt from taxes, and thus would not incur the tax expenses that Alcoa currently pays of $5.3

million (State and Federal combined). The PCS provides a specific exemption and payment-in-lieu for property taxes. See the "Tax Analysis" section of this memo for additional information.

Stanly County in its brief to ERC estimated operating expenses to be $2.5 million annually with an additional $1.5 million annually for enhancements and capital improvements.

Cost of Issuing Debt
The Trust is authorized to incur debt to purchase, construct, renovate, and equip facilities for the purpose of generating hydroelectric power, as well as, acquire land. The Trust may issue revenue bonds, as a municipality, under Article 5 and other provisions of Chapter 159 of the General Statutes. All authorized debt would require approval by the Local Government Commission.

Any revenue bonds issued by the Trust would not carry a pledge of the full faith and credit of the State. Revenue bonds would not be secured by any other sources of revenue besides revenue generated by project financed or by the revenue-generating entity, the hydroelectric operation.

To the extent that revenues fall short of the debt service payments and the Trust is in risk of defaulting on any revenue bonds, the bond holders can seek remedies through rate setting and other operational changes as determined by special covenants of the bonds. The bond holders would have no expectation that other State revenues would be obligated to repay debt.

Aside from revenues generated by the Trust, no impact is anticipated to State debt or the State's debt service requirement.

Revenues
On the revenue side, the PCS stipulates that the Trust shall first use revenues to:

(1) Operate the Yadkin Project;
(2) Pay the debt service on any revenue bonds, notes, or other evidences of indebtedness or obligation;
(3) Fulfill the local responsibilities under G.S. 77-126; and
(4) Make payments to taxing units under G.S. 77-129.

After these obligations are paid remaining revenue is to be remitted to the State General Fund, any or all of which can be used for the replacement of the Yadkin River Bridge.

According to Alcoa, the Yadkin Project has a total generating capacity of 215 megawatts of electricity.[5] Alcoa claims that average annual revenue is approximately $43.6 million. Alcoa asserts that annual expenses and depreciation costs are approximately $28.3 million. Additionally, the annual costs associated with the new license would be $1.6 million. Thus, profits before taxes would be approximately $13.7 million.

Lobbyists for Stanly County contend that profits could be $35 million, or more, annually. In its brief to ERC, Stanly County stated that they estimated the Yadkin Project gross annual revenues to

[5] Alcoa website, accessed April 25, 2009, http://www.alcoa.com/yadkin/en/info_page/hydropower.asp.

be at least $40 million with annual costs of about $2.5 million and new enhancements of $1.5 million annually.

Thus, Fiscal Research estimates that annual revenues for the Trust would be between $13.7 million and $35 million. As to revenues being remitted to the State General Fund, Fiscal Research estimates that such disbursements would most likely be minimal in the first five years of the project. The Trust would first need to pay all operating expenses, all debt service, all obligations under G.S. 77-124(b), and all payments-in-lieu as specified under G.S. 77-129. Many of the duties under G.S. 77-124(b) could be quite costly, and the PCS does not stipulate the amounts (neither absolute dollars nor percentages) that should go towards these activities. For example, the remediation fund described under G.S. 77-124(b)(3) and the Yadkin River Clean Water Trust Fund described under G.S. 77-124(b)(10) could require extensive revenues.

Tax Analysis

Property Tax Exemption (77-129)
The PCS provides that the Yadkin River Trust will be exempt from property taxes as a governmental entity. In lieu of taxes, the Trust will make payments to the local government districts in which it owns property. The amount of the payments will be based on the amount paid annually at the time of the acquisition. These payments will be made after other debts to pay operating expenses, debt service and other obligations resulting from federal financing agreements have been paid. Because the payments in lieu will be based on the amount of tax paid at the time of acquisition, local governments will experience a fiscal impact to the extent that this amount differs from the actual amount of tax that would have been owed in any particular year. The amount of property taxes paid for the Yadkin River Project in 2008 was $1,307,885.

SOURCES OF DATA: Stanly County Assessor's Office; Davie County Assessor's Office; Davidson County Assessor's Office; Montgomery County Assessor's Office; Lobbyists for Alcoa and APGI; Lobbyists for Stanly County; Documents prepared by Stanly County for the Environmental Review Commission and Documents prepared by APGI for the Environmental Review Commission available online at http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=12&sFolderName=\Alcoa%20-%20Stanley%20County%20-%20FERC%20Re-licensing; Alcoa Licensing and Relicensing Documents available online at http://www.alcoa.com/yadkin/en/info_page/relicensing_overview.asp.

TECHNICAL CONSIDERATIONS: none

SENATE FINANCE COMMITTEE
Tuesday, May 5, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 5, 2009, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator Dan Clodfelter presided.

S.B. 1008 – Anterless Deer Tag.

Senator Swindell was recognized to explain the bill which provides for a fee for bonus anterless deer tags. Gordon Myers, NC Wildlife Resources Commission's Executive Director, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 1009 – Hunting License Exemption for Special Events.

Senator Swindell was recognized to explain the bill. The bill authorizes the Wildlife Resources to provide exemptions from hunting license requirements for special events. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill, the fiscal note and the summary is attached.

S.B. 368 – Various Changes in Motor Vehicle Law. - AB

Senator Jenkins was recognized to explain the bill. Senator Jenkins moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS clarifies the requirements for a retired state highway patrol special plate, provides for the recovery of civil penalties assessed by the Department of Crime Control and Public Safety, requires that all motor vehicles used in intrastate commerce weighing more than ten thousand pounds be marked, modifies the requirements for flags and lighting and when headlamps would be required to be used on loads that are projecting from the end or sides of a commercial motor vehicle or a motor vehicle weighing more than ten thousand pounds and engaged in commerce, etc. Thomas Caves, the legislative liaison for the Department of Crime Control and Public Safety, was recognized to answer questions. Charlie Diehl, NC Trucking Association lobbyist, was recognized to answer questions. The bill was displaced until further answers could be determined. A copy of the PCS, the fiscal note, the federal requirement certification, and the summary is attached.

S.B. 777 – Tobacco Products Tax Revisions.

Senator Garrou was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS allows affiliates of a tobacco products manufacturer to be treated the same as the manufacturer for purposes of payment of the excise tax on other tobacco products. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill, the PCS, the summary and the fiscal note is attached.

S.B. 809 – License Renewal/Active Military Duty.

Senator Jones was recognized to explain the bill which authorizes a member of the armed forces or of a reserve component of the armed forces to renew a drivers licenses upon receipt of deployment orders and allows a sixty-day grace period for an expired license upon release from active duty outside of the United States. Senator Hartsell moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 99 – Internet Ticket Resale Amendments.

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS extends and amends an act to protect customers purchasing tickets via the internet, and imposes a privilege license tax on gross receipts received to the extent they exceed face value of the ticket. Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 922 – Modify SBIR/STTR Grant Requirements.

Senator Rand was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS excludes research that cannot be conducted within the State from eligibility calculations for grants from the One North Carolina Small Business Program. Senator Weinstein moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:40 PM.

Senator Daniel Clodfelter, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, May 05, 2009

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

FAVORABLE

S.B.	**99**	Internet Ticket Resale Amendments.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.(CS #1)	**809**	License Renewal/Active Military Duty.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1008**	Antlerless Deer Tag Fee.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1009**	Hunting License Exemption for Special Events.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, May 05, 2009

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

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

S.B. **777** Tobacco Products Tax Revisions.

Draft Number:	55361
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **922** NC Life Sciences Development Corporation Act.

Draft Number:	85211
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Finance Committee
Tuesday, May 5, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 54	Municipal Drainage Service Districts.	Sen. Soles
SB 99	Internet Ticket Resale Amendments.	Sen. Hartsell
SB 368	Various Changes in Motor Vehicle Law.-AB	Sen. Jenkins
SB 777	Tobacco Products Tax Revisions.	Sen. Garrou
SB 809	License Renewal/Active Military Duty.	Sen. Jones
SB 922	NC Life Sciences Development Corporation Act.	Sen. Rand
SB 997	Repeal Use Tax Cap on Out-of-State Vehicles.	Sen. Jenkins
SB 1008	Antlerless Deer Tag Fee.	Sen. Swindell
SB 1009	Hunting License Exemption for Special Events.	Sen. Swindell

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
ANTHONY MANGUM	NCACC
ZACH PLETCHETT	CAA
Kay Hatcher	DMV
Donna Boone	DMV
Alison Roach	DMV
Cady Thomas	NC ASSN of REALTORS
Sarah Clapp	NCWRC
GORDON MYERS	NCWRC
Matthew McConnell	Carolinas Healthcare Sys.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Hunton & Williams
Lisa Familo	NCAH
Cam Cove	BPMH
Laura Pisoni	NCSEA
Laura W. Bone	Bone + Associates, LLC
[signature]	S.H.
Jim Blackburn	NC Association of County Commissioners
DAVID BARNES	Poyner Spruill
Charlie Diehl	NC Trucking Assn.
Paul Sherman	NCFB
Chris Stanley	Senate Intern
[signature]	NRPC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sheila McAdams	NCOMV
Brenda Freeman	NCDMV
[illegible]	NC Federation of Boys Clubs
Joe Lanier	SRDC
Ed Turlington	Brooks Pierce
Lennie Collins	NC DOR
AL Milax	NCDOR
John Hardin	NC Dept. of Commerce
William Belch	NC SHP
Allen Hook	NCSHP
Amanda Arrington	ASUS

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ericka Everly	
Penny Griffin	Sch of Gov
TOM BOWLIN	NC NATIONAL GUARD
Reid McMillan	Moore & Van Allen

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1008

Short Title:	Antlerless Deer Tag Fee.	(Public)
Sponsors:	Senator Swindell.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A FEE FOR BONUS ANTLERLESS DEER TAGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.3(b) is amended by adding a new subdivision to read:

"(2a) Bonus Antlerless Deer License – $10.00. This license shall be issued to an individual resident or nonresident of the State who holds a valid North Carolina big game hunting license or an individual resident who is exempt from the hunting license requirement in accordance with G.S. 113-276(c) and G.S. 113-276(d) and entitles the holder to take two antlerless deer during seasons and by methods authorized by the Wildlife Resources Commission. This license expires June 30."

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

SENATE BILL 1008:
Antlerless Deer Tag Fee

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 4, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate bill 1008 would authorize a Bonus Antlerless Deer license.

CURRENT LAW: In addition to a hunting license, deer hunters must obtain a big game hunting license, and comply with reporting requirements when any species of big game is killed. Individuals hunting on their own land and individuals under 16 accompanied by a licensed adult are exempt from the hunting and fishing license requirements.

Individuals are limited to taking 6 deer per season. In the area in and east of Vance County, Franklin County, Wake County, Harnett County, Moore County south of NC 211 and west of US 1, and Richmond County of the 6 total deer, individuals may take no more than 4 antlered deer per season. In the area west of Vance County, Franklin County, Wake County, Harnett County, Moore County south of NC 211 and west of US 1, and Richmond County of the 6 total deer, individuals may take no more than 2 antlered deer per season.

Hunters may take more than the per season limit by obtaining a Bonus Antlerless Harvest Report Card, however, hunters do not need to obtain an additional license.

BILL ANALYSIS: Senate Bill 1008 would authorize a "Bonus Anterless Deer License." This license may be issued to valid holders of big game hunting licenses and individuals exempt from the licensing requirements including landholders and individuals under 16 accompanied by a licensed adult. Individuals would be able to take two additional antlerless deer, increasing the total deer per season to the following:

- In the area in and east of Vance County, Franklin County, Wake County, Harnett County, Moore County south of NC 211 and west of US 1, and Richmond County of the **8 total deer, individuals may take no more than 4 antlered deer per season.**
- In the area west of Vance County, Franklin County, Wake County, Harnett County, Moore County south of NC 211 and west of US 1, and Richmond County of the **8 total deer, individuals may take no more than 2 antlered deer per season.**

The fee for obtaining this license will be $10.00.

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

BACKGROUND: This bill will allow hunters to increase the take of antlerless deer. Implementing the license and associated fee will allow the Commission to recover the expenses of administering this program.

Approximately 289,399 license holders had valid big game privileges in fiscal year 2007-2008. This included big game privilege license, sportsman and comprehensive licenses, and lifetime license holders.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1008 (First Edition)

SHORT TITLE: Antlerless Deer Tag Fee.

SPONSOR(S): Senator Swindell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Wildlife Resources Commission	$200,000	$200,000	$200,000	$200,000	$200,000
EXPENDITURES					
Wildlife Resources Commission	0	0	0	0	0
POSITIONS (cumulative):					
Wildlife Resources Commission	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Wildlife Resources Commission

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:
S.B. 1008 amends G.S. 113-270.3(b), creating a fee for bonus antlerless deer licenses. The antlerless deer license allows hunters to take two antlerless deer during hunting season by methods authorized by the Wildlife Resources Commission (WRC). In order to purchase this $10 license, the licensee must already hold a North Carolina big game hunting license (unless exempt under other statutory provisions). Both residents and non-residents could purchase this license for $10.

ASSUMPTIONS AND METHODOLOGY:

In FY 2007-08, WRC sold 289,399 short-term, annual, and lifetime hunting licenses that had valid big game hunting privileges. This number is comprised of the following:

- 38,525 stand alone annual big game privilege licenses;
- 4,536 stand alone short-term big game privilege licenses;
- 166,338 annual sportsman and comprehensive hunting licenses, which include big game privileges; and
- 80,000 lifetime holders who received their big game report card (which is required in order to hunt big game).

Big game includes wild turkey, boar, bear, and deer. More people hunt white-tailed deer than any other game species in North Carolina. Each year approximately 250,000 sportsmen/women take more than 2.9 million trips afield in pursuit of deer. A standard big game hunting license allows for the taking of six deer. In eastern North Carolina (i.e. in and east of Vance, Franklin, Wake, Harnett, and Moore counties), the six deer limit includes four antlered deer; in the piedmont and western regions, the limit includes only two antlered deer. Approximately 3.6% of big game hunters take their full allotment of deer each year.

When a big game animal is harvested it must be reported to a Wildlife Cooperator Agent or to WRC. In an effort to control the deer population, WRC instituted antlerless deer report cards (formerly "tag") in 2007; WRC currently provides this bonus tag free of charge. WRC was given the authority to set up a bonus tag system – or to extend deer hunting season – but the session law did not stipulate the fee to be charged for this tag.

In FY 2007-08, WRC provided 23,430 bonus antlerless harvest report cards. However, only 1,326 hunters reported harvests that exceeded the six deer season bag limit allowed by the standard big game license. WRC believes that this is an underestimate of the number of hunters that harvested deer with the bonus tag because many hunters may have saved traditional big game harvest report cards in order to retain the opportunity to harvest an antlered deer.

WRC estimates that the demand for bonus antlerless deer tags will be approximately 20,000 despite the $10 fee. This should bring in additional revenue of $200,000 annually. The $10 fee for the privilege of taking two additional deer is not excessive relative to other states. The table below provides a comparison of the cost of North Carolina's bonus license to four other states.

	Fee per Bonus Taking	
State	**Resident**	**Non-resident**
North Carolina	*$5.00*	*$5.00*
Wisconsin	$15.00	$24.00
Maine	$12.00	$12.00
Maryland	$10.00	$25.00
Virginia	$9.00	$15.50

Since WRC already has a bonus antlerless tag in place, the costs associated with developing and distributing these licenses, as well as enforcing them, are already included in WRC's budget. There should be no increase in operating costs due to implementing a fee for this bonus tag.

SOURCES OF DATA:
Wildlife Resources Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 4, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 1009

Short Title:	Hunting License Exemption for Special Events.	(Public)
Sponsors:	Senator Swindell.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO PROVIDE EXEMPTIONS FROM HUNTING LICENSE REQUIREMENTS FOR SPECIAL EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-276(n) reads as rewritten:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals from the hunting and fishing license requirements of G.S. 113-270.1B, 113-270.3(b)(1), 113-270.3(b)(3), 113-270.3(b)(5), 113-271, 113-272, and 113-272.2(c)(1) who participate in organized hunting and fishing events ~~held in inland or joint fishing waters from recreational fishing license requirements~~ for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to. Those exempted persons shall comply with the hunter safety requirements of G.S. 113-270.1A or shall be accompanied by a properly licensed adult who maintains a proximity to the license exempt individual which enables the adult to monitor the activities of, and communicate with, the individual at all times."

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

SENATE BILL 1009:
Hunting License Exemption for Special Events

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 4, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1009 is an agency bill that would authorize the Wildlife Resources Commission to exempt individuals from hunting and fishing license requirements when participating in special events.***

CURRENT LAW: Article 21 of Chapter 113 outlines the requirements for hunting and fishing licenses and permits in North Carolina. The licenses and permits are issued by the Wildlife Resources Commission.

S.L. 2005-455 authorized the Wildlife Resources Commission adopt rules to exempt individuals who are participating in an organized fishing event from recreational fishing license requirements.

BILL ANALYSIS: Senate Bill 1009 authorizes the Commission to adopt rules to exempt individuals from certain hunting and fishing license requirements when participating in organized events. The rules may exempt individuals from the following requirements:

G.S. 113-270.1B – License for hunting, fishing, or trapping.

G.S. 113-270.3 – Special activity license, including big game hunting (b)(1), and hunting or trapping on game lands managed by the Commission (b)(3).

G.S. 113-271 – Inland hook-and-line fishing license, does not include fishing in coastal waters

G.S. 113-272 – Special trout license for fishing in designated mountain heritage trout waters.

G.S. 113-272.2 – Fishing with a special devise license, including (c)(1) resident noncommercial special devise license.

Exempted individuals must comply with reporting requirements of the Commission, federal requirements for waterfowl hunting, and all other requirements of license holders. Exempt individuals must also comply with hunting safety requirements or be accompanied by a licensed adult that supervises the individual.

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

BACKGROUND: The Commission has requested the bill to provide opportunities for hunters and to meet Commission goals in hunter recruitment and retention. The following are examples of events the Commission may adopt rules to allow exempt individuals to participate in:

- Youth mentor days.
- Special events supported by the Commission but organized by nonprofits.
- Special hunts endorsed by the Commission for which specific details regarding individuals participating and unknown until the event commences.
- Apprentice hunter events.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1009 (First Edition)

SHORT TITLE: Hunting License Exemption for Special Events.

SPONSOR(S): Senator Swindell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Wildlife Resources Commission	****** See Assumptions and Methodology ******				
EXPENDITURES					
Wildlife Resources Commission	$0	$0	$0	$0	$0
POSITIONS (cumulative):					
Wildlife Resources Commission	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Wildlife Resources Commission

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:
S.B. 1009 amends GS 113-276(n) to expand the authority of the Wildlife Resources Commission (WRC) to grant exemptions to licensing requirements. Under current law, WRC is authorized to grant exemptions from fishing license requirements for certain fishing events. S.B. 1009 adds language that authorizes WRC to grant exemptions to a variety of hunting and fishing license requirements for organized events when the event is consistent with the conservation objectives of WRC. The bill requires that exempt individuals comply with any requirements applicable to a license holder, including reporting requirements and purchasing waterfowl stamps if appropriate, and requires compliance with statutory safety requirements or be accompanied by a licensed adult
Source: Bill Digest S.B. 1009 (03/26/0200).

Consequently, the fiscal impact of this bill cannot be accurately estimated. The exemptions are designed to attract new hunters and angler by introducing them to these sports. The one time, short-term licenses exemption will result in forgone license revenue for WRC. However, WRC expects that forgone revenue to be exceeded by revenue from new license purchases made by new hunters and fishermen recruited through these special events.

SOURCES OF DATA:
Wildlife Resources Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 4, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 368
Commerce Committee Substitute Adopted 4/22/09
PROPOSED COMMITTEE SUBSTITUTE S368-CSTD-25 [v.4]

5/4/2009 3:50:14 PM

Short Title: Various Changes in Motor Vehicle Law.-AB (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR A RETIRED STATE HIGHWAY PATROL SPECIAL REGISTRATION PLATE; TO PROVIDE FOR THE RECOVERY OF CIVIL PENALTIES ASSESSED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY; TO REQUIRE THAT ALL MOTOR VEHICLES USED IN INTRASTATE COMMERCE WEIGHING MORE THAN TEN THOUSAND POUNDS BE MARKED; TO MODIFY THE REQUIREMENTS FOR FLAGS AND LIGHTING AND WHEN HEADLAMPS WOULD BE REQUIRED TO BE USED ON LOADS THAT ARE PROJECTING FROM THE END OR SIDES OF A COMMERCIAL MOTOR VEHICLE OR A MOTOR VEHICLE WEIGHING MORE THAN TEN THOUSAND POUNDS AND ENGAGED IN COMMERCE; TO REQUIRE SAFE TIRES ON COMMERCIAL MOTOR VEHICLES AS REQUIRED BY PART 393 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS; TO MAKE A CHANGE TO THE WEIGHT AND SIZE PENALTY PROVISIONS TO ALLOW FOR THE ASSESSMENT OF A CIVIL PENALTY FOR ONLY THAT AMOUNT OF WEIGHT IN EXCESS OF THE PERMITTED AMOUNT, TO REQUIRE THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO ASSESS CIVIL FINES FOR VIOLATIONS OF THE SPECIAL PERMIT REQUIREMENTS OF G.S. 20-119, AND TO PREVENT MOTOR CARRIERS FROM OPERATING VEHICLES THAT HAVE BEEN DECLARED "OUT-OF-SERVICE"; TO REQUIRE BRAKES AS STANDARD EQUIPMENT FOR SEMITRAILERS BEING PULLED BY TRACTOR TRUCKS AND OTHER PULL UNITS; TO REQUIRE THAT OWNERS OF MOTORCYCLES MAINTAIN IN GOOD WORKING ORDER DIRECTIONAL SIGNALS INSTALLED BY THE MANUFACTURER; TO MODIFY THE SEAT BELT EXEMPTION PROVIDED FOR GARBAGE AND RECYCLING TRUCK OPERATORS AND PASSENGERS TO COMPLY WITH FEDERAL LAW; TO PROHIBIT THE OPERATION OF A DIGITAL VIDEO DISC PLAYER AT ANY POINT FORWARD OF THE BACK OF A DRIVER'S SEAT WHILE OPERATING A MOTOR VEHICLE; TO INCREASE THE CAP ON THE MAXIMUM ALLOWABLE SUPERVISORY PERSONNEL IN THE STATE HIGHWAY PATROL FROM TWENTY-ONE PERCENT TO TWENTY-THREE PERCENT; TO CLARIFY THAT CIVIL PENALTIES AND FORFEITURES ARE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; TO ENSURE THAT PROCEEDS FROM LEASE OF PROPERTY OWNED BY THE STATE HIGHWAY PATROL AS PART OF

THE VIPER PROJECT BE USED TO CONSTRUCT, MAINTAIN, AND SUPPORT THE PROJECT, AS REQUESTED BY THE STATE HIGHWAY PATROL; AND TO CLARIFY THAT TRUCKS MAY TRAVEL OVER POSTED BRIDGES AS LONG AS THE TRUCK DOES NOT EXCEED TO POSTED WEIGHT LIMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(104) reads as rewritten:

"(104) Retired State Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. An individual who has retired from the North Carolina State Highway ~~Patrol.~~Patrol, presenting to the Division, along with the application for the plate, a copy of the retiree's retired identification card or letter of retirement.

b. The surviving spouse of a person who had ~~a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.~~retired from the State Highway Patrol who, along with the application for the plate, presents a copy of the deceased retiree's identification card or letter of retirement and certifies in writing that the retiree is deceased and that the applicant is not remarried.

~~c. The surviving spouse of a person who qualified for a retired highway patrol plate so long as the surviving spouse applies for the plate within ninety (90) days of the qualifying spouse's death and does not remarry.~~"

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-91.4. Civil penalties assessed by the Department of Crime Control and Public Safety; procedures for recovery.**

(a) Unless collection of penalties is made pursuant to G.S. 20-96, G.S. 20-382.2, or some other statutory provision, any person or entity that does not deny liability for a civil penalty assessed by the Department of Crime Control and Public Safety pursuant to this Article shall make payment within 30 calendar days of the date the penalty is assessed. Payment shall be made to the Department of Transportation, Fiscal Section. A penalty payable pursuant to this section that remains unpaid for more than 30 days following the date of assessment shall be delinquent and shall be subject to the maximum allowable late penalties and interest as a past-due account pursuant to G.S. 147-86.23.

(b) Any person or entity who denies liability for a penalty imposed by the Department of Crime Control and Public Safety under this Article may request an informal review by the Secretary of the Department of Crime Control and Public Safety or the Secretary's designee. A request for informal review must be made within 30 days of the assessment of a civil penalty, must be made in writing, and must contain sufficient information for the Secretary of Crime Control and Public Safety to determine the specific basis upon which liability is being challenged.

(c) Upon receiving a request for informal review, the Secretary of Crime Control and Public Safety, or the Secretary's designee, shall review the record and determine whether the civil penalty was assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee, determines that the assessment or a portion thereof was not issued in error, the penalty must be paid within 30 days of the notice of decision.

(d) Any person or entity who is dissatisfied with the decision of the Secretary of Crime Control and Public Safety pursuant to subsection (c) of this section and who has paid the

penalty in full within 30 days as required by subsection (c) of this session may, within 60 days of the decision, bring an action for refund of the penalty against the Department of Crime Control and Public Safety in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed."

SECTION 3. G.S. 20-101(b) reads as rewritten:

"(b) A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight rating of more than 10,000 ~~pounds, but less than 26,001 pounds,~~pounds and is used in intrastate commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12), shall have the name of the owner printed on ~~the~~ each side of the vehicle in letters not less than three inches in height."

SECTION 4. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

(a) General Provisions. – Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than ~~12~~ 18 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

(b) Commercial Motor Vehicles. – Notwithstanding the provisions of subsection (a) of this section, a commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. § 393."

SECTION 5. G.S. 20-122.1 reads as rewritten:

"**§ 20-122.1. Motor vehicles to be equipped with safe tires.**

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty- seconds tread depth requirements of this section shall not apply to dual wheel trailers. ~~Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels.~~ For the purpose of this section, the following definitions shall apply:

(1) "Chunking" – separation of the tread from the carcass in particles which may range from very small size to several square inches in area.
(2) "Cord" – strands forming a ply in a tire.
(3) "Tread" – portion of tire which comes in contact with road.
(4) "Tread depth" – the distance from the base of the tread design to the top of the tread.

(a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is operated on the streets or highways of this State shall be equipped with tires that are safe for the operation of the vehicle and do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so

as to expose tire cord, or there is a visible tread separation or chunking, or if the steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove, or if any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove, or if the tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se."

SECTION 6. G.S. 20-118(e)(3) reads as rewritten:

"(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3)of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision ~~(b)(3),~~(b)(3) of this section, or by a special permit issued pursuant to G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars ($10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

SECTION 7. G.S. 20-119(d) reads as rewritten:

"(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of Crime Control and Public Safety ~~may~~ shall assess a civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of one thousand five hundred dollars ($1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.

~~(1)~~(1a) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit.~~permit, or failing to comply with the number of properly certified escort vehicles required.~~

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house

trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision ~~(1)~~ (1), (1a), or (2) of this subsection. ~~In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).~~"

SECTION 8. G.S. 20-119 is amended by adding a new subsection to read:

"(d1) In addition to the penalties assessed pursuant to subsection (d) of this section, the Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten thousand dollars ($10,000), in accordance with G.S. 20-118(e)(1) and (3) against the registered owner of the vehicle for any of the following:

(1) Operating without the issuance of a required permit.

(2) Operating off permitted route of travel.

(3) Failing to comply with travel restrictions of the permit.

(4) Operating without the proper vehicle registration or license for the class of vehicle being operated.

A violation of this subsection constitutes operating a vehicle without a special permit."

SECTION 9. G.S. 20-381(a)(2a) reads as rewritten:

"(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety ~~finds~~ finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown ~~unsafe for use~~ in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, ~~to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous,~~ the agent shall declare the vehicle "Out-of-Service." The agent shall~~may~~ require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out-of-Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out-of-Service" until all repairs required by the "Out-of-Service" notice have been satisfactorily completed.~~in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect.~~ Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier

subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes."

SECTION 10. G.S. 20-124(e1) reads as rewritten:

"(e1) Every motor truck and ~~tractor-truck~~truck-tractor with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front ~~wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes.~~wheels if it was manufactured prior to July 25, 1980. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124(e)."

SECTION 11. G.S. 20-124(g) reads as rewritten:

"(g) The provisions of this section shall not apply to any trailer ~~or semitrailer~~ when used by a farmer, his tenant, agent, or employee under such circumstances that such trailer ~~or semitrailer~~ is exempt from registration by the provisions of G.S. 20-51. This exemption does not apply to trailers that are equipped with brakes from the manufacturer and that are manufactured after October 1, 2009."

SECTION 12. G.S. 20-125.1(d) reads as rewritten:

"(d) Nothing in this section shall apply to ~~motorcycles.~~motorcycles unless the motorcycle was equipped with electrical or mechanical directional signals from the manufacturer."

SECTION 13. G.S. 20-135.2A(c)(8) reads as rewritten:

"(8) A ~~driver or~~ passenger of a residential garbage or recycling truck while the truck is operating during collection ~~rounds, and while traveling to and from garbage and recycling material loading and unloading locations.~~rounds."

SECTION 14. G.S. 20-136.1 reads as rewritten:

"**§ 20-136.1. Location of ~~television viewers.~~television, computer, or video disc players, monitors, and screens.**

No person shall drive any motor vehicle upon a public street or highway or public vehicular area ~~equipped with any television viewer, screen, or other means of visually receiving a television broadcast~~while operating, using, or viewing any television, computer, or video disc player which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; equipment that displays audio system information, functions or controls, or weather, traffic, and safety information; vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties."

SECTION 15. G.S. 20-185(a) reads as rewritten:

"(a) The State Highway Patrol shall consist of a commanding officer, who shall be appointed by the Governor and whose rank shall be designated by the Governor, and such additional subordinate officers and members as the Secretary of Crime Control and Public Safety, with the approval of the Governor, shall direct. Members of the State Highway Patrol shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the pleasure of the Governor and Secretary. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Department of Administration. Notwithstanding any other provision of this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to ~~twenty-one percent (21%)~~twenty-three percent (23%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions."

SECTION 16. G.S. 20-382.2(d) reads as rewritten:

"(d) Proceeds. – A penalty imposed under this section is payable to the Department of Crime Control and Public Safety. ~~Penalties collected under this section shall be credited to the Highway Fund as nontax revenue.~~The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 17. G.S. 146-30 is amended by adding a new subsection to read:

"(b2) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands purchased and owned by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these dispositions shall be deposited into an account created in the Department of Crime Control and Public Safety to be used only for the purpose of constructing, maintaining, or supporting the VIPER network."

SECTION 18.(a) G.S. 20-118(c) reads as rewritten:

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or ~~posted bridge.~~exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance

between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or ~~a posted bridge.~~exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds."

SECTION 18.(b) G.S. 20-118(h) reads as rewritten:

"(h) Tolerance. – A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to ~~bridges posted~~any vehicle exceeding posted bridge weight limitations as posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998."

SECTION 19. Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

SENATE BILL 368:
Various Changes in Motor Vehicle Law.-AB

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 1, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 368 makes the following changes to North Carolina motor vehicle laws:

- *Amends eligibility requirements for issuance of a Retired Highway Patrol special plate.*
- *Reinstates a mandatory informal review process for those who deny liability for civil penalties assesses by the Department of Crime Control and Public Safety.* **The PCS providest that those who deny liability must pay any penalty imposed 30 days after the notice of decision of the review.**
- *Requires all vehicles used in intrastate commerce that are over 10,000 lbs to be marked with the name of the owner (currently applies only to vehicles between 10,000 – 26,001 lbs)*
- *Requires a larger flag on the end of a load that extends more than 4 ft beyond the rear of a vehicle.*
- *Amends safe tire provisions to comply with federal requirements.*
- *Amends penalties for oversize/overweight vehicles.*
- *Requires the Department of Crime Control and Public Safety to declare unsafe vehicles "Out-of-Service" until required repairs have been completed.*
- *Eliminates/narrows exemptions from brake requirements.*
- *Requires motorcycles to have directional signals if equipped with them by the manufacturer.*
- *Amends seat belt exemption for drivers and passengers in garbage and recycling trucks.*
- *Prohibits drivers from operating or viewing computers or DVD players in the front of the vehicle.*
- *Increases the cap on the maximum percentage of supervisory personnel in the State Highway Patrol from 21% to 23%.*
- *Requires all proceeds from the lease of property owned by the State Highway Patrol as part of the VIPER project to be used to support the project.*

The PCS to Senate Bill 368 clarifies that trucks may travel over posted bridges as long as the truck does not exceed the posted weight limit.

BILL ANALYSIS: Senate Bill 368 makes the following changes to the law, as requested by the State Highway Patrol:

Section 1: Retired State Highway Patrol special license plate. Currently, the surviving spouse of a person who is deceased and retired from the State Highway Patrol would have to apply for a plate within 90 days of the qualifying spouse's death. The PCS eliminates the time requirement, and requires an applicant for the plate to present a copy of the retiree's identification card or letter of retirement.

Section 2: Informal review process to protest civil penalties. The bill reinstates a mandatory informal review process for civil penalties assessed by the Department of Crime Control and Public Safety. The Department used an informal process prior to 2008, when the provision in Chapter 20 authorizing the process was repealed. The informal process requires that payment of the penalty be made within 30 days of it being assessed, unless the person denies liability for the penalty. If the penalty is upheld by the Secretary, the penalty must be paid within 30 days of notice of the decision.

Section 3: All vehicles over 10,000 lbs. in intrastate commerce to be marked. Current law requires a motor vehicle weighing between 10,000 lbs. and 26,001 lbs. that is used in intrastate commerce to be marked on the side with the name of the owner. The bill requires that vehicles 26,001 lbs. and greater be marked as well.

Section 4: Flags at the end of a load. When a load on a vehicle extends more than 4 feet beyond the rear of the bed or body of the vehicle, the law requires that a red or orange flag not less than 12 inches in length and width be displayed at the end of the load during daylight hours. The bill increases the flag size required from 12 inches to 18 inches in length and width.

Section 5: Safe tires. The bill amends safe tire specifications for vehicles with a gross vehicle weight rating of 10,001 lbs. or more in order to comply with federal requirements.

Section 6, 7, and 8: Oversize/overweight penalties. The bill authorizes overweight penalties only to the extent the actual weight exceeds what is allowed in the permit (currently, the penalty would be applied as if the operator did not have a permit). It also requires the Department to assess penalties for violating special permit conditions, decreases the maximum penalty from $25,000 to $10,000, and makes it a flat $1500 penalty for operating without the proper number of escorts.

Section 9: "Out-of-Service"vehicles. The Department of Crime Control and Public Safety has the authority to prohibit a motor carrier from operating a vehicle that is unsafe for use. Under the current law, it is the duty of an agent to guide the vehicle to a location to correct the defect if the vehicle is in operative condition and movement is not dangerous. The bill would require the agent to declare the vehicle "Out-of-Service" if its condition is likely to cause a crash or breakdown and prohibits anyone from operating the vehicle until all required repairs have been completed.

Section 10 and 11: Brake exemptions. G.S. 20-124 generally requires all motor vehicles operated on the highways to be equipped with brakes adequate to control the movement of the vehicle. The bill eliminates or narrows exemptions from brake requirements as follows:

- Truck-tractors with semitrailers attached and three or more axles – brakes not required on front wheels *only if manufactured prior to July 2, 1980.*
- Eliminates exemption for semitrailers when used by farmers.
- Trailers used by farmers – brakes not required *only if not equipped with brakes from manufacturer prior to October 1, 2009.*

Section 12: Directional signals on motorcycles. Currently, motorcycles are exempt from the requirement that vehicles be equipped with directional signals. The bill would continue to exempt them only if they are not equipped with directional signals by the manufacturer.

Section 13: Seat belt exemption for garbage trucks. G.S. 20-135.2A generally requires occupants in motor vehicles to have a seatbelt properly fastened when the vehicle is in forward motion on a street or highway. There is currently an exemption from the requirement for drivers or passengers in residential garbage or recycling trucks while on collection rounds and going to and from loading and unloading

locations. The bill would eliminate the exemption for the driver and for trips to and from loading and unloading locations, so the exemption would apply only to passengers during rounds.

Section14: Prohibit computer or DVD players in front seat of vehicles. Current law prohibits television viewers or screens in the front seat of motor vehicles. The bill amends the provision to prohibit operating, using, or viewing a computer or video disc player while driving on a highway or public vehicular area.

Section 15: Increase cap on supervisory personnel in the State Highway Patrol. Current law caps the maximum number of supervisory personnel in the State Highway Patrol at 21% of the personnel serving as uniformed highway patrolmen. The bill would increase the cap to 23%.

Section 17: Proceeds from lease to support VIPER project. G.S. 146-30 requires that, when land owned by the State is sold or leased, a service charge must be paid into the State Land Fund. The bill would amend that provision to allow the Highway Patrol to lease space on a tower owned as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project and have all of the proceeds deposited into an account to be used to support the VIPER network and not pay the service charge to the State Land Fund.

Section 18: Clarify weight limits on posted bridges. The Department of Transportation has the authority to determine the load-carrying capacity for bridges in the State. The bill clarifies that vehicles traveling over a bridge and exceeding the maximum load-carry weight posted are subject to a penalty.

EFFECTIVE DATE: Sections 1, 6, 15, 16, and 17 of the bill are effective when they become law. The remainder of the bill becomes effective October 1, 2009, and applies to offenses committed on or after that date.

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S368-SMTD-36(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 368 (Second Edition)

SHORT TITLE: Various Changes in Motor Vehicle Law.-AB

SPONSOR(S): Senator Jenkins

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
EXPENDITURES:	**No additional costs expected for the implementation of this bill.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Crime Control and Public Safety; Department of Transportation

EFFECTIVE DATE: Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

BILL SUMMARY:

This bill enacts the following:

- Clarifies the requirements for a retired State Highway Patrol special registration plate
- Provides for the recovery of civil penalties assessed by the Department of Crime Control and Public Safety
- Requires that all motor vehicles used in intrastate commerce weighing more than ten thousand pounds be marked
- Modifies the requirements for flags and lighting and when headlamps would be required to be used on loads that are projecting from the end or sides of a commercial motor vehicles or a motor vehicle weighing more than ten thousand pounds and engaged in commerce
- Requires safe tires on commercial motor vehicles are required by Part 393 of Title 49 of the Code of Federal Regulations
- Makes a change to the weight and size penalty provision to allow for the assessment of a civil penalty for only that amount of weight in excess of the permitted amount, to require the Department of Crime Control and Public Safety to assess civil fines for violations of the special permit requirements of G.S. 20-119, and to prevent motor carriers from operating vehicles that have been declared "out-of-service"

- Requires brakes as standard equipment for semitrailers being pulled by tractor trucks and other pull unites
- Requires that owners of motorcycles maintain in good working order directional signals installed by the manufacture
- Modifies the seat belt exemption provided for garbage and recycling truck operators and passengers to comply with federal law
- Prohibits the operation of a digital video disc player at any point forward of the back of a driver's seat while operating a motor vehicle
- Increases the cap on the maximum allowable supervisory personnel in the State Highway Patrol from twenty-one percent to twenty-three percent
- Ensures that proceeds from lease of property owned by the State Highway Patrol as part of the VIPER project is used to construct, maintain, and support the project, as requested by the State Highway Patrol.

Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

This proposed bill addresses numerous changes to several statutes; however, these changes are not anticipated to have a substantial fiscal impact. A few of these changes are discussed below.

Department of Crime Control and Public Safety

The Department of Crime Control and Public Safety (CCPS) staff reported that they do not anticipate any fiscal impact as a result of Section 15 of the proposed bill becoming law. Section 15 changes the proportion of supervisory personnel of the State Highway Patrol actually serving as uniformed highway patrolmen from twenty-one percent (21%) to twenty-three percent (23%). This Section does not commit the State to any new expenses, it simply allows the State Highway Patrol to move monies within their existing budget.

Department of Transportation - Division of Motor Vehicles

The Division of Motor Vehicles does not anticipate any fiscal impact from this bill. This analysis is based on the Division's assessment that it 1) will not retain a copy or image of the identification/documentation presented for the issuance of the Retired State Highway Patrol plate; 2) will not revoke any Retired State Highway Patrol plate that was issued prior to this change, and 3) will not require identification/documentation for the renewal of an existing Retired State Highway Patrol plate.

SOURCES OF DATA: Department of Transportation and the Department of Crime Control and Public Safety

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Jean Sandaire

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 5, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

Session 2009

Senate Bill 368

Various Changes in Motor Vehicle Law

Bill Primary Sponsor(s):	Senator Jenkins	S368-CSTD-25
Relevant Federal Law:	*49 C.F.R. § 392.16, 49 C.F.R. § 393.75*	
☒ Required by or Necessary for Compliance with Federal Law		☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law		☐ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

The Federal Motor Vehicle Safety Act, 49 C.F.R. § 392.16, requires that every commercial vehicle that has a seat belt assembly installed at the driver's seat shall not be driven unless the driver is properly restrained by the seat belt. G.S. 20-136.1 currently exempts drivers or passengers in residential garbage or recycling trucks while on collection rounds and going to and from loading and unloading locations from the requirement for wearing a seat belt. The proposed committee substitute to Senate Bill 368 would eliminate the exemption for the driver and for trips to and from loading and unloading locations, so the exemption would only apply to passengers during rounds.

The Federal Motor Vehicle Safety Act, 49 C.F.R. § 393.75 provides that no motor vehicle may be operated on any tire that:

1. *Has body ply or belt material exposed through the tread or sidewall.*
2. *Has any tread or sidewall separation.*
3. *Is flat or has an audible leak.*
4. *Has a cut to the extent the ply or belt material is exposed.*

In addition, the front tires on any bus, truck or tractor trailer must have a tread groove pattern depth of at least 4/32 of an inch. All other tires must have a tread grove pattern of 2/32 of an inch. The proposed committee substitute to Senate Bill 368 amends G.S. 20-122.1 to conform the tire safety requirements to the federal requirements. G.S. 20-122.1 is amended to provide that tires shall be considered unsafe if any of the following apply:

1. *If cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord.*
2. *There is a visible tread separation or chunking.*
3. *The steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove.*
4. *Any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove.*
5. *The tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.*

COMPLIANCE CONSIDERATIONS

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents involving commercial motor vehicles. Failure to comply with Federal rules on commercial motor vehicle safety would result in the loss of up to 50% of funds awarded to the State. Sections 5 and 13 of the proposed committee substitute would amend the North Carolina motor vehicle laws to comply with the Federal Motor Vehicle Safety Act, bringing the State in compliance for funding purposes.

TECHNICAL OR MECHANICAL CONSIDERATIONS

The proposed committee substitute to Senate Bill 368 has no apparent technical or mechanical considerations.

REVIEW AND APPROVAL

Prepared By: HDF — Heather D. Fennell, Committee Counsel — **Date:** 5-5-09

Approved By: O. Walker Reagan — O. Walker Reagan, Director of Research — **Date:** 5-5-09

SENATE BILL 809
Commerce Committee Substitute Adopted 4/20/09

Short Title: License Renewal/Active Military Duty. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF A RESERVE COMPONENT OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS, AND TO ALLOW A SIXTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY OUTSIDE OF THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside of the United States shall be considered to have a valid license until 60 days after the date of release from active duty outside of the United States upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty ~~in the armed forces of the United States~~ and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the ~~armed forces~~ Armed Forces of the United States.

(2) A member of ~~the national guard or of~~ a reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

SENATE BILL 809:
License Renewal/Active Military Duty

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 4, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 809 would modify drivers license renewal provisions for members of the Armed Forces and reserve components of the Armed Forces who are on active duty in the following three ways:

- ***Allow those members to renew a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.***
- ***Extend the validity of a drivers license that expired while the member was on active duty outside of the United States.***
- ***Allow an active duty reserve member stationed outside the State to renew a drivers license by mail. (Currently allowed for members of Armed Forces on active duty.)***

CURRENT LAW: G.S. 20-7(f)(3a) allows a person to apply to the Division of Motor Vehicles to renew a drivers license during the 180-day period before the license expires and prohibits the Division from accepting renewal applications before that period.

G.S. 20-7(f)(4) permits a person serving active duty and is stationed outside to the State to renew a drivers license by mail. A license renewed by mail is a temporary license that expires 60 days after the individual returns to the State. G.S. 20-97(q) permits the Division to develop a military designation for drivers licenses issued to residents on active duty, their spouses and dependent children. Licenses with a military designation may be twice renewed by mail and do not expire when the individual returns to the State.

BILL ANALYSIS: Senate Bill 809 would amend existing motor vehicle law as follows:

Section 1 – Would add a new definition in Chapter 20 (Motor Vehicles) of the General Statutes, defining "Reserve components of the Armed Forces of the United States" and specifying that the definition includes the Army and Air National Guard.

Section 2 – Would add a new subdivision to G.S. 20-7(f) (Duration and Renewal of Licenses) to:

- Allow the Division of Motor Vehicles to renew the drivers license of a member of the Armed Forces or of a reserve component of the Armed Forces with orders placing the member on active duty outside of the State, regardless of the date of expiration of the license.
- Classify as valid a drivers license that expired while a member of the Armed Forces or of a reserve component of the Armed Forces was on active duty outside of the United States. The license would continue to be valid until 60 days after the date of release from active duty outside of the United States. Licenses that were revoked, rescinded or invalidated under some other provision of law would not be declared valid under this provision.

Amends G.S. 20-7(f)(4) to allow reservists on active duty stationed outside of the State to renew their drivers license by mail, as is currently the case for active duty armed forces.

Sections 3 and 4 – Would capitalize the term Armed Forces wherever it occurs throughout Chapter 20 of the General Statutes.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to all licenses expiring on or after its effective date.

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S809-SMTD-40(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 809 (Second Edition)

SHORT TITLE: License Renewal/Active Military Duty.

SPONSOR(S): Senator Jones

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	$0	$0	$0	$0	$0
EXPENDITURES DMV:	$62,560	$11,628	$11,628	$11,628	$11,628
POSITIONS (cumulative):	N/A	N/A	N/A	N/A	N/A

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles, Department of Transportation Information Technology

EFFECTIVE DATE: Bill becomes effective when it becomes law.

BILL SUMMARY:
This bill amends G.S. 20-7 to permit a service member to renew a driver's license without limitation on the period of time before it expires if the service member is deployed on active duty outside of the state, to provide for a 30-day grace period for driver's license renewals upon a service member's release from active duty, and to provide for renewal by mail to service members on active duty. This bill amends G.S. 20-7(r) to waive the required eye exam for service members serving in combat or hazardous duty zones who renew their driver's licenses by mail. The bill makes corresponding change to the definitional provisions of G.S. 20-4.01 and requires the Revisor of Statutes to replace "armed forces" with "Armed Forces" in G.S. Chapter 20.

ASSUMPTIONS AND METHODOLOGY: Based on Division of Motor Vehicles (DMV) estimates, the total development cost to complete programming required to implement this bill is $62,560 in the first year. This includes planning, development, and implementation costs for DMV and the Office of Information Technology Services (ITS). For cost estimating purposes, DMV is using an hourly rate of $85. Total planning and design phase costs are $2,720, or 32 hours

of an information technology professional's time. Most of the projected cost is for 396 hours of testing during the execution and build phase, and includes ITS's costs, for a total of $42,075. The implementation phase is estimated to cost a total of $2,210, and DMV has allowed $680 for project management. A change budget of 20% is also included.

Annual maintenance and operations costs following completion of the project are estimated at $11,628, with $8,500 required for maintenance and $3,128 for operations. Any programming requires maintenance, and DMV has allowed 6.6 hours a month at $85 an hour to maintain this application, covering their costs and ITS's. The estimated operations cost is based on five percent of the overall development cost.

SOURCES OF DATA: Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: Because of programming requirements, the DMV has proposed delaying the implementation until March 1, 2010.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Amna Cameron

APPROVED BY:

Marilyn Chism, Director
Fiscal Research Division

DATE: May 1, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 777
PROPOSED COMMITTEE SUBSTITUTE S777-CSRB-8 [v.2]

5/5/2009 11:20:37 AM

Short Title: Affiliate Liability for OTP Excise Tax. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1a) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

(2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.

(3) Distributor. – Either of the following:

a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.

b. A ~~person who manufactures or produces cigarettes or causes them to be manufactured or produced~~ manufacturer of cigarettes.

(4) Repealed by Session Laws 1991, c. 689, s. 267.

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, ~~is the only person to whom the manufacturer sells its products,~~ and is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who manufactures ~~or produces~~ tobacco ~~products.~~products or contracts with another person to manufacture tobacco products.

(7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.

(8) Person. – Defined in G.S. 105-228.90.

(9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.

(10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(10a) Secretary. – The Secretary of Revenue.

(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.

(14) Wholesale dealer. ~~A~~ Either of the following:

a. A person who ~~makes tobacco products other than cigarettes or who~~ acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.

b. A manufacturer of tobacco products other than cigarettes."

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

SENATE BILL 777:
Tobacco Products Tax Revisions

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S777-CSRB-8		

SUMMARY: ***Senate Bill 777 amends the definition of an 'integrated wholesale dealer' for purposes of the excise tax on other tobacco products (OTP) so that an affiliate of a manufacturer of OTP may be treated the same as the manufacturer for purposes of allowing relief from paying the excise tax. The tax would become payable by the wholesale or retail dealer to whom the integrated wholesale dealer sold the product.***

The proposed committee substitute redrafts the language to more effectively accomplish the purpose of the legislation.

CURRENT LAW: The excise tax on OTP is paid by the wholesale dealer or retail dealer who first acquires or otherwise handles OTP. The excise tax rate on OTP is 10% of the cost price of the product.

By definition, all manufacturers are wholesale dealers. A manufacturer who is not a retail dealer and who ships OTP to either a wholesale dealer or a retail dealer may apply to the Secretary of Revenue to be relieved of paying the tax. Once granted permission, a manufacturer may choose not to pay the tax, which would result in the tax being paid by the wholesale or retail dealer to whom the manufacturer sells the product.

In 2007, the General Assembly defined the term 'integrated wholesale dealer' and allowed an integrated wholesale dealer to be treated as the same entity as the manufacturer with whom it is an affiliate for purposes of allowing relief from paying the excise tax on OTP. The change in 2007, for example, enabled Conwood Sales, an affiliate of Conwood Company, to be relieved of paying the tax on the OTP it received from Conwood Company since Conwood Company could be relieved of paying the tax.

BILL ANALYSIS: An integrated wholesale dealer is defined as a wholesale dealer who is an affiliate of a manufacturer of other tobacco products and is the only person to whom the manufacturer sells its products. **Senate Bill 777** would eliminate the requirement in the definition of 'integrated wholesale dealer' that the manufacturer sells its entire product to its affiliate and it would modify the definition of manufacturer to include a contract manufacturer. Currently contract manufacturers are not explicitly included in that definition and, instead, are included in the definition of cigarette distributor.

The change to the definition of integrated wholesale dealer allows an affiliate of a manufacturer of OTP to be treated the same as the manufacturer with respect to payment of the OTP excise tax. G.S. 105-113.25 establishes the procedure by which a manufacturer can be relieved of payment of the OTP excise tax. Under the revised definition, that procedure would apply to all affiliates of a manufacturer.

The change to the definition of manufacturer makes its clear that the process in G.S. 105-113.25 applies to a person who contracts for the manufacture of OTP as well as a person who manufactures OTP directly.

EFFECTIVE DATE: The bill becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 5, 2009

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: Tobacco Products Tax Revisions

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
North Carolina Department of Revenue

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY: Effective July 1, 2009, SB 777 clarifies when the excise taxes on other tobacco products are payable. Under current law, the wholesale dealer or retail dealer who first acquires or otherwise handles other tobacco products (OTP) pays the excise tax. The law defines wholesale dealers under G.S. 105-113.4(a) as persons who make OTP or who acquire OTP for sale

to a wholesale dealer or a retailer. A manufacturer who is not a retail dealer and who ships other tobacco products to either a wholesale or a retail dealer may apply to the Secretary to be relieved of paying the tax. Once granted permission, a manufacturer may choose to not pay the tax, which would result in the tax being paid by the receiving wholesale or retail dealer.

The bill changes the law so that the sale between affiliates who are not retail dealers does not trigger payment of the OTP excise tax. It does this by:

- Eliminating the requirement in the definition of integrated wholesale dealer that the affiliate sell all of its product to its affiliate.
- Changes the definition of manufacturer to include a contract manufacturer. This is how the law is currently administered.
- Changes the definition of distributor (for cigarettes) and wholesale dealer (for OTP) to make it clear that a manufacturer who sells to a retail dealer is considered a distributor or a wholesale dealer but not a manufacturer who does not sell to retailers.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue estimates that there is $2.5 million in uncollected assessments, penalties, and interest associated with the legislative changes in SB 777. In future years, this legislation allows for manufacturers to transfer OTP among subsidiaries and affiliate companies without incurring the excise tax. However, the tax will still be paid when the products are distributed for retail causing no net impact to the General Fund.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

SENATE BILL 777

Short Title:	Tobacco Products Tax Revisions.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Finance.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SCOPE OF TOBACCO PRODUCT MANUFACTURERS AND WHOLESALER DEFINITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1a) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

(2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.

(3) Distributor. – Either of the following:

a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.

b. A person who manufactures or produces cigarettes or causes them to be manufactured or produced.

(3a) Federal excise tax bond. – A bond securing the payment of taxes imposed by sections 5701 or 7652 of the Code that is required by the United States Department of Treasury in order to possess a Tobacco Manufacturer's Permit.

(4) Repealed by Session Laws 1991, c. 689, s. 267.

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, ~~is the only person~~ to whom the manufacturer sells its products, and who is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who manufactures or produces tobacco ~~products.~~products or causes them to be manufactured or produced.

(7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.

(8) Person. – Defined in G.S. 105-228.90.

(9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.

(10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(10a) Secretary. – The Secretary of Revenue.

(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.

(14) Wholesale dealer. – A person who ~~makes~~ manufactures or produces tobacco products other than cigarettes or causes them to be manufactured or produced, or who acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer."

SECTION 2. G.S. 105-113.35 reads as rewritten:

"**§ 105-113.35. Tax on tobacco products other than cigarettes; use of proceeds.**

(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ten percent (10%) of the cost price of the products. This tax does not apply to the following:

(1) A tobacco product sold outside the State.

(2) A tobacco product sold to the federal government.

(3) A sample tobacco product distributed without charge.

(4) A tobacco product that remains under federal excise tax bond.

...."

SECTION 3. If any clause, sentence, paragraph, division, or other portion of this act shall for any reason be found by a court of competent jurisdiction to be invalid for any reason, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, division, or other portion found to be invalid.

SECTION 4. This act becomes effective July 1, 2009, and applies to tobacco products subject to the tax imposed by G.S. 105-113.35 that are sold or distributed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 99
PROPOSED COMMITTEE SUBSTITUTE S99-CSRBx-5 [v.1]

4/27/2009 7:19:24 PM

Short Title: Internet Ticket Resale Amendments. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND AND AMEND AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET, AND TO IMPOSE A PRIVILEGE LICENSE TAX ON GROSS RECEIPTS RECEIVED TO THE EXTENT THEY EXCEED FACE VALUE OF THE TICKET.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2008-158 reads as rewritten:

"**SECTION 4.** This act becomes effective August 1, 2008, and expires ~~June 30, 2009.~~ June 30, 2011. ~~The expiration of this act does not relieve a person's liability to file the report required under G.S. 14-344.1(e) for gross receipts received in June 2009.~~ Liability for acts or omissions before the expiration date of this act are not abated or affected by the expiration. Section 3 of this act applies to offenses committed on or after that date."

SECTION 2. G.S. 14-344.1(e) is repealed effective June 30, 2009, but the repeal does not relieve a person's liability to file the report required by that subsection for gross receipts received in June 2009.

SECTION 3. G.S. 14-344.1(a) reads as rewritten:

"(a) Internet Resale. – A person may resell an admission ticket under this section on the Internet at a price greater than the price on the face of the ticket unless the venue where the event will occur prohibits the Internet ticket resale as provided under subsection (b) of this section. To resell an admission ticket under this section, the person reselling the ticket must offer the ticket for resale on a Web site with a ticket guarantee that meets the requirements of subsection (c) of this section. A prospective purchaser must be directed to the guarantee before completion of the resale transaction. A person who resells an admission ticket under this section acknowledges liability for the ~~informational report required under subsection (c) of this section.~~tax under G.S. 105-37.1."

SECTION 4. G.S. 105-37.1(a) and (b) read as rewritten:

"(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(4) Reselling or offering to resell admission tickets on the Internet under G.S. 14-344.1.

(b) Rate and Payment. – The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this section. For taxes imposed under subdivision (a)(4) of this section, gross receipts exclude the price printed on the face of the ticket. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month."

SECTION 5. Sections 1, 2, and 5 of this act are effective when they become law. Sections 3 and 4 of this act becomes effective July 1, 2009.

SENATE BILL 99:
Internet Ticket Resale Amendments

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	April 28, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S99-CSRBx-5		

SUMMARY: Senate Bill 99 does two things:

- ***It would extend the sunset on S.L. 2008-158 for two years, from June 30, 2009, to June 30, 2011.***
- ***It would replace the current informational reporting requirement for the Internet sale of admission tickets in excess of face value with a 3% gross receipts privilege tax. The gross receipts tax would be imposed on the difference between the price sold and the face price on the ticket. The Senate passed this provision last session, but the House removed it. (SB 1407, 4th Edition, 2007 Session)***

The proposed committee substitute makes a conforming change to G.S. 14-344.1. (Section 3)

CURRENT LAW: Reselling tickets online is a new and growing business. Last session, the General Assembly enacted S.L. 2008-158 to provide an exception to the prohibition against admission tickets being resold on the Internet at a price greater than the price printed on the face of the ticket. The law provided protections for both the consumer and the venue:

- The act required a person who resells admission tickets online to provide a ticket guarantee and to provide a purchaser with a full refund of the amount paid for the ticket if the event is cancelled, the purchaser is denied admission through no fault of the purchaser, or the ticket is not delivered to the purchaser and the failure to receive the ticket results in the purchaser's inability to attend the event.
- The act made it an unfair and deceptive trade practice for a person to knowingly sell or possess software that is primarily designed or produced for the purpose of interfering with the operation of a ticket seller who, pursuant to a written agreement with the venue, sells admission tickets over the Internet.[1]

These changes will sunset June 30, 2009. If the changes sunset, it will become a Class 2 misdemeanor for a seller or reseller of an admission ticket to charge more than the face price of the ticket, plus an authorized service fee.[2] And there will not be a prohibition on ticket purchasing software.

BILL ANALYSIS: Senate Bill 99 would delay the sunset by two years and it would expand the privilege license tax to include the reselling of admission tickets on the Internet in excess of face value. G.S. 105-37.1 currently imposes a gross receipts tax on a person who sells the initial ticket to an entertainment event. The rate of tax is 3% of the admission price. The 3% gross receipts privilege tax on ticket resellers would be imposed on the difference between the price of the ticket sold and the face price on the ticket.

The 4th Edition of Senate Bill 1407, introduced by Sen. Hartsell in the 2007 Session, provided for the imposition of a 3% gross receipts privilege tax on the difference between the price of the ticket sold and

[1] If a person is found to have violated the Unfair and Deceptive Trade Practice Act, the aggrieved person is entitled to treble the amount of damages fixed by the verdict.

[2] The service fee is limited to no more than $3.00 unless the promoter of the event and the ticket sales agency, in writing, agree to and make known to the public a different amount.

the face price on the ticket. This provision was deleted from the bill when the bill was in the House Finance Committee. The conference report, as enacted last session, removed the tax provision and replaced it with a reporting requirement. A person who resells admission tickets via the Internet in excess of the face value of the ticket must report to the Department of Revenue by the 10th day after the end of each month on the gross receipts received during the previous month from reselling admission tickets for events in the State. The report must include the total amount of gross receipts derived from resell activity (minus the face value on the tickets), the event and venue for which each ticket was sold, the entity from which the reseller purchased each ticket, the amount the reseller paid for each ticket, the price received by the reseller for each ticket, the name and address of reseller-purchasers of each ticket, and any other information required by the Department. As of April 28, 2009, only 16 monthly reports had been filed by eight ticket resellers.[3]

EFFECTIVE DATE: The expansion of the gross receipts tax to ticket resellers would become effective July 1, 2009. The remainder of the act would become effective when it becomes law.

BACKGROUND: House Bill 309, introduced by Representatives Glazier, Gibson, Tillis, and Harrell, would remove the sunset on S.L. 2008-158. It would not impose a tax on the transaction. House Bill 309 is in the Senate Commerce Committee.

S99-SMRB-4(CSRBx-5) v1

[3] Those 16 reports showed the original cost of the tickets resold was $429,198. The ticket resellers received $722,613, for a net proceeds total of $293,415.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 922
PROPOSED COMMITTEE SUBSTITUTE S922-CSRB-10 [v.1]

5/5/2009 12:38:50 PM

Short Title: Modify SBIR/STTR Grant Requirements. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE RESEARCH THAT CANNOT BE CONDUCTED WITHIN THE STATE FROM ELIGIBILITY CALCULATIONS FOR GRANTS FROM THE ONE NORTH CAROLINA SMALL BUSINESS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.80(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that ~~at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State and that the business~~it will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.

(6) The business must demonstrate its ability to conduct the research described in its SBIR/STTR Phase I ~~proposal.~~proposal and must certify that at least fifty-one percent (51%) of this research will be conducted in this State, other than research that requires special laboratory facilities that are not located in this State."

SECTION 2. G.S. 143B-437.81(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I

report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that ~~at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State and that the business~~it will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct the research described in its SBIR/STTR Phase II ~~proposal.~~proposal and must certify that at least fifty-one percent (51%) of this research will be conducted in this State, other than research that requires special laboratory facilities that are not located in this State."

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

SENATE BILL 922:
Modify SBIR/STTR Grant Requirements

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S922-CSRB-10		

SUMMARY: ***The proposed committee substitute for SB 922 modifies the North Carolina Small Business Program so that a business may be eligible for a grant from the program even though part of its research is conducted outside of North Carolina.***[1]

CURRENT LAW: The North Carolina Board of Science and Technology administers two programs in the North Carolina Small Business Program.

- North Carolina SBIR/STTR Incentive Program. – Under this program, the Board may award grants to offset costs associated with applying for a Phase I grant from either the United States Small Business Administration for Small Business Innovative Research (SBIR) or Small Business Technology Transfer Research (STTR). The maximum grant under this program is $3,000.
- North Carolina SBIR/STTR Matching Funds Program. – Under this program, the Board may award grants to match funds received by a business as a SBIR or STTR Phase I award. The grant may not exceed $100,000.

To be eligible for the grants, a business must be a for-profit, North Carolina-based business and at least 51% of the research described in its grant proposal must be conducted in North Carolina.

BILL ANALYSIS: The PCS for Senate Bill 922 would allow a business to be eligible for a grant even though less than 51% of the research would be conducted in this State if the research requires special laboratory facilities that are not located in North Carolina.

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

S922-SMRB-10(CSMCx-7) v1

S922-SMRB-11(CSRB-10) v1

[1] The original bill created the NC Life Sciences Loan Fund. The provisions of the original bill are not contained in the PCS.

SENATE FINANCE COMMITTEE
Wednesday, May 6, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 6, 2009, in Room 544 of the Legislative Office Building. Thirty-one members of the committee were present. Senator David Hoyle presided. Gaired Jordan of Kernersville, Adam Welch of Four Oaks, and Keith Riggins of Garner served as pages.

Department of Revenue

Secretary Kenneth Lay was recognized to address the committee regarding the delay in State income tax refunds.

Revenue Update

Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized to give an overview of the State's financial outlook. He stated that there is a current deficit of $4.2 billion for the upcoming biennium.

S.B. 457 – Add Definition of Biodiesel.

Senator Snow was recognized to explain the bill. Senator Clodfelter moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS adds the definition of biodiesel to the energy credit banking and selling program for the quality and safety of motorists and makes a conforming change to the alternative fuel revolving fund. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 834 – Rewrite Sanitarian Examiners Laws/Fees.

Senator Bingham was recognized to explain the bill. Senator Albertson moved to adopt the PCS for discussion and the motion carried. The PCS rewrites the laws regulating sanitarians and authorizes the State Board of Sanitarian Examiners to impose an application fee, it also increases certain fees. Senator Weinstein and Senator Rucho moved for a favorable report and the motion carried. A copy of the bill, the PCS and the summary is attached.

S.B. 495 – Oak Ridge ETJ.

Senator Berger was recognized to explain the bill and offer a technical amendment. The bill authorizes the extension of the extraterritorial jurisdiction of the Town of Oak Ridge. Senator Berger moved for the adoption of the amendment and the motion carried. Senator East and Senator Tillman moved to report the bill favorable as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 200 – Various Finance Law Changes.

Senator Jenkins was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS establishes a minimum motor fuels tax rate for two years. Senator Albertson moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 368 – Various Changes in Motor Vehicle Laws.

Senator Jenkins was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS makes various changes to the Motor Vehicle Law as requested by the Department of Crime Control and Public Safety. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 575 – Extend Sunset for JDIG.

Senator Hoyle was recognized to explain the bill. He moved to adopt the PCS for discussion and the motion carried. The PCS encourages the location and expansion of capital intensive companies in this State. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 1006 – Withholding on Contractors Identified by ITIN.

Senator Hoyle was recognized to explain the bill. He moved to adopt the PCS for discussion and the motion carried. The PCS requires withholding on contractors identified by an individual taxpayer identification number (ITIN). Senator Soles moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 755 – Promote Private Mitigation.

Senator Clodfelter was recognized to explain the bill which promotes the use of compensatory mitigation banks for riparian buffer protection and nutrient offset payments and makes clarifying changes to the statutes governing compensatory mitigation for wetland and stream impacts. Senator Clodfelter offered an amendment. Senator Soles moved for the adoption of the amendment and the motion carried. Then Senator Soles moved for a favorable report and the motion carried. A copy of the bill, the amendment and the summary is attached.

S.B. 909 – Sales Tax: reliance on Written Advice by DOR.

Senator Clodfelter was recognized to explain the bill which extinguishes the liability of retailers for sales tax over-collections made in reliance on written advice of the Secretary of Revenue. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 2:09 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 6, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 368	Various Changes in Motor Vehicle Law.-AB	Senator Jenkins
SB 457	Add Definition of Biodiesel.	Senator Snow
SB 495	Oak Ridge ETJ.	Senator Berger
SB 575	Extend Sunset for JDIG.	Senator Hoyle
SB 755	Promote Private Mitigation Banks.	Senator Clodfelter
SB 834	Rewrite Sanitarian Examiners Laws/Fees.	Senator Bingham
SB 867	Tax Law Compliance Condition of ABC Permit.	Senator Hoyle
SB 909	Sales Tax: Reliance on Written Advice by DOR.	Senator Clodfelter
SB 997	Repeal Use Tax Cap on Out-of-State Vehicles.	Senator Jenkins
SB 1006	Withholding on Contractors Identified by ITIN.	Senator Hoyle

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, May 6, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

State Tax Refunds - Secretary Ken Lay, Department of Revenue

Revenue Update – Barry Boardman, Fiscal Research Division

Bills

SB 200	Various Finance Law Changes.	Sen. Jenkins
SB 368	Various Changes in Motor Vehicle Law.-AB	Sen. Jenkins
SB 457	Add Definition of Biodiesel.	Sen. Snow
SB 495	Oak Ridge ETJ.	Sen. Berger
SB 575	Extend Sunset for JDIG.	Sen. Hoyle
SB 755	Promote Mitigation Banks.	Sen. Clodfelter
SB 834	Rewrite Sanitarian Examiners Laws/Fees.	Sen. Bingham
SB 909	Sales Tax: Reliance on Written Advice by DOR.	Sen. Clodfelter
SB 1006	Withholding on Contractors Identified by ITIN.	Sen. Hoyle

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, May 07, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **368** Various Changes in Motor Vehicle Law.-AB

Draft Number:	35310
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **834** Rewrite Sanitarian Examiners Laws/Fees.

Draft Number:	55368
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 06, 2009

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

FAVORABLE

S.B. **909** Sales Tax: Reliance on Written Advice by DOR.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **495** Oak Ridge ETJ.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

S.B. **200** Various Finance Law Changes.
Draft Number: 85213
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **575** Extend Sunset for JDIG.
Draft Number: 55362
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1006** Withholding on Contractors Identified by ITIN.
Draft Number: 55363
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **755** Promote Mitigation Banks.

Draft Number:	35309
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 06, 2009

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

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

S.B. **457** Add Definition of Biodiesel.

Draft Number:	75252
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Daniel Boum	K+L Gates
Steven Waters	Living Streets
Bruce Thomson	Parker Poe
Mallory Hatcher	MWC
[signature]	MWC
Harrison Gilbert	Governor's Office
Patrick Rankin	Senator Hoyle intern
[signature]	NCFA
[signature]	NCICU
Steven Levitas	Kilpatrick Stockton
[signature]	Intern

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Virgil McBride	"
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Mari Wilder	Novant
Patrice Parker	NCACC
Laura Pisoni	NCSEA
Tom Cors	TNC
Leslie Bevacqua Coman	Capstrat
Yvonne Schmidt	Chapel Hill
Chris Kang	Chapel Hill

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Michelle Brooks	UHS Eastern Carolina
Elena Williams	Jacksonville City Council
Fannie L Coleman	Councilmember J'Ville, N.C.
Rita Sullivan	Jacksonville City Council (SB30)
Mayor Sammy Phillips	Jacksonville Mayor
John Carter	Jacksonville City Attorney
Jon. Gilstrap	RS Board
Layton Long	RS Board
Kathryn Sawyer Westcott	AZEA/NC
Reid McMillan	Moore & Van Allen

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Paul Rodney	Moore & Van Allen
Sammy Phillips	Jacksonville - Mayor
Johanna Reese	DOT
[signature]	WCPSS
Betsy Bailey	PENC
Nelia Van Loor	Charlotte Chamber of Commerce
Tim Newman	Crws
Henry Owen	Attorney, Raleigh
[signature]	[signature]
Bob Ford	NCPF

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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DH Buckner	WNC
DOUG LEIDY	STOP
LONNIE LORBACHER	OLCAFA
Wayne Reeves	Good Neighbors of Salisbury Rowan County
Cecil Stevens	Rowan County
Tina Hall	Rowan County Commission
Gary Harris	NCPCM
Todd Winecoff	Good Neighbors - Rowan County
J.W. SANDRIDGE	" " " "

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Andy Segal	NCDOR
Eric Schaeffer	LWC
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David Kunstling	DENR
BILL GILMORE	DENR
TAD BOGGS	DENR
ALAN MELVIN	SHP
MARC Nichols	CCR-WCSHP
Drew Ball	Sierra Club
Elizabeth Colcord	DOR

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Linda Millsaps	NC DOR
Robbie Quinn	NC DMV
Jim Stanfill	NCDENR - EEP
Karl Knapp	NCLM
Janice W. Davidson	NC DOR
Donna Alderman	NC DOR
Scott Mason	Lowe's
Andy Ellen	NCRMA
Marvin Waters	LCPS
Thomas Coves	CCPS
Ken Melton	K. M.A.

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Senate Finance Committee — May 6, 2009

Name of Committee — **Date**

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Allen Hook	NCSHP
Carmen Hooker	Electricities of NC
Cadey Thomas	NC Assn of REALTORS
Paula A. Wolf	El Pueblo
John Hammond	UNC Institute on Aging
Kevin Leonard	WCSR
Michael Thurser	NC DOR
[illegible]	BCS
Ray Combs	Mayor Oak Ridge
Kris Gerardo	NBC 17 / WNCN
Ben Niolet	N+O

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 457
PROPOSED COMMITTEE SUBSTITUTE S457-CSTD-28 [v.2]

5/5/2009 8:51:15 PM

Short Title: Add Definition of Biodiesel. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ADD THE DEFINITION OF BIODIESEL TO THE ENERGY CREDIT BANKING AND SELLING PROGRAM FOR THE QUALITY AND SAFETY OF MOTORISTS AND TO MAKE A CONFORMING CHANGE TO THE ALTERNATIVE FUEL REVOLVING FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-58.4(a) reads as rewritten:

"(a) ~~As used in this section:~~The following definitions apply in this section:

(1) ~~"AFV" means a~~AFV. – A hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.

(2) ~~"Alternative fuel" means biodiesel,~~Alternative fuel. – Biodiesel, biodiesel blend, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.

(3) ~~"B-20" means a~~B-20. – A blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.

(3a) Biodiesel. – A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting the requirements of the American Society for Testing and Materials (ASTM) D-6751.

(3b) Biodiesel blend. — A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.

(4) ~~"Department" means the~~Department. – The Department of Administration.

(5) ~~"Energy Policy Act" means the~~Energy Policy Act. – The federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.

(6) ~~"EPAct credit" means a~~EPAct credit. – A credit issued pursuant to the Energy Policy Act.

(7) ~~"E-85" means a~~E-85. – A blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.

(8) ~~"Incremental fuel cost" means the~~Incremental fuel cost. – The difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.

(9) ~~"Incremental vehicle cost" means the~~Incremental vehicle cost. – The difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model."

SECTION 2. G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council."

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

SENATE BILL 457:
Add Definition of Biodiesel

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S457-CSTD-28		Committee Counsel

SUMMARY: Senate Bill 457 would add the definition of biodiesel to the energy credit banking and selling program and makes technical corrections. The proposed committee substitute to Senate Bill 457 creates separate definitions for "biodiesel" and "biodiesel blends."

[As introduced, this bill was identical to H606, as introduced by Rep. Harrison, which is currently in House Energy and Energy Efficiency, if favorable, Finance.]

CURRENT LAW: The State Energy Office (SEO) has established a banking and selling program that will use monies generated by the sale of federal Energy Policy Act (EPAct) credits to purchase alternative fuel, develop related refueling infrastructure, and purchase alternative fuel vehicles (AFV). An Alternative Fuel Revolving Fund generated from the sale of EPAct credits has been established by the Department of Administration (Department). The Motor Fleet Management Division in the Department and the Department of Transportation are the principal agencies that participate in the credit program.

State fleets can earn Biodiesel Fuel Use Credits to meet 50% of their annual AFV acquisition requirements by purchasing and using biodiesel. Biodiesel Fuel Use Credits are defined in 01 NCAC 41D .0102 to mean an EPAct credit given by the U.S. Department of Energy for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit is given for the petroleum portion of the biodiesel fuel blends.

There is currently no definition for the term biodiesel in G.S. 143-58.4 however; the term is used numerous times in that section of the General Statutes.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 457 would define the term "biodiesel" to mean:

> A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting the requirements of the American Society of Testing and Materials (ASTM) D-6751.

The proposed committee substitute to Senate Bill 457 would define the term "biodiesel blend" to mean:

> A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.

The proposed committee substitute also makes a conforming change to G.S. 143-58.5.

EFFECTIVE DATE: Senate Bill 457 would become effective July 1, 2009.

Jennifer Mundt, substantially contributed to this summary.

S457-SMTD-43(CSTD-28) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 834
Health Care Committee Substitute Adopted 4/9/09
PROPOSED COMMITTEE SUBSTITUTE S834-CSTDf-26 [v.3]

5/5/2009 4:17:45 PM

Short Title: Rewrite Sanitarian Examiners Laws/Fees. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING SANITARIANS AND AUTHORIZING THE STATE BOARD OF SANITARIAN EXAMINERS TO IMPOSE AN APPLICATION FEE, AND TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The title of Article 4 of Chapter 90A of the General Statutes reads as rewritten:

"Article 4.

Registrations of ~~Sanitarians.~~Environmental Health Specialists."

SECTION 1.(b) G.S. 90A-50 reads as rewritten:

"**§ 90A-50. State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners.**

(a) There is hereby created a State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners to register qualified ~~sanitarians~~ environmental health specialists to practice within the State. Each registered sanitarian and registered sanitarian intern on the effective date of this act shall be a registered environmental health specialist or a registered environmental health specialist intern as applicable on and after the effective date of this act.

(b) It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as registered environmental health specialists or registered environmental health specialist interns who are qualified by education, training, and experience to work in the public sector in the field of environmental health within the scope of practice as defined in this Article."

SECTION 2. G.S. 90A-51 reads as rewritten:

"**§ 90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

(1) "Board" means the Board of ~~Sanitarian~~ Environmental Health Specialist Examiners.

(2) "Certificate of registration" ~~is~~ means a document issued by the Board as evidence of registration and qualification to practice as a ~~sanitarian or a sanitarian intern~~registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation ~~"registered sanitarian" or "sanitarian intern"~~"Registered

Environmental Health Specialist' or 'Registered Environmental Health Specialist Intern' and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.

(2a) 'Environmental health practice' means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; milk and dairy sanitation; shellfish sanitation; recreational water quality; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of Environmental Health to State and local environmental health professionals to enforce rules adopted by the Commission for Public Health or the Environmental Management Commission. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.

(2b) 'Environmental health specialist' means a public health professional who meets the educational requirements under this Article and has attained specialized training and acceptable environmental health field experience to effectively plan, organize, manage, provide, execute, and evaluate one or more of the many diverse elements comprising the field of environmental health practice.

~~(3) "Registered sanitarian" is a sanitarian registered in accordance with the provisions of this Article.~~

~~(4) "Sanitarian" is a public health professional qualified by education in the arts and sciences, specialized training, and acceptable environmental health field experience to effectively plan, organize, manage, execute and evaluate one or more of the many diverse elements comprising the field of environmental health. Practice in the field of environmental health within the meaning of this Article includes, but is not limited to, organization, management, education, enforcement, and consultation for the purpose of prevention of environmental health hazards and the promotion and protection of the public health and the environment in the following areas: food, lodging and institutional sanitation, on-site sewage treatment and disposal, and milk and dairy sanitation.~~

'Registered environmental health specialist' means an environmental health specialist registered in accordance with the provisions of this Article.

For purposes of this Article the following are not included within the definition of ~~"sanitarian":~~'registered environmental health specialist' unless the person is working as an environmental health specialist:

a. A person teaching, lecturing, or engaging in research.

b. A person who is a sanitary engineer, public health engineer, public health engineering assistant, registered professional engineer, industrial hygienist, health physicist, chemist, epidemiologist, toxicologist, geologist, hydrogeologist, waste management specialist, or soil ~~scientist, except when the person is working as a sanitarian.~~scientist.

c. A public health officer or public health department director.

d. A person who holds a North Carolina license to practice medicine, veterinary medicine, or nursing.

e. Laboratory personnel when performing or supervising the performance of sanitation related laboratory functions.

~~It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as sanitarians who are qualified by education, training, and experience to work, or are working, in the public sector in the field of environmental health within the scope of practice as defined in this Article.~~

(5) ~~"Sanitarian intern" is~~'Registered environmental health specialist intern' means a person who possesses the necessary educational qualifications as prescribed in ~~G.S. 90A-53(3),~~G.S. 90A-53, but who has not completed the experience and specialized training requirements in the field of public health sanitation as required for registration."

SECTION 3. G.S. 90A-52 reads as rewritten:

"**§ 90A-52. Practice without certificate unlawful.**

(a) In order to safeguard life, health and the environment, it shall be unlawful for any person to practice as ~~a sanitarian~~ an environmental health specialist or an environmental health specialist intern in the State of North Carolina or use the title ~~"registered sanitarian"~~'registered environmental health specialist' or 'registered environmental health specialist intern' unless ~~such~~ the person shall have obtained a certificate of registration from the Board. No person shall offer ~~his~~ services as a registered ~~sanitarian~~ environmental health specialist or registered environmental health specialist intern or use, assume or advertise in any way any title or description tending to convey the impression that ~~he~~ the person is a registered ~~sanitarian~~ environmental health specialist or registered environmental health specialist intern unless ~~he~~ the person is the holder of a current certificate of registration issued by the Board.

(b) Notwithstanding the provisions of subsection (a), a person may practice as ~~a~~ an ~~sanitarian intern~~environmental health specialist intern for a period not to exceed three years from the date of the initial registration, provided ~~he~~ the person has obtained a temporary certificate of registration from the Board."

SECTION 4. G.S. 90A-53 reads as rewritten:

"**§ 90A-53. Qualifications and examination for registration as ~~a sanitarian.~~an environmental health specialist or environmental health specialist intern.**

(a) The Board shall issue ~~certificates~~ a certificate to a qualified ~~persons~~ person as a registered ~~sanitarians.~~environmental health specialist or a registered environmental health specialist intern. A certificate as a registered ~~sanitarian~~ environmental health specialist or a registered environmental health specialist intern shall be issued to any person upon the Board's determination that ~~such~~ the person:

(1) Has made application to the Board on a form prescribed by the ~~Board;~~Board and paid a fee not to exceed one hundred dollars ($100);

(2) Is of good moral ~~character;~~and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board;

(3) ~~Has received a baccalaureate degree from a post-secondary educational institution rated as acceptable by the Board with a minimum of 30 semester hours or its equivalent in the physical and/or biological sciences;~~Meets any of the following combinations of education and practice experience standards:

a. Graduated from a baccalaureate or postgraduate degree program that is accredited by the National Environmental Health Science and

Protection Accreditation Council (EHAC) and has one or more years of experience in the field of environmental health practice; or

b. Graduated from a baccalaureate or postgraduate degree program that is accredited by an accrediting organization recognized by the United States Department of Education, Council for Higher Education Accreditation (CHEA) and meets both of the following:

1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
2. Has two or more years of experience in the field of environmental health practice.

c. Graduated from a baccalaureate program rated as acceptable by the Board and meets both of the following:

1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
2. Has two or more years of experience in the field of environmental health practice.

(4) Has satisfactorily completed a course in specialized instruction and training approved by the ~~Board which course shall be designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by public health sanitation, the elements of good environmental health sanitation, the laws and regulations governing sanitation in environmental health and the protection of the public health;~~Board in the practice of environmental health;

~~(5) Has had at least two years' experience in the field of environmental health as defined in this Article. Provided, however, that only one year of experience in the field of environmental health as defined in this Article is required of a sanitarian intern who is a graduate of a bachelor's or master's degree program that is accredited by the National Accreditation Council for Environmental Health Curricula of the National Environmental Health Association;~~

(6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the Board; and

(7) Has paid a fee set by the Board not to exceed the cost of purchasing the ~~examination.~~examination and an administrative fee not to exceed one hundred fifty dollars ($150.00).

(b) The Board may issue a certificate to a person serving as a registered environmental health specialist intern without the person meeting the full requirements for experience of a registered environmental health specialist for a period not to exceed three years from the date of initial registration as a registered environmental health specialist intern, provided, the person meets the educational requirements in G.S. 90A-53 and is in the field of environmental health practice."

SECTION 5. G.S. 90A-54 is repealed.

SECTION 6. G.S. 90A-55 reads as rewritten:

"§ 90A-55. State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners; appointment and term of office.

(a) Board Membership. – The Board shall consist of ~~nine members:~~ 12 members who shall serve staggered terms: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health of the Department of Environment and Natural Resources, and ~~four~~ seven practicing ~~sanitarians~~ environmental health specialists who qualify by education and experience for registration under this Article, ~~three~~ six of whom ~~will~~ shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners shall be appointed by the Governor for a term of four years. As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for ~~his~~ the Governor's consideration in ~~appointments.~~ appointments, except for the two representatives of the Department of Environment and Natural Resources recommended by the Secretary of Environment and Natural Resources and the local health director recommended by the North Carolina Local Health Directors Association.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 7. G.S. 90A-56 reads as rewritten:

"**§ 90A-56. Compensation of Board members; expenses; employees.**

Members of the Board ~~shall~~ may receive compensation and be reimbursed for travel expenses in accordance with G.S. 93B-5. Notwithstanding G.S. 93B-5(a), the per diem for eligible Board members shall not exceed fifty dollars ($50.00). The Board may employ necessary personnel for the performance of its functions and fix the compensation therefor, within the limits of funds available to the Board. The total expenses of the administration of this Article shall not exceed the total income therefrom and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina."

SECTION 8. G.S. 90A-57(a) reads as rewritten:

"(a) The Board shall annually elect a ~~chairman, vice-chairman and a secretary~~chair, vice-chair, and a secretary-treasurer from among its membership. The officers may serve more than one term. The Board shall meet annually in the City of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. ~~Five~~ Seven members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purpose, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board."

SECTION 9. G.S. 90A-59 reads as rewritten:

"**§ 90A-59. Record of proceedings; register of applications; ~~register~~ registry of registered ~~sanitarians and sanitarian interns.~~ environmental health specialists and environmental health specialist interns.**

(a) The Board shall keep a record of its proceedings.

(b) The Board shall maintain ~~a register of all applications~~records for registration, which shall ~~show:~~include:

(1) The place of residence, name and age of each applicant;

(2) The name and address of the employer of each applicant;

(3) The date of application;

(3a) The date of employment;

(4) Complete information of educational and experience qualifications;

(4a) A signed Code of Ethics;

(5) The action taken by the Board;

(6) The serial number of the certificate of registration issued to the applicant;

(7) The date on which the Board reviewed and acted upon the application; ~~and~~

(7a) Information on continuing education required to maintain registration; and

(8) Such other pertinent information as may be deemed necessary by the Board.

(c) The Board shall maintain a current registry of all ~~sanitarians and sanitarian interns~~environmental health specialists and environmental health specialist interns in the State of North Carolina that have been registered in accordance with the provisions of this Article.

(d) ~~These records shall be~~ Records of the Board are public records as defined in Chapter 132 of the General Statutes of North Carolina. However, college transcripts, examinations, and medical information submitted to the Board shall not be considered public records."

SECTION 10. G.S. 90A-60 and G.S. 90A-61 are repealed.

SECTION 11. G.S. 90A-62 reads as rewritten:

"**§ 90A-62. Certification and registration of ~~sanitarians certified~~environmental health specialists registered in other states.**

The Board may, without examination, grant a certificate as a registered ~~sanitarian~~ environmental health specialist to any person who at the time of application, is ~~certified~~ registered as a registered sanitarian by a similar board of another state, district or territory whose standards are determined to be acceptable to the Board ~~but not lower than those required by this Article.~~and comply with rules adopted by the Board. A fee to be determined by the Board and not to exceed ~~thirty-five dollars ($35.00)~~one hundred dollars ($100.00) shall be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section."

SECTION 12. G.S. 90A-63 reads as rewritten:

"**§ 90A-63. Renewal of certificates.**

(a) A certificate as a registered ~~sanitarian or sanitarian intern~~ environmental health specialist or registered environmental health specialist intern issued pursuant to the provisions of this Article will expire on the thirty-first day of December of the current year and must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ~~thirty-five dollars ($35.00).~~one hundred twenty-five dollars ($125.00). However, for renewals postmarked before January 1 of each year, the renewal fee shall not exceed one hundred dollars ($100.00). ~~The Board is authorized to charge an extra five dollar late renewal fee for renewals made after the first day of January of each year.~~

(b) Registrations expired for failure to pay renewal fees may be reinstated under the rules and regulations adopted by the Board.

(c) A registered ~~sanitarian~~ environmental health specialist shall complete any continuing education requirements specified by the Board for renewal of a certificate."

SECTION 13. G.S. 90A-64 reads as rewritten:

"**§ 90A-64. Suspensions and revocations of certificates.**

(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under provisions of this Article for any of the causes hereafter ~~enumerated:~~enumerated, as determined by the Board:

(1) Fraud, deceit, or perjury in obtaining registration under the provisions of this Article;

(2) ~~Addiction to narcotics;~~Inability to practice with reasonable skill and safety due to drunkenness, excessive use of alcohol, drugs, or chemicals;

(3) ~~Drunkenness on duty;~~Unprofessional conduct, including a material departure from or failure to conform to the standards of acceptable and prevailing practice or the ethics of the profession;

(4) Defrauding the public or attempting to do so;

(5) Failing to renew certificate as required;

(6) Dishonesty;

(7) Incompetency;

(8) Inexcusable neglect of duty;

(9) ~~Guilty of any unprofessional or dishonorable conduct unworthy of and affecting the practice of his profession.~~Conviction in any court of a crime involving moral turpitude or conviction of a felony;

(10) Failing to adhere to the Code of Ethics; or

(11) Failing to meet qualifications for renewal.

(a1) A registered environmental health specialist or registered environmental health specialist intern who is convicted of a felony or a crime of moral turpitude shall report the conviction to the Board within 30 days from the date of the conviction. A felony conviction shall result in the automatic suspension of a certificate issued by the Board for 60 days until further action is taken by the Board. The Board shall immediately begin the hearing process in accordance with Article 3A of Chapter 150B of the General Statutes. Nothing in this section shall preclude the Board from taking further action.

(b) The procedure to be followed by the Board when refusing to allow an applicant to take an examination, or revoking or suspending a certificate issued under the provisions of this Article, shall be in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(c) The Board may conduct investigations for any complaints alleged or upon its own motion for any allegations or causes for disciplinary action under subsection (a) of this section. The Board may subpoena individuals and records to determine if action is necessary to enforce this Article.

(d) The Board and its members, individually, or its staff shall not be held liable for any civil or criminal proceeding when exercising in good faith its powers and duties authorized under the provisions of this Article."

SECTION 14. G.S. 90A-65 reads as rewritten:

"**§ 90A-65. Representing oneself as a registered ~~sanitarian.~~environmental health specialist or registered environmental health specialist intern.**

A holder of a current certificate of registration may append to his or her name the letters, ~~"R.S."~~"R.E.H.S.' or 'R.E.H.S.I.'."

SECTION 15. Article 4 of Chapter 90A of the General Statutes is amended by adding a new section to read:

"**§ 90A-67. Code of Ethics.**

The Board shall prepare and adopt, by rule, a Code of Ethics to be made available in writing to all registered environmental health specialists and registered environmental health specialist interns and each applicant for registration under this Article. All registered environmental health specialists and registered environmental health specialist interns shall

adhere to the Code of Ethics adopted by the Board. Publication of the Code of Ethics shall serve as due notice to all certificate holders of its contents."

SECTION 16. Every person registered as an environmental health specialist or environmental health specialist intern on the effective date of this act shall sign a Code of Ethics pursuant to G.S. 90A-67, as enacted by Section 15 of this act. Each registered environmental health specialist or registered environmental health specialist intern shall submit a copy of the signed Code of Ethics with his or her application for registration renewal the following year from the effective date of this act.

SECTION 17. The three registered environmental health specialists to be appointed to the State Board of Environmental Health Specialist Examiners pursuant to G.S. 90A-55, as enacted by Section 6 of this act, shall each be appointed for four-year terms. The members described in this section shall serve for the term for which the members were appointed and until the members' successors are appointed and qualified.

SECTION 18. This act is effective when it becomes law.

SENATE BILL 834:
Rewrite Sanitarian Examiners Laws/Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Bingham	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S834-CSTDf-26		

SUMMARY: ***The proposed committee substitute to Senate Bill 834 amends Article 4 (Registration of Sanitarians) of Chapter 90A of the General Statutes to rename sanitarians as environmental health specialists, add relevant new definitions to the Article, revise training requirements, limit per diem of Board members, add or raise certain fees, add and require adherence to a code of ethics, add three members to the State Board of Sanitarian Examiners, amend and add grounds for suspension or revocation of certificates, and require Board notification of and suspension of certification for certain criminal convictions.***

CURRENT LAW: Article 4 of Chapter 90A of the General Statutes sets forth provisions governing the certification and practice of sanitarians in the State.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 834 would amend Article 4 in the following ways:

1. Makes conforming changes throughout the Act to change the term "sanitarians" to "environmental health specialists."
2. Revises training, registration, and grounds for suspension or revocation of individuals certified as an environmental health specialist or an environmental health specialist intern.
3. Creates a new fee for applications and examinations, raises other fees charged to specialists.
4. Makes changes to the Board, including lowering the per diem rate of Board members.

1. Conforming changes throughout the Act to change the term "sanitarians" to "environmental health specialists."

- Amends the title of the article to reflect the new title of Environmental Health Specialists and making conforming changes throughout the article.
- Adds a purpose section to the article, and specifies that each registered sanitarian and registered sanitarian intern on the effective date of this act shall be a registered environmental health specialist and registered environmental health specialist intern.
- Adds definitions for 'environmental health practice', 'environmental health specialist', 'registered environmental health specialist', and 'registered environmental health specialist intern', and makes conforming changes to reflect these new titles throughout the article.

2. Revises training, registration, grounds for suspension or revocation, of individuals certified as an environmental health specialist or environmental health specialist intern.

- Amends the qualifications and examination for registration as a 'registered environmental health specialist', and 'registered environmental health specialist intern' to add the following:
  - Requires signed agreement to adhere to code of ethics.
  - Revises existing training provision to require graduation from accredited baccalaureate or postgraduate degree programs plus either one year of experience in the field (EHAC accredited) or two years and 30 semester hours of physical or biological science credit (CHEA accredited). Current law requires two year's experience, one year for sanitarian intern who is a graduate of an accredited degree program.

  - Authorizes the Board to issue a certificate to a registered environmental health specialist intern working in the field who does not meet the experience requirement, for a period of up to three years from initial registration, provided the intern satisfies the educational requirement.
- Revises the grounds for Board suspension or revocation of certification, to include: inability to practice due to substance abuse, unprofessional conduct, conviction of a felony or a crime involving moral turpitude, failing to adhere to the code of ethics, and failing to meet qualifications for renewal.
- Adds new provisions directing registered environmental health specialist and registered environmental health specialist interns to report conviction of a felony or a crime involving moral turpitude within 30 days of the conviction, directing the Board to suspend the person's certificate for 60 days, and directing the Board to immediately begin a hearing process.

3. **Creates a new fee for applications and examinations, raises other fees charged to specialists.**
   - Authorizes an application fee not to exceed $100.
   - Raises fee for certification of environmental health specialists registered in another state if the state's standards are determined to be acceptable to the Board from $35.00 to $100.00.
   - Raises the ceiling on renewal fees from $35.00 to $125.00 for renewals mailed after January 1, or to $100.00 for renewals mailed before January 1.
   - Authorizes an administrative examination fee not to exceed $150.
4. **Makes changes to the Board, including lowering the per diem rate of Board members.**
   - Authorizes the Board to conduct investigations into complaints of grounds that could lead to suspension or revocation of a certificate and authorizes the Board to subpoena persons and records. Protects the Board and its staff from liability when exercising its powers and duties in good faith.
   - Adds three members to the Board, to now total 12, specifying that seven members are practicing environmental health specialists, six of whom will represent the Western, Piedmont, and Eastern regions of the State, that members' terms are to be staggered, and that two members be representatives of DENR recommended by the Secretary of Environment and Natural Resources and one be a local health director recommended by the NC Local Health Directors Association.
   - Makes compensation for travel expenses permissive and limits per diem to no more than $50.00.
   - Revises Board officer terminology.
   - Directs the Board to prepare and adopt a Code of Ethics..
   - Providing that the three new Board members be appointed for four-year terms and will serve until their successors are appointed and qualified.
5. **Other conforming changes.**
   - Adds date of employment, a signed code of ethics, and information on required continuing education, to the list of items included in the records for registration maintained by the Board.
   - Specifies that college transcripts, examinations, and medical information submitted to the Board are not public record.
   - Repeals G.S. 90A-60 (Rating of educational institutions) and G.S. 90A-61 (temporary provisions dating from 1982 regarding certification and registration of sanitarians).

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

Ben Popkin, counsel to Senate Health Care, substantially contributed to this summary.

S834-SMTD-44(CSTDf-26) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 834
Health Care Committee Substitute Adopted 4/9/09

Short Title: Rewrite Sanitarian Examiners Laws/Fees. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING SANITARIANS AND AUTHORIZING THE STATE BOARD OF SANITARIAN EXAMINERS TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The title of Article 4 of Chapter 90A of the General Statutes reads as rewritten:

"Article 4.

Registrations of ~~Sanitarians.~~Environmental Health Specialists."

SECTION 1.(b) G.S. 90A-50 reads as rewritten:

"**§ 90A-50. State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners.**

(a) There is hereby created a State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners to register qualified ~~sanitarians~~ environmental health specialists to practice within the State. Each registered sanitarian and registered sanitarian intern on the effective date of this act shall be a registered environmental health specialist or a registered environmental health specialist intern as applicable on and after the effective date of this act.

(b) It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as registered environmental health specialists or registered environmental health specialist interns who are qualified by education, training, and experience to work in the public sector in the field of environmental health within the scope of practice as defined in this Article."

SECTION 2. G.S. 90A-51 reads as rewritten:

"**§ 90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

(1) "Board" means the Board of ~~Sanitarian~~ Environmental Health Specialist Examiners.

(2) "Certificate of registration" ~~is~~ means a document issued by the Board as evidence of registration and qualification to practice as a ~~sanitarian or a sanitarian intern~~registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation ~~"registered sanitarian" or "sanitarian intern"~~'Registered Environmental Health Specialist' or 'Registered Environmental Health Specialist Intern' and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.

(2a) 'Environmental health practice' means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; milk and dairy sanitation; shellfish sanitation; recreational water quality; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of Environmental Health to State and local environmental health professionals to enforce rules adopted by the Commission for Public Health or the Environmental Management Commission. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.

(2b) 'Environmental health specialist' means a public health professional who meets the educational requirements under this Article and has attained specialized training and acceptable environmental health field experience to effectively plan, organize, manage, provide, execute, and evaluate one or more of the many diverse elements comprising the field of environmental health practice.

~~(3) "Registered sanitarian" is a sanitarian registered in accordance with the provisions of this Article.~~

(4) ~~"Sanitarian" is a public health professional qualified by education in the arts and sciences, specialized training, and acceptable environmental health field experience to effectively plan, organize, manage, execute and evaluate one or more of the many diverse elements comprising the field of environmental health. Practice in the field of environmental health within the meaning of this Article includes, but is not limited to, organization, management, education, enforcement, and consultation for the purpose of prevention of environmental health hazards and the promotion and protection of the public health and the environment in the following areas: food, lodging and institutional sanitation, on-site sewage treatment and disposal, and milk and dairy sanitation.~~

'Registered environmental health specialist' means an environmental health specialist registered in accordance with the provisions of this Article.

For purposes of this Article the following are not included within the definition of ~~"sanitarian":~~'registered environmental health specialist' unless the person is working as an environmental health specialist:

a. A person teaching, lecturing, or engaging in research.

b. A person who is a sanitary engineer, public health engineer, public health engineering assistant, registered professional engineer, industrial hygienist, health physicist, chemist, epidemiologist, toxicologist, geologist, hydrogeologist, waste management specialist, or soil ~~scientist, except when the person is working as a sanitarian.~~scientist.

c. A public health officer or public health department director.

d. A person who holds a North Carolina license to practice medicine, veterinary medicine, or nursing.

e. Laboratory personnel when performing or supervising the performance of sanitation related laboratory functions.

~~It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as sanitarians who are qualified by education, training, and experience to work, or are working, in the public sector in the field of environmental health within the scope of practice as defined in this Article.~~

(5) ~~"Sanitarian intern" is~~'Registered environmental health specialist intern' means a person who possesses the necessary educational qualifications as prescribed in ~~G.S. 90A-53(3),~~G.S. 90A-53, but who has not completed the experience and specialized training requirements in the field of public health sanitation as required for registration."

SECTION 3. G.S. 90A-52 reads as rewritten:

"§ 90A-52. Practice without certificate unlawful.

(a) In order to safeguard life, health and the environment, it shall be unlawful for any person to practice as ~~a sanitarian~~ an environmental health specialist or an environmental health specialist intern in the State of North Carolina or use the title ~~"registered sanitarian"~~'registered environmental health specialist' or 'registered environmental health specialist intern' unless ~~such~~ the person shall have obtained a certificate of registration from the Board. No person shall offer ~~his~~ services as a registered ~~sanitarian~~ environmental health specialist or registered environmental health specialist intern or use, assume or advertise in any way any title or description tending to convey the impression that ~~he~~ the person is a registered ~~sanitarian~~ environmental health specialist or registered environmental health specialist intern unless ~~he~~ the person is the holder of a current certificate of registration issued by the Board.

(b) Notwithstanding the provisions of subsection (a), a person may practice as ~~a~~ an ~~sanitarian intern~~environmental health specialist intern for a period not to exceed three years from the date of the initial registration, provided ~~he~~ the person has obtained a temporary certificate of registration from the Board."

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(a) The Board shall issue ~~certificates~~ a certificate to a qualified ~~persons~~ person as a registered ~~sanitarians.~~environmental health specialist or a registered environmental health specialist intern. A certificate as a registered ~~sanitarian~~ environmental health specialist or a registered environmental health specialist intern shall be issued to any person upon the Board's determination that such person:

(1) Has made application to the Board on a form prescribed by the Board;

(2) Is of good moral ~~character;~~and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board;

(3) Has ~~received~~ graduated from a baccalaureate or postgraduate degree ~~from a post-secondary educational institution rated as acceptable by the Board with a minimum of 30 semester hours or its equivalent in the physical and/or biological sciences;~~program that is:

a. Accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC) and:

1. Has one or more years of experience in the field of environmental health practice; or

b. Accredited by an accrediting organization recognized by the United States Department of Education, Council for Higher Education Accreditation (CHEA) or received a baccalaureate degree from a

postsecondary educational institution rated as acceptable by the Board and:

1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
2. Has two or more years of experience in the field of environmental health practice.

(4) Has satisfactorily completed a course in specialized instruction and training approved by the ~~Board which course shall be designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by public health sanitation, the elements of good environmental health sanitation, the laws and regulations governing sanitation in environmental health and the protection of the public health;~~Board in the practice of environmental health;

~~(5) Has had at least two years' experience in the field of environmental health as defined in this Article. Provided, however, that only one year of experience in the field of environmental health as defined in this Article is required of a sanitarian intern who is a graduate of a bachelor's or master's degree program that is accredited by the National Accreditation Council for Environmental Health Curricula of the National Environmental Health Association;~~

(6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the Board; and

(7) Has paid a fee set by the Board not to exceed the cost of purchasing the ~~examination.~~examination and an administrative fee not to exceed one hundred fifty dollars ($150.00).

(b) The Board may issue a certificate to a person serving as a registered environmental health specialist intern without the person meeting the full requirements for experience of a registered environmental health specialist for a period not to exceed three years from the date of initial registration as a registered environmental health specialist intern, provided, the person meets the educational requirements in G.S. 90A-53 and is in the field of environmental health practice."

SECTION 5. G.S. 90A-54 is repealed.

SECTION 6. G.S. 90A-55 reads as rewritten:

"**§ 90A-55. State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners; appointment and term of office.**

(a) Board Membership. – The Board shall consist of ~~nine members:~~12 members who shall serve staggered terms: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health of the Department of Environment and Natural Resources, and ~~four~~ seven practicing ~~sanitarians~~ environmental health specialists who qualify by education and experience for registration under this Article, ~~three~~ six of whom ~~will~~

shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners shall be appointed by the Governor for a term of four years. As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for ~~his~~ the Governor's consideration in ~~appointments.~~appointments, except for the two representatives of the Department of Environment and Natural Resources recommended by the Secretary of Environment and Natural Resources and the local health director recommended by the North Carolina Local Health Directors Association.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 7. G.S. 90A-56 reads as rewritten:

"§ 90A-56. Compensation of Board members; expenses; employees.

Members of the Board ~~shall~~ may receive compensation and be reimbursed for travel expenses in accordance with G.S. 93B-5. Notwithstanding G.S. 93B-5(a), the per diem for eligible Board members shall not exceed fifty dollars ($50.00). The Board may employ necessary personnel for the performance of its functions and fix the compensation therefor, within the limits of funds available to the Board. The total expenses of the administration of this Article shall not exceed the total income therefrom and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina."

SECTION 8. G.S. 90A-57(a) reads as rewritten:

"(a) The Board shall annually elect a ~~chairman, vice-chairman and a secretary~~chair, vice-chair, and a secretary-treasurer from among its membership. The officers may serve more than one term. The Board shall meet annually in the City of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. ~~Five~~ Seven members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purpose, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board."

SECTION 9. G.S. 90A-59 reads as rewritten:

"§ 90A-59. Record of proceedings; register of applications; ~~register~~ registry of registered ~~sanitarians and sanitarian interns.~~environmental health specialists and environmental health specialist interns.

(a) The Board shall keep a record of its proceedings.

(b) The Board shall maintain ~~a register of all applications~~records for registration, which shall ~~show:~~include:

(1) The place of residence, name and age of each applicant;

(2) The name and address of the employer of each applicant;

(3) The date of application;

(3a) The date of employment;

(4) Complete information of educational and experience qualifications;

(4a) A signed Code of Ethics;

(5) The action taken by the Board;
(6) The serial number of the certificate of registration issued to the applicant;
(7) The date on which the Board reviewed and acted upon the application; ~~and~~
(7a) Information on continuing education required to maintain registration; and
(8) Such other pertinent information as may be deemed necessary by the Board.

(c) The Board shall maintain a current registry of all ~~sanitarians and sanitarian interns~~environmental health specialists and environmental health specialist interns in the State of North Carolina that have been registered in accordance with the provisions of this Article.

(d) ~~These records shall be~~ Records of the Board are public records as defined in Chapter 132 of the General Statutes of North Carolina. However, college transcripts, examinations, and medical information submitted to the Board shall not be considered public records."

SECTION 10. G.S. 90A-60 and G.S. 90A-61 are repealed.

SECTION 11. G.S. 90A-62 reads as rewritten:

"**§ 90A-62. Certification and registration of ~~sanitarians certified~~environmental health specialists registered in other states.**

The Board may, without examination, grant a certificate as a registered ~~sanitarian~~ environmental health specialist to any person who at the time of application, is ~~certified~~ registered as a registered sanitarian by a similar board of another state, district or territory whose standards are determined to be acceptable to the Board ~~but not lower than those required by this Article.~~and comply with rules adopted by the Board. A fee to be determined by the Board and not to exceed ~~thirty-five dollars ($35.00)~~one hundred dollars ($100.00) shall be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section."

SECTION 12. G.S. 90A-63 reads as rewritten:

"**§ 90A-63. Renewal of certificates.**

(a) A certificate as a registered ~~sanitarian or sanitarian intern~~ environmental health specialist or registered environmental health specialist intern issued pursuant to the provisions of this Article will expire on the thirty-first day of December of the current year and must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ~~thirty-five dollars ($35.00).~~one hundred twenty-five dollars ($125.00). However, for renewals postmarked before January 1 of each year, the renewal fee shall not exceed one hundred dollars ($100.00). ~~The Board is authorized to charge an extra five dollar late renewal fee for renewals made after the first day of January of each year.~~

(b) Registrations expired for failure to pay renewal fees may be reinstated under the rules and regulations adopted by the Board.

(c) A registered ~~sanitarian~~ environmental health specialist shall complete any continuing education requirements specified by the Board for renewal of a certificate."

SECTION 13. G.S. 90A-64 reads as rewritten:

"**§ 90A-64. Suspensions and revocations of certificates.**

(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under provisions of this Article for any of the causes hereafter ~~enumerated:~~enumerated, as determined by the Board:

(1) Fraud, deceit, or perjury in obtaining registration under the provisions of this Article;
(2) ~~Addiction to narcotics;~~Inability to practice with reasonable skill and safety due to drunkenness, excessive use of alcohol, drugs, or chemicals;
(3) ~~Drunkenness on duty;~~Unprofessional conduct, including a material departure from or failure to conform to the standards of acceptable and prevailing practice or the ethics of the profession;
(4) Defrauding the public or attempting to do so;

(5) Failing to renew certificate as required;
(6) Dishonesty;
(7) Incompetency;
(8) Inexcusable neglect of duty;
(9) ~~Guilty of any unprofessional or dishonorable conduct unworthy of and affecting the practice of his profession.~~Conviction in any court of a crime involving moral turpitude or conviction of a felony;
(10) Failing to adhere to the Code of Ethics; or
(11) Failing to meet qualifications for renewal.

(a1) A registered environmental health specialist or registered environmental health specialist intern who is convicted of a felony or a crime of moral turpitude shall report the conviction to the Board within 30 days from the date of the conviction. A felony conviction shall result in the automatic suspension of a certificate issued by the Board for 60 days until further action is taken by the Board. The Board shall immediately begin the hearing process in accordance with Article 3A of Chapter 150B of the General Statutes. Nothing in this section shall preclude the Board from taking further action.

(b) The procedure to be followed by the Board when refusing to allow an applicant to take an examination, or revoking or suspending a certificate issued under the provisions of this Article, shall be in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(c) The Board may conduct investigations for any complaints alleged or upon its own motion for any allegations or causes for disciplinary action under subsection (a) of this section. The Board may subpoena individuals and records to determine if action is necessary to enforce this Article.

(d) The Board and its members, individually, or its staff shall not be held liable for any civil or criminal proceeding when exercising in good faith its powers and duties authorized under the provisions of this Article."

SECTION 14. G.S. 90A-65 reads as rewritten:

"**§ 90A-65. Representing oneself as a registered ~~sanitarian.~~environmental health specialist or registered environmental health specialist intern.**

A holder of a current certificate of registration may append to his or her name the letters, ~~"R.S."~~"R.E.H.S.' or 'R.E.H.S.I.'."

SECTION 15. Article 4 of Chapter 90A of the General Statutes is amended by adding a new section to read:

"**§ 90A-67. Code of Ethics.**

The Board shall prepare and adopt, by rule, a Code of Ethics to be made available in writing to all registered environmental health specialists and registered environmental health specialist interns and each applicant for registration under this Article. All registered environmental health specialists and registered environmental health specialist interns shall adhere to the Code of Ethics adopted by the Board. Publication of the Code of Ethics shall serve as due notice to all certificate holders of its contents."

SECTION 16. Every person registered as an environmental health specialist or environmental health specialist intern on the effective date of this act shall sign a Code of Ethics pursuant to G.S. 90A-67, as enacted by Section 15 of this act. Each registered environmental health specialist or registered environmental health specialist intern shall submit a copy of the signed Code of Ethics with his or her application for registration renewal the following year from the effective date of this act.

SECTION 17. The three registered environmental health specialists to be appointed to the State Board of Environmental Health Specialist Examiners pursuant to G.S. 90A-55, as enacted by Section 6 of this act, shall each be appointed for four-year terms.

The members described in this section shall serve for the term for which the members were appointed and until the members' successors are appointed and qualified.

SECTION 18. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 495

Short Title:	Oak Ridge ETJ.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Finance.	

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EXTENSION OF THE EXTRATERRITORIAL JURISDICTION OF THE TOWN OF OAK RIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, is amended by adding a new section to read:

"Section 1.2. In accordance with G.S. 160A-360, and in the territory described below, the Town of Oak Ridge shall exercise extraterritorial jurisdiction and may exercise any other power in accordance with Article 19 of Chapter 160A of the General Statutes except that G.S. 160A-360(a) and (e) do not apply:

(1) Being that area in Guilford County, beginning at the intersection of County Line Road and the corporate limits of the Town of Oak Ridge, thence along County Line Road in a generally westerly direction to the Forsyth County line, thence north along the county line to the corporate limits of the Town of Stokesdale, then following the corporate limits of the Town of Stokesdale to the point where the corporate limits of the Town of Stokesdale and the Town of Oak Ridge intersect, thence along the corporate limits of the Town of Oak Ridge beginning in a southeasterly direction and following the western side of the corporate limits of the Town of Oak Ridge.

(2) Being that area in Guilford County west of North Carolina Highway 68 that on March 1, 2009, was entirely surrounded by the corporate limits of the Town of Stokesdale and the Town of Oak Ridge.

(3) Being those areas in Guilford County west of North Carolina Highway 68 that on March 1, 2009, were entirely surrounded by the corporate limits of the Town of Oak Ridge.

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

SENATE BILL 495: Oak Ridge ETJ

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: Senate Bill 495 would authorize the extension of the extraterritorial jurisdiction of the Town of Oak Ridge in certain described areas in the bill.

CURRENT LAW: Municipalities have the statutory authority to regulate land-use within their corporate limits and within an area one-mile beyond their municipal boundaries. The area outside the municipal limits, but under the municipality's planning authority, is called the extraterritorial land-use planning jurisdiction (ETJ). Land use regulation may take the form of zoning, subdivision, regulation, minimum housing codes, and regulations governing open spaces and community appearance.

BILL ANALYSIS: Senate Bill 495 amends the Oak Ridge Town Charter, Chapter 1 of S.L. 1998-113, as amended, by adding a new Section 1.3, authorizing Oak Ridge to exercise extraterritorial jurisdiction over three (3) described areas in the bill.

The bill allows the Town to exercise any other power in accordance with Article 19 of G.S. 160A, except that the following statutory restrictions do not apply:

1) G.S. 160A-360(a) pertaining to the exercise of powers by a municipality within a defined area, extending not more than one mile beyond its corporate limits; not more than two miles beyond its corporate limits for a city with a population between 10,000 and 25,000, and not more than three miles beyond its corporate limits for a city with a population of 25,000 or more, all subject to approval by the county commissioners.
2) G.S. 160A-360(e) which prohibits a municipality from extending its ETJ into any area where the county is already enforcing planning regulations, zoning regulations, and the State Building Code.

EFFECTIVE DATE: Senate Bill 495 would become effective when it becomes law.

BACKGROUND: The incorporation of Oak Ridge in 1998 (S.L. 1998-113) did not include certain territory located to the south and southwest of its boundaries with the Town of Stokesdale and bordering the Guilford County line. The area of unincorporated Guilford County north of County Line Road has historically been considered part of Oak Ridge and is part of the Oak Ridge Fire District. The Oak Ridge Town Council will provide the citizens of the unincorporated area north of County Line Road with representation in future land use recommendations. Extension of the ETJ will provide the Town of Oak Ridge the ability to ensure that the unincorporated area of Guilford County north of County Line Road develops in a manner consistent with the Town's comprehensive plan and development ordinance.

The Town of Oak Ridge adopted a Resolution in support of Senate Bill 495 on March 12, 2009. The Town of Stokesdale adopted a Resolution in support of Senate Bill 495 on March 19, 2009.

AMENDMENT: The Amendment makes a technical correction by renumbering from 1.2 to 1.3 the new Section added by Senate Bill 495 to Chapter 1 of the Oak Ridge Town Charter, to prevent duplicate section numbers in the Charter, as Section 1.2 already exists in the Charter.

S495-SMRE-22(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 495

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

S495-ARE-2 [v.2]

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

Date _____ ,2009

Senator Berger of Rockingham

moves to amend the bill on page 1, line 7, by rewriting the line to read:
"Section 1.3. In accordance with G.S. 160A-360, and in the territory described below, the"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 200
PROPOSED COMMITTEE SUBSTITUTE S200-CSRBx-12 [v.2]

5/5/2009 6:01:40 PM

Short Title: Temporary Floor for Motor Fuels Tax Rate. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MINIMUM MOTOR FUELS TAX RATE FOR TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 105-449.80(a), for the period July 1, 2009, through June 30, 2011, the variable wholesale component of the motor fuel excise tax rate is twelve and four-tenths cents (12.4¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater.

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

SENATE BILL 200:
Temporary Floor for Motor Fuels Tax Rate

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S200-CSRBx-12		

SUMMARY: ***The proposed committee substitute for Senate Bill 200 would provide that the motor fuels tax rate would not fall below 29.9¢ a gallon for the next two fiscal years. The bill would become effective when it becomes law.***

CURRENT LAW: A motor fuel excise tax is imposed on all motor fuels sold, distributed, or used in the State. The rate of tax consists of a flat rate of 17.5¢ per gallon plus a variable wholesale component equal to the greater of 7% of the average wholesale price of motor fuel during a base six-month base period or 3.5¢ per gallon. In 2006, the General Assembly capped the variable wholesale component of the motor fuels tax at 12.4¢ per gallon, the wholesale rate for the period of January 1, 2006, through June 30, 2006.[1] The General Assembly extended the cap in 2007 from July 1, 2007, through June 30, 2009.[2] With the cap, the variable rate may be less than 12.4¢ per gallon, but it cannot be greater. With the variable component capped, the maximum possible motor fuel tax rate is 29.9¢ per gallon.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 200 would provide that variable wholesale component of the motor fuels tax could not fall below 12.4¢ a gallon for the next two fiscal years. Under current law, the motor fuel tax rate would decrease from 29.9¢ a gallon to 27.9¢ a gallon on July 1, 2009, to reflect the reduction in the average wholesale price of motor fuel. The change made in this PCS ensures that the motor fuel excise tax rate would not fall below its current rate of 29.9¢ a gallon for the next two fiscal years, 2009-2010 and 2010-2011.

EFFECTIVE DATE: This section would become effective when it becomes law.

S200-SMRB-12(CSRBx-12) v3

[1] S.L. 2006-66.
[2] S.L. 2007-323.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 6, 2009

TO: Senate Finance Committee

FROM: Bob Weiss
Fiscal Research Division

RE: PCS S200-CSRBx-12(v.2)
Establish Temporary Floor for Motor Fuel Tax

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES: HF and HTF	**$50 million**	**$17.5 million**			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Highway Fund (HF) and Highway Trust Fund (HTF)

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Notwithstanding G.S. 105-449.80(a), provides that for the two year period from July 1, 2009 through June 30, 2011 the variable wholesale rate component of the motor fuel

excise tax rate is 12.4 cents per gallon (equivalent to a total motor fuels tax of 29.9 cents per gallon) or 7% of the average wholesale price of motor fuel for the applicable base period, whichever is greater.

ASSUMPTIONS AND METHODOLOGY:
Under current law the motor fuels tax rate will be adjusted on July 1, 2009 from the current rate of 29.9 cents per gallon. The expected calculated tax rate for the FY2009-10 fiscal year as a whole is forecast to be 29.16 cents per gallon, an average of 27.9 cents per gallon from July through December and 30.4 cents per gallon from January through July. (Source: Calculated from Office of State Budget and Management forecast, April 23, 2009) The PCS would set the rate for the first six month period at 29.9 cents per gallon, an increase of 2.0 cents per gallon. One penny of motor fuel tax yields approximately $50 million of revenue per year so the increase in revenue would be 2.0 times $50 million times one half year, or approximately $50 million. These revenues go to the Highway Fund (three quarters) and the Highway Trust Fund (one quarter). In the second six month period the forecast is for a calculated rate of 30.4 cents per gallon, which would be the actual rate under the PCS so there would be no change in revenues.
Forecasts for six month periods are not reliable for FY2010-2011. However, the calculated tax rate under current law is forecast to be 29.55 for the full fiscal year. The PCS would set the rate at 29.9 cents per gallon, an increase of 0.35 cents per gallon, equivalent to additional revenues of about $17.5 million.

Table
Difference in Tax Rates and Revenues
Current Law and PCS

Fiscal Year	Forecast of Tax Rate Under Current Law	Tax Rate Under PCS	Difference in Tax Rate	Difference in Total Revenues (HF and HTF)
FY2009-10 July-December	27.9 cpg	29.9 cpg	2.0 cpg	$50 million
FY2009-10 January-June	30.4 cpg	30.4 cpg	None	None
FY2010-11	29.55 cpg	29.9 cpg	0.35 cpg	$17.5 million

SOURCES OF DATA: Office of State Budget and Management

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 368
Commerce Committee Substitute Adopted 4/22/09
PROPOSED COMMITTEE SUBSTITUTE S368-CSTD-25 [v.9]

5/6/2009 11:32:45 AM

Short Title: Various Changes in Motor Vehicle Law.-AB (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAW AS REQUESTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(104) reads as rewritten:

"(104) Retired State Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. An individual who has retired from the North Carolina State Highway ~~Patrol.~~Patrol, presenting to the Division, along with the application for the plate, a copy of the retiree's retired identification card or letter of retirement.

b. The surviving spouse of a person who had ~~a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.~~retired from the State Highway Patrol who, along with the application for the plate, presents a copy of the deceased retiree's identification card or letter of retirement and certifies in writing that the retiree is deceased and that the applicant is not remarried.

~~c. The surviving spouse of a person who qualified for a retired highway patrol plate so long as the surviving spouse applies for the plate within ninety (90) days of the qualifying spouse's death and does not remarry.~~"

SECTION 2.(a) Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-91.4. Review of penalty imposed by Department of Crime Control and Public Safety.**

A person who denies liability for a penalty imposed by the Department of Crime Control and Public Safety under this Article may pay the penalty under protest and apply to the Department for a review and hearing. The review and hearing procedures in G.S. 20-382.2 apply to a request made under this section."

SECTION 2.(b) G.S. 20-382.2 reads as rewritten:

"**§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.**

...

(b) Payment. – When the Department of Crime Control and Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle shall be placed out of service until the motor carrier is in compliance and the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Department of Crime Control and Public Safety for a ~~hearing.~~review and hearing.

(c) Review and Hearing. – Upon receiving a request for a ~~hearing,~~review and hearing on a penalty, the Department must first conduct an informal review of its records to determine if the penalty was property assessed. If the Department finds the penalty was properly assessed, the Department must schedule a hearing. The hearing must be scheduled for 30 days after the Department concludes its informal review. ~~the Secretary of Crime Control and Public Safety shallschedule a hearing within 30 days after receipt of the request.~~ If after the hearing the Secretary of Crime Control and Public Safety determines that the motor carrier was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department of Crime Control and Public Safety determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Department of Crime Control and Public Safety for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

..."

SECTION 3. G.S. 20-101(b) reads as rewritten:

"(b) ~~A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight rating of more than 10,000 pounds, but less than 26,001 pounds, and is used in intrastate commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12), shall have the name of the owner printed on the side of the vehicle in letters not less than three inches in height.~~ A motor vehicle with a gross vehicle weight of more than 10,000 that is used on interstate commerce shall have the name of the owner printed on each side of the vehicle in letters not less that three inches in height, unless either of the following apply:

(1) The motor vehicle is subject to 49 C.F.R. Part 390.

(2) The motor vehicle is a farm vehicle as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12)."

SECTION 4. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

(a) General Provisions. – Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than ~~12~~ 18 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

(b) Commercial Motor Vehicles. – A commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. § 393."

SECTION 5. G.S. 20-122.1 reads as rewritten:

"**§ 20-122.1. Motor vehicles to be equipped with safe tires.**

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty- seconds tread depth requirements of this section shall not apply to dual wheel trailers. ~~Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels.~~ For the purpose of this section, the following definitions shall apply:

(1) "Chunking" – separation of the tread from the carcass in particles which may range from very small size to several square inches in area.

(2) "Cord" – strands forming a ply in a tire.

(3) "Tread" – portion of tire which comes in contact with road.

(4) "Tread depth" – the distance from the base of the tread design to the top of the tread.

(a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is operated on the streets or highways of this State shall be equipped with tires that are safe for the operation of the vehicle and do not expose the public to needless hazard. A tire is unsafe if any of the following apply:

(1) It is cut, cracked, or worn so as to expose tire cord.

(2) There is a visible tread separation or chunking.

(3) If the steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove.

(4) If any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove, or

(5) If the tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se."

SECTION 6. G.S. 20-118(e)(3) reads as rewritten:

"(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3)of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision ~~(b)(3),~~(b)(3) of this section, or by a special permit issued pursuant to

G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars ($10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

SECTION 7. G.S. 20-119(d) reads as rewritten:

"(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of Crime Control and Public Safety ~~may~~ shall assess a civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of one thousand five hundred dollars ($1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.

~~(1)~~(1a) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit.~~permit, or failing to comply with the number of properly certified escort vehicles required.~~

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision ~~(1)~~ (1), (1a), or (2) of this subsection. ~~In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).~~"

SECTION 8. G.S. 20-119 is amended by adding a new subsection to read:

"(d1) In addition to the penalties assessed under subsection (d) of this section, the Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten thousand dollars ($10,000), in accordance with G.S. 20-118(e)(1) and (3) against the registered owner of the vehicle for any of the following:

(1) Operating without the issuance of a required permit.

(2) Operating off permitted route of travel.

(3) Failing to comply with travel restrictions of the permit.

(4) Operating without the proper vehicle registration or license for the class of vehicle being operated.

A violation of this subsection constitutes operating a vehicle without a special permit."

SECTION 9. G.S. 20-381(a)(2a) reads as rewritten:

"(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety ~~finds~~ finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown ~~unsafe for use~~ in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, ~~to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous,~~ the agent shall declare the vehicle "Out-of-Service." The agent shall~~may~~ require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out-of-Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out-of-Service" until all repairs required by the "Out-of-Service" notice have been satisfactorily completed.~~in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect.~~ Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes."

SECTION 10. G.S. 20-124(e1) reads as rewritten:

"(e1) Every motor truck and ~~tractor-truck~~truck-tractor with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front ~~wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes.~~wheels if it was manufactured prior to July 25, 1980. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124(e)."

SECTION 11. G.S. 20-124(g) reads as rewritten:

"(g) The provisions of this section shall not apply to ~~any~~ a trailer ~~or semitrailer~~ when used by a farmer, ~~his~~ a farmer's tenant, agent, or employee ~~under such circumstances that such~~if

the trailer ~~or semitrailer~~ is exempt from registration by the provisions of G.S. 20-51. This exemption does not apply to trailers that are equipped with brakes from the manufacturer and that are manufactured after October 1, 2009."

SECTION 12. G.S. 20-125.1(d) reads as rewritten:

"(d) Nothing in this section shall apply to ~~motorcycles.~~motorcycles unless the motorcycle was equipped with electrical or mechanical directional signals from the manufacturer."

SECTION 13. G.S. 20-135.2A(c)(8) reads as rewritten:

"(8) A ~~driver or~~ passenger of a residential garbage or recycling truck while the truck is operating during collection ~~rounds, and while traveling to and from garbage and recycling material loading and unloading locations.~~rounds."

SECTION 14. G.S. 20-136.1 reads as rewritten:

"**§ 20-136.1. Location of ~~television viewers.~~television, computer, or video disc players, monitors, and screens.**

No person shall drive any motor vehicle upon a public street or highway or public vehicular area ~~equipped with any television viewer, screen, or other means of visually receiving a television broadcast~~while operating, using, or viewing any television, computer, or video disc player which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; equipment that displays audio system information, functions or controls, or weather, traffic, and safety information; vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties."

SECTION 15. G.S. 20-382.2(d) reads as rewritten:

"(d) Proceeds. – A penalty imposed under this section is payable to the Department of Crime Control and Public Safety. ~~Penalties collected under this section shall be credited to the Highway Fund as nontax revenue.~~The clear proceeds of all civil penalties assessed by the Department pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 16. G.S. 146-30 is amended by adding a new subsection to read:

"(b2) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands purchased and owned by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these dispositions shall be deposited into an account created in the Department of Crime Control and Public Safety to be used only for the purpose of constructing, maintaining, or supporting the VIPER network."

SECTION 17.(a) G.S. 20-118(c) reads as rewritten:

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state

adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or ~~posted bridge.~~exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or ~~a posted bridge.~~exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds."

SECTION 17.(b) G.S. 20-118(h) reads as rewritten:

"(h) Tolerance. – A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to ~~bridges posted~~a vehicle exceeding posted bridge weight limitations as posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998."

SECTION 18. Sections 1, 6, 15, and 16 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

SENATE BILL 368:
Various Changes in Motor Vehicle Law.-AB

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 6, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: The PCS to Senate Bill 368 makes the following changes to the bill:

- *The review process for penalties imposed by the Department is revised. A person who denies liability for penalties imposed under Article 3 of Chapter 120, may pay the protest under penalty and apply to the Department for a review and hearing. The procedure for the review and hearing process is the same as the existing process found in G.S. 20-382.2, the review process for penalties imposed for failure to comply with registration and insurance verification requirements.*
- *Removes the increase in the cap on the maximum percentage of supervisory personnel in the State Highway Patrol from 21% to 23%.*

Senate Bill 368 makes the following changes to North Carolina motor vehicle laws:

- *Amends eligibility requirements for issuance of a Retired Highway Patrol special plate.*
- *Reinstates a mandatory informal review process for those who deny liability for civil penalties assesses by the Department of Crime Control and Public Safety.*
- *Requires all vehicles used in intrastate commerce that are over 10,000 lbs to be marked with the name of the owner (currently applies only to vehicles between 10,000 – 26,001 lbs)*
- *Requires a larger flag on the end of a load that extends more than 4 ft beyond the rear of a vehicle.*
- *Amends safe tire provisions to comply with federal requirements.*
- *Amends penalties for oversize/overweight vehicles.*
- *Requires the Department of Crime Control and Public Safety to declare unsafe vehicles "Out-of-Service" until required repairs have been completed.*
- *Eliminates/narrows exemptions from brake requirements.*
- *Requires motorcycles to have directional signals if equipped with them by the manufacturer.*
- *Amends seat belt exemption for drivers and passengers in garbage and recycling trucks.*
- *Prohibits drivers from operating or viewing computers or DVD players in the front of the vehicle.*
- *Increases the cap on the maximum percentage of supervisory personnel in the State Highway Patrol from 21% to 23%.*
- *Requires all proceeds from the lease of property owned by the State Highway Patrol as part of the VIPER project to be used to support the project.*
- *Clarifies that trucks may travel over posted bridges as long as the truck does not exceed the posted weight limit.*

BILL ANALYSIS: Senate Bill 368 makes the following changes to the law, as requested by the State Highway Patrol:

Section 1: Retired State Highway Patrol special license plate. Currently, the surviving spouse of a person who is deceased and retired from the State Highway Patrol would have to apply for a plate within 90 days of the qualifying spouse's death. The PCS eliminates the time requirement, and requires an applicant for the plate to present a copy of the retiree's identification card or letter of retirement.

Section 2: Informal review process to protest civil penalties. The proposed committee substitute allows individuals who deny liability for a penalty imposed under Article 3 of Chapter 120, to request a review and hearing from the Department. The procedure for the review and hearing process is the same as the existing process found in G.S. 20-382.2, the review process for penalties imposed for failure to comply with registration and insurance verification requirements. Individuals may pay the penalty under protest, and then request a review and hearing. The Department must first conduct an informal review of its records to determine if the penalty was properly assessed. If so, the Department must schedule a hearing within 30 days of concluding the informal review. After the hearing, individuals may bring an action in the Superior Court of Wake County for refund of the penalty.

Section 3: All vehicles over 10,000 lbs. in intrastate commerce to be marked. Current law requires a motor vehicle weighing between 10,000 lbs. and 26,001 lbs. that is used in intrastate commerce to be marked on the side with the name of the owner. The bill requires that vehicles 26,001 lbs. and greater be marked as well.

Section 4: Flags at the end of a load. When a load on a vehicle extends more than 4 feet beyond the rear of the bed or body of the vehicle, the law requires that a red or orange flag not less than 12 inches in length and width be displayed at the end of the load during daylight hours. The bill increases the flag size required from 12 inches to 18 inches in length and width.

Section 5: Safe tires. The bill amends safe tire specifications for vehicles with a gross vehicle weight rating of 10,001 lbs. or more in order to comply with federal requirements.

Section 6, 7, and 8: Oversize/overweight penalties. The bill authorizes overweight penalties only to the extent the actual weight exceeds what is allowed in the permit (currently, the penalty would be applied as if the operator did not have a permit). It also requires the Department to assess penalties for violating special permit conditions, decreases the maximum penalty from $25,000 to $10,000, and makes it a flat $1500 penalty for operating without the proper number of escorts.

Section 9: "Out-of-Service"vehicles. The Department of Crime Control and Public Safety has the authority to prohibit a motor carrier from operating a vehicle that is unsafe for use. Under the current law, it is the duty of an agent to guide the vehicle to a location to correct the defect if the vehicle is in operative condition and movement is not dangerous. The bill would require the agent to declare the vehicle "Out-of-Service" if its condition is likely to cause a crash or breakdown and prohibits anyone from operating the vehicle until all required repairs have been completed.

Section 10 and 11: Brake exemptions. G.S. 20-124 generally requires all motor vehicles operated on the highways to be equipped with brakes adequate to control the movement of the vehicle. The bill eliminates or narrows exemptions from brake requirements as follows:

- Truck-tractors with semitrailers attached and three or more axles – brakes not required on front wheels *only if manufactured prior to July 2, 1980.*
- Eliminates exemption for semitrailers when used by farmers.

- Trailers used by farmers – brakes not required *only if not equipped with brakes from manufacturer prior to October 1, 2009.*

Section 12: Directional signals on motorcycles. Currently, motorcycles are exempt from the requirement that vehicles be equipped with directional signals. The bill would continue to exempt them only if they are not equipped with directional signals by the manufacturer.

Section 13: Seat belt exemption for garbage trucks. G.S. 20-135.2A generally requires occupants in motor vehicles to have a seatbelt properly fastened when the vehicle is in forward motion on a street or highway. There is currently an exemption from the requirement for drivers or passengers in residential garbage or recycling trucks while on collection rounds and going to and from loading and unloading locations. The bill would eliminate the exemption for the driver and for trips to and from loading and unloading locations, so the exemption would apply only to passengers during rounds.

Section 14: Prohibit computer or DVD players in front seat of vehicles. Current law prohibits television viewers or screens in the front seat of motor vehicles. The bill amends the provision to prohibit operating, using, or viewing a computer or video disc player while driving on a highway or public vehicular area.

Section 16: Proceeds from lease to support VIPER project. G.S. 146-30 requires that, when land owned by the State is sold or leased, a service charge must be paid into the State Land Fund. The bill would amend that provision to allow the Highway Patrol to lease space on a tower owned as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project and have all of the proceeds deposited into an account to be used to support the VIPER network and not pay the service charge to the State Land Fund.

Section 17: Clarify weight limits on posted bridges. The Department of Transportation has the authority to determine the load-carrying capacity for bridges in the State. The bill clarifies that vehicles traveling over a bridge and exceeding the maximum load-carry weight posted are subject to a penalty.

EFFECTIVE DATE: Sections 1, 6, 15, and 16 of the bill are effective when they become law. The remainder of the bill becomes effective October 1, 2009, and applies to offenses committed on or after that date.

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S368-SMTD-36(e2) v7

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 368 (Second Edition)

SHORT TITLE: Various Changes in Motor Vehicle Law.-AB

SPONSOR(S): Senator Jenkins

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
EXPENDITURES:	**No additional costs expected for the implementation of this bill.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Crime Control and Public Safety; Department of Transportation

EFFECTIVE DATE: Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

BILL SUMMARY:

This bill enacts the following:

- Clarifies the requirements for a retired State Highway Patrol special registration plate
- Provides for the recovery of civil penalties assessed by the Department of Crime Control and Public Safety
- Requires that all motor vehicles used in intrastate commerce weighing more than ten thousand pounds be marked
- Modifies the requirements for flags and lighting and when headlamps would be required to be used on loads that are projecting from the end or sides of a commercial motor vehicles or a motor vehicle weighing more than ten thousand pounds and engaged in commerce
- Requires safe tires on commercial motor vehicles are required by Part 393 of Title 49 of the Code of Federal Regulations
- Makes a change to the weight and size penalty provision to allow for the assessment of a civil penalty for only that amount of weight in excess of the permitted amount, to require the Department of Crime Control and Public Safety to assess civil fines for violations of the special permit requirements of G.S. 20-119, and to prevent motor carriers from operating vehicles that have been declared "out-of-service"

- Requires brakes as standard equipment for semitrailers being pulled by tractor trucks and other pull unites
- Requires that owners of motorcycles maintain in good working order directional signals installed by the manufacture
- Modifies the seat belt exemption provided for garbage and recycling truck operators and passengers to comply with federal law
- Prohibits the operation of a digital video disc player at any point forward of the back of a driver's seat while operating a motor vehicle
- Increases the cap on the maximum allowable supervisory personnel in the State Highway Patrol from twenty-one percent to twenty-three percent
- Ensures that proceeds from lease of property owned by the State Highway Patrol as part of the VIPER project is used to construct, maintain, and support the project, as requested by the State Highway Patrol.

Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

This proposed bill addresses numerous changes to several statutes; however, these changes are not anticipated to have a substantial fiscal impact. A few of these changes are discussed below.

Department of Crime Control and Public Safety

The Department of Crime Control and Public Safety (CCPS) staff reported that they do not anticipate any fiscal impact as a result of Section 15 of the proposed bill becoming law. Section 15 changes the proportion of supervisory personnel of the State Highway Patrol actually serving as uniformed highway patrolmen from twenty-one percent (21%) to twenty-three percent (23%). This Section does not commit the State to any new expenses, it simply allows the State Highway Patrol to move monies within their existing budget.

Department of Transportation - Division of Motor Vehicles

The Division of Motor Vehicles does not anticipate any fiscal impact from this bill. This analysis is based on the Division's assessment that it 1) will not retain a copy or image of the identification/documentation presented for the issuance of the Retired State Highway Patrol plate; 2) will not revoke any Retired State Highway Patrol plate that was issued prior to this change, and 3) will not require identification/documentation for the renewal of an existing Retired State Highway Patrol plate.

SOURCES OF DATA: Department of Transportation and the Department of Crime Control and Public Safety

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Jean Sandaire

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 5, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 575
PROPOSED COMMITTEE SUBSTITUTE S575-CSRBx-13 [v.3]

5/6/2009 8:26:10 AM

Short Title: Modify Corporate Apportionment Formula. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE LOCATION AND EXPANSION OF CAPITAL INTENSIVE COMPANIES IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.4 is amended by adding a new subsection to read:

"(s1) All apportionable income of a capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section. A 'capital intensive corporation' is a corporation whose property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%). A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a capital intensive corporation."

SECTION 2. G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public ~~utilities and excluded corporations~~ utilities, excluded corporations, and capital intensive corporations, shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. ~~Provided, that where~~ If the sales factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors and ~~where~~ if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors plus one."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010.

SENATE BILL 575:
Modify Corporate Apportionment Formula

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 5, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S575-CSRBx-13		

SUMMARY: ***The proposed committee substitute for Senate Bill 575[1] encourages the location and expansion of capital intensive corporations in North Carolina by changing the corporate apportionment formula from a three-factor formula based on property, payroll and double-weighted sales to a single sales factor formula. A single sales factor formula would lower the corporate income tax liability of a corporation with relatively large shares of its nationwide property in the State but a relatively small share of its nationwide sales in the State.***

The bill would become effective for taxable years beginning on or after January 1, 2010.

CURRENT LAW: A corporation that does business in more than one state must pay income tax to each of the states in which it has nexus. The U.S. Supreme Court cases have upheld the right of states to tax the income of multistate corporations so long as the income is fairly sourced to the taxing state. The conventional method used by states to source income has been the apportionment formula. Ideally, each state's law for determining the portion of income taxable by it would be such that, if adopted by all states, every corporation would be taxable on 100% of its income and none of its income would be taxed by more than one state.[2]

Most states use an apportionment formula based on or substantially similar to the Uniform Division of Income for Tax Purposes Act (UDITPA). UDITPA dates back to 1957 and utilizes an apportionment formula to derive an 'apportionment percentage'. Generally speaking, a taxpayer multiplies its taxable income by its apportionment percentage to determine the amount of its income sourced to a state. The state's corporate income tax rate is applied to the corporation's income apportionable to that state.

The UDITPA formula is a composite of three factors: a property factor, a payroll factor, and a sales factor. The property factor represents the ratio of the taxpayer's real and tangible personal property in the taxing state to its real and tangible personal property everywhere. Likewise, the payroll factor and the sales factor represent a ratio of the taxpayer's payroll and sales in the taxing state to its payroll and sales everywhere. Under UDITPA, the sum of the three factors is divided by three, resulting in a taxpayer's apportionment percentage.

North Carolina shifted to a double-weighted sales factor apportionment formula in 1988 at the request of RJR Nabisco.[3] A double-weighted sales factor tends to favor home-state industries that have a concentration of their total facilities in a state but sell their products all over the country. Under North Carolina's current apportionment formula, the payroll and property factors are each weighted 25% and the sales factor is weighted at 50%; the sum of the four factors is divided by four.

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[1] The original contents of SB 575, which extended the sunset for JDIG, have been removed from the bill.

[2] Although there is a risk of double taxation when a corporation is taxable by states using different apportionment formulas, the U.S. Supreme Court has found that the constitution does not require a uniform apportionment formula for all states. A state's apportionment formula will be upheld unless it is found to be arbitrary or produces a result that is out of proportion to the amount of business transactions in the state.

[3] RJR Nabisco had plans for a large automated bakery in the Garner area. After the change was adopted, RJR Nabisco was bought out and forced to cut back on capital expenditures. The company never build the plant.

BILL ANALYSIS: The PCS for Senate Bill 575 would apportion the income of a capital intensive corporation with a single sales factor apportionment formula. Under the single sales factor formula, the total allocation of the corporation's nationwide profits to North Carolina would be solely based on where the corporation's sales occur. This method of apportionment would provide a tax reduction to a corporation with relatively large shares of its nationwide property and payroll in North Carolina but a relatively small share of its nationwide sales in North Carolina.

The bill defines a capital intensive corporation as one whose property factor as a percentage of the sum of the factors in North Carolina's three factor apportionment formula exceeds 75%.

EFFECTIVE DATE: The PCS for Senate Bill 575 would become effective for taxable years beginning on or after January 1, 2010.

S575-SMRB-13(CSRBx-13) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 575

Short Title:	Extend Sunset for JDIG.	(Public)
Sponsors:	Senators Hoyle and Foriest.	
Referred to:	Finance.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET PROVISION OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2010.~~2016."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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DATE: May 5, 2009

TO: Senator Hoyle

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to S575

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund		***Minimum loss of $1.5 million annually - See Assumptions and Methodology***			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Department of Commerce

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2010.

BILL SUMMARY:
The proposed committee substitute for Senate Bill 575 encourages the location and expansion of capital intensive corporations in North Carolina by changing the corporate apportionment formula from a three-factor formula based on property, payroll and double-weighted sales to a single sales factor formula. A single sales factor formula would lower the corporate income tax liability of a corporation with relatively large shares of its nationwide property in the State but a relatively small share of its nationwide sales in the State.

ASSUMPTIONS AND METHODOLOGY:
Under current law, corporate income tax liability for multi-state taxpayers is apportioned using a three-factor apportionment formula. The formula is a composite of three factors: a property factor, a payroll factor, and a sales factor. The property factor represents the ratio of the taxpayer's real and tangible personal property in North Carolina to its real and tangible personal property everywhere. Likewise, the payroll factor and the sales factor represent a ratio of the taxpayer's payroll and sales in North Carolina to its payroll and sales everywhere. Under North Carolina's current apportionment formula, the payroll and property factors are each weighted 25% and the sales factor is weighted at 50%.

The PCS to S575 would change the apportionment formula for eligible taxpayers so that only the sales factor would be considered in apportioning income. Under this method, income is apportioned by applying a fraction, the numerator of which is the total sales of the corporation in the State and the denominator is the total sales of the corporation everywhere. This method of apportionment would provide a tax reduction to a corporation with relatively large shares of its nationwide property and payroll in North Carolina but a relatively small share of its nationwide sales in North Carolina.

The Department of Revenue provided data for the top 100 companies based on investment in tangible personal property and appraised property value for purposes of franchise tax base. The information provided included the companies' property, sales and payroll factors. Three companies were identified that would meet the eligibility requirement for a capital intensive company, that is, each has a property factor that is at least 75% of the total of the three factors. By changing to a single factor apportionment formula, these companies would have reduced income tax liability of approximately $1.5 million annually.

If additional companies locate in North Carolina and qualify as capital intensive corporations, the revenue loss would increase by an amount depending on the amount of income apportionable to the State under current law versus the single factor formula.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1006
PROPOSED COMMITTEE SUBSTITUTE S1006-PCS55363-RBx-14

Short Title: Withholding on Contractors Identified by ITIN. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.1 reads as rewritten:

"**§ 105-163.1. Definitions.**

The following definitions apply in this Article:

(1) Compensation. – Consideration a payer pays ~~a~~ to any of the following:
   a. A nonresident individual or nonresident entity for personal services performed in this State.
   b. An ITIN holder who is a contractor and not an employee for services performed in this State.

~~(2) Contractor. Either of the following:~~
   ~~a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~
   ~~b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~

(3) Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.

(4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
   a. Controls the payment of wages to an individual for services performed for another.

b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
c. Pays wages on behalf of a unit of government that is not located in this State.
d. Pays wages for any other reason.

(6) Individual. – Defined in G.S. 105-134.1.

(6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.

(6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).

(7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(7a) Nonresident contractor. – Either of the following:
a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

(8) Nonresident entity. – Any of the following:
a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

(9) Pass-through entity. – Defined in G.S. 105-228.90.

(10) Payer. – A person who, in the course of a trade or business, pays ~~a~~ compensation to any of the following:
a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.
b. An ITIN holder who is a contractor and not an employee for services performed in this State.

(11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.

(11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.

(12) Taxable year. – Defined in section 441(b) of the Code.

(13) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include either of the following:

a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).

b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.

(14) Withholding agent. – An employer, a pension payer, or a payer."

SECTION 2. G.S. 105-163.3 reads as rewritten:

"**§ 105-163.3. Certain payers must withhold taxes.**

(a) Requirement. – Every payer who pays a nonresident contractor more than one thousand five hundred dollars ($1,500) during a calendar year ~~shall~~ or pays any amount to an ITIN contractor during a calendar year must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

(c) ~~Returns; Due Date.~~ Returns. – A payer ~~shall~~ must file a return with the Secretary ~~on a form prepared by the Secretary and shall provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the payer pays compensation to a contractor. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.~~and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) Annual ~~Statement; Report to Secretary.~~ Statement and Report. – A payer required to deduct and withhold from a contractor's compensation under this section ~~shall furnish to the contractor duplicate copies of~~ must give the contractor a written statement ~~showing the following:~~that sets out the following information and any other information required by the Secretary:

(1) The payer's name, address, and taxpayer identification number.

(2) The contractor's name, address, and taxpayer identification number.

(3) The total amount of compensation paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar ~~year. If~~ year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the ~~statement,~~ statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor. ~~The Secretary may require the payer to include additional information on the statement.~~

Each payer ~~shall~~ must file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a

speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer ~~shall~~ must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer ~~shall~~ must obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer ~~shall~~ must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer ~~shall~~ must obtain the partnership's address and taxpayer identification number. The payer ~~shall~~ must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section ~~must:~~must take the following actions:

(1) Not report the amount refunded on the annual statement required by subsection ~~(d); and~~(d) of this section.

(2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010.

SENATE BILL 1006:
Withholding on Contractors Identified by ITIN

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 6, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S1006-CSRBx-14		

SUMMARY: ***Senate Bill 1006 would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation. The bill would become effective January 1, 2010.***

The proposed committee substitute better integrates the new provisions into the current statutes, it modifies the definition of 'contractor' to conform to the new provisions, and it conforms the due date of the withholding returns and remittances to the general due date for income tax withholdings.

CURRENT LAW: North Carolina taxes income derived from businesses, trades, and occupations carried on in this State. An employer is required to deduct and withhold from an employee's wages the State income taxes payable by the employee on those wages and deposit the withheld taxes with the Department of Revenue. A person who pays more than $1,500 during a calendar year as compensation other than wages for personal services performed in this State by a nonresident individual or entity must withhold 4% of the payment and remit the withheld taxes to the Department. The withheld taxes are credited to the employee or to the nonresident individual or entity from whom they were withheld. People from whom taxes have been withheld receive credit for the withheld taxes by filing a North Carolina income tax return; any excess is refunded to the taxpayer.

BILL ANALYSIS: Senate Bill 1006 would require a person who, in the regular course of a trade or business, pays compensation other than wages to an ITIN holder to withhold 4% of the payment and remit the withheld taxes to the Department. An ITIN holder is defined as a person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN). An ITIN is issued to a person who is required to have a taxpayer identification number but is not eligible to obtain a social security number. A person may obtain a social security if the person has been lawfully admitted to the United States for permanent residence or under other immigration categories that authorize employment in the United States.

A payer required to withhold taxes from compensation paid to an ITIN holder must file a return and pay the withheld taxes to the Department. The withheld taxes are payable quarterly, monthly, or semiweekly depending upon the average amount withheld by a payer each month. If the amounts withheld average less than $250 a month, the payments are due quarterly. If the amounts withheld average at least $250 but less than $2,000, the payments are due monthly. All other payments are due by the date set under the Internal Revenue Code for payment of federal employment taxes attributable to the same wages. A payer who withholds taxes from compensation paid to an ITIN holder must give the person a written statement by January 31 following the end of the calendar year that sets out the total amount of compensation paid during the calendar year to the person and the total amount deducted and withheld.

EFFECTIVE DATE: The bill becomes effective January 1, 2010.

BACKGROUND: The Department of Revenue requested this change in the law to better enable it to collect State income taxes on amounts paid to ITIN holders who are not employees.[1] The Department

[1] The withholding of taxes due on wages paid to employees is covered under current law.

reviewed 1099 Forms available through the Federal Data Exchange Program with the Internal Revenue Service. A review of the data indicated a number of North Carolina ITIN holders as the recipients of 1099 miscellaneous payments. Often, the ITIN holders receiving the compensation identified on the 1099 forms were illegal immigrants. Attempted collections of these amounts by the Department resulted in less than 10% of the amount of tax due. The Department believes that a withholding requirement on non-employee compensation paid to ITIN holders will insure the tax is properly paid on income earned in the State. The withholding requirement could apply to an array of businesses but one of the predominant ones would be the construction trades.

S1006-SMRB-14(CSRBx-14) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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DATE: May 5, 2009

TO: Senator Hoyle

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to Senate Bill 1006 (First Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund	***Potential annual increase of $18 million – see assumptions and methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2010.

BILL SUMMARY:
Senate Bill 1006 would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation. The bill would become effective January 1, 2010.
The proposed committee substitute better integrates the new provisions into the current statutes, it

modifies the definition of 'contractor' to conform to the new provisions, and it conforms the due date of the withholding returns and remittances to the general due date for income tax withholdings.

ASSUMPTIONS AND METHODOLOGY:
Compensation paid to ITIN holders, along with other non-employee compensation payments, is reported to the Internal Revenue Service on the Form 1099 Misc. return. The Department of Revenue receives extract tapes containing Form 1099 data through the Federal Data Exchange Program. Based on 2006 tax year data, the most recent year for which data is available, the Department estimates that non-taxed income received by individuals with ITIN numbers and tax liability in excess of $300 amounted to $452 million.

SB 1006 would require withholding of 4% of compensation paid to contractors with ITINs. Applying the 4% rate to the non-taxed income figure of $452 million results in an annual revenue increase of $18.1 million. The bill would be in effect for half of FY 2009-10, which would result in a first-year increase of about $9 million.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

SENATE BILL 755

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/5/09

Short Title: Promote Mitigation Banks. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE USE OF COMPENSATORY MITIGATION BANKS FOR RIPARIAN BUFFER PROTECTION AND NUTRIENT OFFSET PAYMENTS AND TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION FOR WETLAND AND STREAM IMPACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.11 reads as rewritten:

"**§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definition. – For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of ~~wetlands or other areas~~jurisdictional waters required as a condition of a ~~section 404~~ permit issued by the Department or by the United States Army Corps of Engineers. For purposes of this section, "jurisdictional waters" means wetlands, streams, or other waters of the State or of the United States.

(b) Department ~~of Environment and Natural Resources~~ to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers ~~under 33 U.S.C. § 1344~~ shall be coordinated by the Department consistent with the basinwide ~~plans for wetlands restoration~~restoration plans and rules developed by the Environmental Management Commission. All compensatory ~~wetlands~~ mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers.

(c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of compensatory mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to the North Carolina Department of Transportation. – The North Carolina Department of Transportation may satisfy compensatory ~~wetlands~~ mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the Department or of the United States Army Corps of ~~Engineers:~~Engineers, as applicable:

(1) Payment of a fee established by the ~~Department~~ Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a ~~private wetlands~~ compensatory mitigation ~~bank.~~bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.

(4) Preparing and implementing a ~~wetlands restoration~~compensatory mitigation plan.

(d1) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of Transportation. – An applicant other than the North Carolina Department of Transportation may satisfy compensatory ~~wetlands~~ mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:

(1) Participation in a ~~private wetlands~~ compensatory mitigation ~~bank.~~ bank if the Department or the United States Army Corps of Engineers, as applicable, approves the use of the bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one ~~private wetlands~~compensatory mitigation bank that has been ~~(i)~~ approved by the United States Army Corps of ~~Engineers and that has available mitigation credit or (ii) approved by the North Carolina Division of Water Quality for resources regulated under the Neuse and Tar-Pam rules and that has available mitigation credit.~~Engineers. For purposes of this subdivision, "hydrologic area" means the eight-digit Hydrologic Unit Code where the mitigation bank is located.

(2) Payment of a fee established by the ~~Department~~ Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12. This option is only available to an applicant ~~if~~ who demonstrates that the option under subdivision (1) of this subsection is not ~~available as an option.~~available.

(3) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(4) Preparing and implementing a ~~wetlands restoration~~compensatory mitigation plan.

(e) Payment Schedule. – A standardized schedule of ~~per-acre payment amounts~~compensatory mitigation payment amounts shall be established by the ~~Environmental Management~~ Commission. Compensatory mitigation payments shall be made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The monetary payment shall be based on the ecological functions and values of wetlands and streams permitted to be lost and on the cost of restoring or creating wetlands and streams capable of performing the same or similar functions, including directly related costs of ~~wetlands~~ wetland and stream restoration planning, long-term monitoring, and maintenance of restored areas. Compensatory mitigation payments for wetlands shall be calculated on a per-acre basis. Compensatory mitigation payments for streams shall be calculated on a per-linear foot basis.

(f) Mitigation Banks. – State agencies and ~~private~~ mitigation ~~banking companies~~banks shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3."

SECTION 2. G.S. 143-214.20 reads as rewritten:

"**§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.**

(a) Compensatory Mitigation for Riparian Buffer Loss. – The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. ~~Alternatives shall include, but are not limited to:~~ All compensatory mitigation for riparian buffer loss shall be consistent with rules adopted by the Commission for protection and maintenance of riparian buffers.

(a1) Compensatory Mitigation Options Available to the North Carolina Department of Transportation. – The North Carolina Department of Transportation may satisfy compensatory mitigation requirements by any of the following actions:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration ~~Fund.~~Fund established in G.S. 143-214.21.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is ~~lost; or~~lost.

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(3) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(4) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Participation in a mitigation bank if the Department has approved the bank and the Department approves the use of the bank for the required compensatory mitigation.

(a2) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of Transportation. – An applicant other than the North Carolina Department of Transportation may satisfy compensatory mitigation requirements by any of the following actions:

(1) Participation in a compensatory mitigation bank if the Department approves the use of the bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one compensatory mitigation bank that has been approved by the Department. For purposes of

this subdivision, "hydrologic area" means the eight-digit Hydrologic Unit Code where the mitigation bank is located

(2) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

(3) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(4) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality in the same river basin as that provided by the riparian buffer this is lost by:

(1) Restoration or enhancement of existing riparian buffers.

(2) Acquisition of land for and creation of new riparian buffers.

(3) Maintenance and monitoring of restored, enhanced, or created riparian buffers over time.

(4) Construction of alternative measures that reduce nutrient loading.

(d) The Commission may adopt rules to implement this section."

SECTION 3. Section 4 of S.L. 2007-438 is repealed.

SECTION 4.(a) Nutrient offset credits may be purchased to partially offset the nitrogen loading requirements specified in 15A NCAC 2B .0234 and 2B .0235 for the Neuse River Basin and to partially offset the nitrogen and phosphorous loading requirements specified in 15A NCAC 2B .0258 for the Tar-Pamlico River Basin. All nutrient offset projects authorized under this section shall be consistent with rules adopted by the Environmental Management Commission for implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin and shall be located within the same eight-digit Cataloging Unit, designated by the United States Geological Survey, in which the associated nutrient loading takes place.

SECTION 4.(b) The North Carolina Department of Transportation may purchase nutrient offset credits through either:

(1) Participation in a nutrient offset bank if the Department approves the use of the bank for the required nutrient offsets.

(2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21.

SECTION 4.(c) Applicants for nutrient offset credits other than the North Carolina Department of Transportation may purchase nutrient offset credits through either:

(1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.

(2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option is only available to an applicant who demonstrates that the option under subdivision (1) of this section is not available.

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

SENATE BILL 755:
Promote Mitigation Banks

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 6, 2009
Introduced by:	Senator Clodfelter	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Staff Attorney

SUMMARY: Senate Bill 755 would provide that, under certain circumstances, persons required to perform environmental mitigation must seek the mitigation from a mitigation bank before seeking mitigation from the Environmental Enhancement Program.

CURRENT LAW AND BACKGROUND:

Federal and State law require developers, which includes the North Carolina Department of Transportation as well as private developers, to avoid, minimize, or mitigate damage to wetlands, damage to riparian buffers, and excess nutrient loading. One of the measures available to developers is the payment of fees into public or private programs that offset the actions of the developers with projects that restore, create, enhance, or preserve natural resources similar to those that were lost. A developer may generally do this in one of two ways.

- The developer may buy credits from a compensatory mitigation or nutrient offset bank that has already restored, created, enhanced, or preserved natural resources. There are a number of such approved banks operating in North Carolina.
- The developer may pay compensatory mitigation or nutrient offset fees to public entities or private nonprofit conservation organizations. Under this type of arrangement, the fees are typically accumulated to establish consolidated mitigation or nutrient offset projects. It is under this system that the Environmental Enhancement Program works.

During the 2008 Regular Session of the 2007 General Assembly, the General Assembly enacted Senate Bill 1885 (Promote Private Compensatory Mitigation). This legislation provided that, under certain circumstances, certain applicants for compensatory wetlands mitigation must seek the compensatory wetlands mitigation from a private wetlands mitigation bank before seeking wetlands mitigation from the Environmental Enhancement Program.

BILL ANALYSIS:

Senate Bill 755 would do several things relating to compensatory mitigation and nutrients offsets:

- The bill would make technical and clarifying changes related to last Session's Senate Bill 1885 (Promote Private Compensatory Mitigation).
- The bill would provide that under certain circumstances, applicants for compensatory riparian buffer mitigation, other than the North Carolina Department of Transportation, must seek the compensatory riparian buffer mitigation from a compensatory mitigation bank before seeking mitigation from the Environmental Enhancement Program.

Specifically, an applicant must first seek compensatory riparian buffer mitigation from a compensatory mitigation bank if:

  - The Department of Environment and Natural Resources, (DENR) has approved the use of the bank for the required compensatory mitigation.

- There is at least one compensatory mitigation bank in the hydrologic area that has been approved by DENR.

If there is no mitigation bank that meets these requirements, the applicant may seek mitigation from the Ecosystem Enhancement Program. The applicant always has the option to implement its own riparian buffer restoration plan or to donate land to a public entity or conservation organization approved by DENR.

- The bill would provide that under certain circumstances, applicants for nutrient offset credits, other than the North Carolina Department of Transportation, must seek the nutrient offset credits from a nutrient offset bank before seeking nutrient offset credits from the Environmental Enhancement Program. Specifically, an applicant must first seek nutrient offset credits from a nutrient offset bank if:
  - DENR has approved the use of the bank for the required nutrient offsets.
  - There is at least one nutrient offset bank in the hydrologic area that has been approved by DENR.

If there is no nutrient offset bank that meets these requirements, the applicant may seek nutrient offsets from the Ecosystem Enhancement Program. The applicant always has the option to implement its own nutrient offset plan or to donate land to a public entity or conservation organization approved by DENR.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 755

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

S755-ASB-6 [v.2]

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

Date May 6 ,2009

Senator Clodfelter

moves to amend the bill on page 1, lines 28 and 29,
by rewriting those lines to read:

"(d) Compensatory Mitigation Options Available to the North Carolina Department of ~~Transportation.~~Transportation, Units of Local Government, and Governmental Authorities. – The North Carolina Department of ~~Transportation~~ Transportation, units of local government, and governmental authorities may satisfy compensatory";

on page 2, lines 8 through 10,
by rewriting those lines to read:

"(d1) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of ~~Transportation.~~Transportation, Units of Local Government, and Governmental Authorities. – An applicant other than the North Carolina Department of ~~Transportation~~ Transportation, a unit of local government, or a governmental authority may satisfy compensatory ~~wetlands~~ mitigation requirements by";

on page 3, lines 12 and 13,
by rewriting those lines to read:

"(a1) Compensatory Mitigation Options Available to the North Carolina Department of Transportation, Units of Local Government, and Governmental Authorities. – The North Carolina Department of Transportation, units of local government, and governmental authorities may satisfy compensatory";

on page 3, lines 43 through 45,
by rewriting those lines to read:

"(a2) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of Transportation, Units of Local Government, and Governmental Authorities. – An applicant other than the North Carolina Department of Transportation, a unit of local government, or a governmental authority may satisfy compensatory mitigation requirements by any of the"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 755

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

S755-ASB-6 [v.2]

on page 5, lines 1 through 8,
by rewriting those lines to read:

"**SECTION 4.(b)** The North Carolina Department of Transportation, units of local government, and governmental authorities may purchase nutrient offset credits through either:

(1) Participation in a nutrient offset bank if the Department approves the use of the bank for the required nutrient offsets.

(2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21.

SECTION 4.(c) Applicants for nutrient offset credits other than the North Carolina Department of Transportation, a unit of local government, or a governmental authority may purchase nutrient offset credits through either:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 909

Short Title:	Sales Tax: Reliance on Written Advice by DOR.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT EXTINGUISHING THE LIABILITY OF RETAILERS FOR SALES TAX OVER-COLLECTIONS MADE IN RELIANCE ON WRITTEN ADVICE OF THE SECRETARY OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.11 is amended by adding a new subsection to read:

"(e) Reliance on Written Advice. – A seller who requests specific written advice from the Secretary and who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any over-collected sales or use tax that was collected in accordance with the written advice."

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

SENATE BILL 909:
Sales Tax: Reliance on Written Advice by DOR

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 6, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 909 provides that a seller is not liable to a purchaser for any over-collected sales and use tax collected in accordance with specific written advice from the Secretary of Revenue.***

[As introduced, this bill was identical to H1229, as introduced by Reps. Gibson, Wray, Tillis, Mills, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

CURRENT LAW: All sales taxes, including over-collections, are remitted to the Department of Revenue. Purchasers seeking a refund of over-collected sales tax must give the seller written notice and allow the seller 60 days in which to respond before bringing a cause of action against the seller. If a refund is given to the purchaser, the seller may then apply to the Department for the amount of the refund.

A taxpayer may request in writing specific advice from the Department. If the Department furnishes erroneous written advice and the taxpayer reasonably relies on that advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice.

BILL ANALYSIS: Senate Bill 909 provides that a seller is not liable to a purchaser for any over-collected sales and use tax collected in accordance with specific written advice from the Secretary of Revenue.

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

S909-SMTD-22(e1) v2

SENATE FINANCE COMMITTEE
Tuesday, May 12, 2009 at 3:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 3:00 PM on May 12, 2009, in Room 544 of the Legislative Office Building. Nineteen members of the committee were present. Senator Clark Jenkins presided.

S.B. 262 – Expunctions/Purge Online Databases.

Senator Doug Berger was recognized to explain the bill. Senator Purcell moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS clarifies that an order to expunge an individual's record shall be forwarded by the clerk of court to all applicable state and local government agencies, requires a State government agency to forward notice of expunction orders received by the agency to any private entity that disseminates criminal history records for compensation that is licensed by the agency to access the agency's criminal history record database, provides that a private entity that disseminates criminal history records for compensation has a duty to update those histories before disseminating them and is subject to civil liability. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the bill, the fiscal note, and the summary is attached.

S.B. 388 – Collection of Offender Fines and Fees.

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS clarifies the collection of offender fines and fees. Senator Weinstein moved for a favorable report and the motion carried. A copy of the PCS, the summary, the bill and the fiscal note is attached.

The meeting adjourned at 3:09 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, May 12, 2009

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

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

S.B. **388** Collection of Offender Fines and Fees.

Draft Number:	55396
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **262** Expunctions/Purge Online Databases.

Draft Number:	15275
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Sen. Ikins

adjourned 3:09

Senate Finance Agenda
Tuesday, May 12

Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
S262	Expunctions/Purge Online Databases	D. Berger	PCS Purcell	Cindy	Tillman moves
S388	Collection of Offender Fines and Fees	Clodfelter	PCS Clodfelter	Cindy	Weinstein

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 12, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Troy D. Page	AOC
Sam White	AOC
Mildred Spearman	NCDOC
Daniel Baum	K & L Gates
Kelli Kuhlman	NCLM
Jim Blackburn	Association of County Commissioners
Curtis Brooks	DOJ/DMV
Charlotte Boyd	DMV
Debbie Jones	DMV
Joe Lamier	S.D. Meicor
Jennifer Flynn	CDHA

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

May 12, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
EDDIE BUFFALOE	FTA
Mallory Hatcher	MWL
Brenda Freeman	AMI
[illegible]	[illegible]
[illegible]	NCATA
Patrick Byrd	NMRS

Senate Finance Committee
Tuesday, May 12, 2009, 3:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 262	Expunctions/Purge Online Databases.	Sen. Berger
SB 388	Collection of Offender Fines and Fees.	Sen. Clodfelter

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 262
Judiciary II Committee Substitute Adopted 3/30/09
PROPOSED COMMITTEE SUBSTITUTE S262-CSRB-19 [v.4]

5/12/2009 11:21:53 AM

Short Title: Expunctions/Purge Online Databases. (Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A is amended by adding the following new sections to read:

"**§ 15A-150. Notification requirements.**

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

(1) Persons granted a discharge or an expunction under this Article.

(2) Persons granted an expunction under G.S. 14-50.29 or G.S. 14-50.30.

(3) Persons granted a conditional discharge or an expunction under G.S. 90-96 or G.S. 90-113.14

(4) Persons whose judgments of convictions have been canceled and expunged under G.S. 90-96 or G.S. 90-113.14.

(b) Notification to Other State and Local Agencies. – The clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged.

(1) The sheriff, chief of police, or other arresting agency.

(2) When applicable, the Division of Motor Vehicles and the Department of Correction.

(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.

(c) Notification to SBI and FBI. – An arresting agency that receives a certified copy of an order under this section shall forward a copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation. The State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it sells any compilation of the information to delete the record in question from its database.

"§ 15A-151. AOC maintain confidential file.

The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

(1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.

(2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.

(3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

"§ 15A-152. Civil liability for dissemination of certain criminal history information.

(a) Duty to Delete Record. – A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question.

(b) Dissemination of Information. – Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 to 6809), a private entity described by subsection (a) of this section that is licensed to access a State agency's criminal history record database may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity originally obtained the information or received the information as an updated record information to its database. The private entity must notify the State agency from which it receives the information of any other entity to which it sells any compilation of the information.

(c) Civil Liability. – A private entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees.

(d) Certificate of Verification. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may apply to the Administrative Office of the Court for a certificate verifying that the person is the subject of a record that has been expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant affidavit under this subsection may not disclose the nature of content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a certificate of verification and an application for the certificate are not public records under G.S. 132-1. The Administrative Office of the Court may establish procedures pertaining to the application for and issuance of certificates of verification."

SECTION 2. G.S. 14-50.29(e) reads as rewritten:

"(e) The clerk ~~of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.~~shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 3. G.S. 14-50.30(b) reads as rewritten:

"(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or ~~information.~~ information and that the conviction be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also ~~order that the said conviction be expunged from the records of the court, and~~ direct all law enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the ~~same~~ conviction to expunge their records of the petitioner's conviction as the result of a criminal charge. The clerk ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~ shall notify State and local agencies of the court's order as provided in G.S.15A-150."

SECTION 4.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the ~~said~~ misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the ~~court, and~~ court. The court shall direct all law-enforcement agencies, the Department of Correction, ~~including~~ the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency.~~ shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~"

SECTION 4.(b) G.S. 15A-145(d) reads as rewritten:

"(d) The clerk ~~of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.~~shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 5.(a) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Department of Correction, ~~including~~ the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency.~~ shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging these records shall not be taxed against the petitioner.~~"

SECTION 5.(b) G.S. 15A-146(c) reads as rewritten:

"(c) The ~~Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement.~~clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 6. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150. The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) ~~Any~~ The Department of Correction and any other applicable State or local government agency shall expunge ~~from~~ its records ~~entries made as a result of the charge or conviction ordered expunged under this section.~~ as provided in G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 7. G.S. 15A-149(b) reads as rewritten:

"(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150. The

costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be taxed against the petitioner."

SECTION 8.(a) G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing records of the same to expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 8.(b) G.S. 90-96(c) is repealed.

SECTION 8.(c) G.S. 90-96(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose."

SECTION 8.(d) G.S. 90-96(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of

his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 9.(a) G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ bearing records of the same to expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 9.(b) G.S. 90-113.14(c) is repealed.

SECTION 9.(c) G.S. 90-113.14(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose."

SECTION 9.(d) G.S. 90-113.14(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall ~~also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 10. This act becomes effective October 1, 2009.

SENATE BILL 262:
Expunctions/Purge Online Databases

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 12, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S262-CSRB-19		

SUMMARY: ***Senate Bill 262 amends the laws pertaining to the expunction of criminal records to require that the court send a certified copy of the expunction order to the Department of Correction, DMV, and any other State & local agencies identified by the petitioner, and direct those agencies to expunge their records of the petitioner's charge or conviction. The bill also requires that a State agency receiving an order of expunction notify any private entity with which it has a licensing agreement for data from the agency's criminal record database, and imposes a duty on the private entity to expunge its records and not disseminate any information for which it has received notice of expunction. The bill creates liability for a private entity that violates the expunction requirement and authorizes court costs and attorneys' fees for a prevailing party***

The proposed committee substitute makes the following changes to the bill:

- ***It moves the substantive provisions to Section 1 of the bill. The remaining sections amend existing statutes to conform to the changes made in Section 1 of the bill.***
- ***It consolidates into one statute, GS 15A-150, all of the notification requirements contained in the various expunction statutes. It consolidates into one statute, GS 15A-151, the responsibility of AOC to maintain a confidential file.***
- ***The civil liability imposed on a private entity that violates the expunction requirements is placed in GS 15A-152. The PCS provides that an application to AOC for a certificate of verification that expunction notice requirements were met must be accompanied by a sworn affidavit. The sworn affidavit is not a public record unless it becomes part of a court proceeding.***
- ***It removes the civil penalty from the bill.***

CURRENT LAW: The terms 'expunction' and 'expungement' are used interchangeably, and both appear in the statutes. Expunction is a judicial process for removing records pertaining to a criminal case. The purpose of expunction is to clear the public record of entries so that a person who is entitled to expunction may omit reference to the charges to potential employers and others, and so that a records check for prior arrests and convictions will not disclose the expunged entries. In North Carolina, expunction is limited to specifically defined situations, and a person can generally be granted only one expungement in his or her lifetime. Each expunction statute specifically prescribes who may apply for an expungement and then specifies the conditions under which a court can order an expungement. The statutes that allow a person to petition for an expunction of a record are provided in the "Background" section of the summary.

BILL ANALYSIS: The bill imposes the following duties on a private entity that compiles and disseminates for compensation criminal history record information:

- It may only disseminate information it receives within 90 days of the date of dissemination.
- It must notify the State agency from which it receives information of any other entity to which it sells any compilation of the information.

- It must delete records from its data base when it receives notice from the State agency to do so and it must notify any entity to which it sells the information to delete the record from its database. The bill requires a State agency to notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency's criminal record database of any deletions the agency made from its records and that the entity must make from its records.

The bill provides a cause of action against a private entity that disseminates information for which it has received notice to delete. The entity would be liable for any damages sustained by the person who is the subject of the information. A person who prevails in such an action is entitled to recover court costs and reasonable attorney fees.

The bill also makes various clarifying and conforming changes to the expunction statutes:

- It provides that the clerk must notify the arresting agency and, when applicable, the Division of Motor Vehicles and the Department of Correction. DMV and DOC also keep records that need to be expunged. Some expunction statutes listed them and others did not. The PCS consolidates all of the notification provisions into one statute to make them consistent.
- It provides that the clerk must notify any State or local agency identified by the petitioner as bearing record of the offense that has been expunged.
- It consolidates into one statute AOC's responsibility to maintain a confidential file of the expunction and expands the purposes for which it may disclose the expunction to include a person requesting confirmation of the person's own discharge or expunction and a court when subpoenaed to do so pursuant to a civil action filed in accordance with the provisions of this bill.
- It amends existing statutes to conform to the changes made by the bill.

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

BACKGROUND: The following statutes provide for an expunction of records:

G.S. 14-50.30 provides for the expunction of records for a person who is convicted of an offense under the Street Gang Suppression Act if the person has not been previously convicted of any criminal offense, and the person was under the age of 18 at the time of the conviction. Expunction is not available if the person acted as an organizer, supervisor, or in any position of management with regard to a criminal street gang in engaging in a pattern of street gang activity, or if the person recruited minors under age 16 to participate in criminal street gang activity.

G.S. 15A-145 provides for the expunction of records for first offenders under the age of 18 at the time of conviction of a misdemeanor. A person who is convicted of a misdemeanor before reaching the age of 18 may petition to have that conviction expunged after 2 years, if there have been no other convictions. G.S. 15A-145 also provides for the expunction of records for first offenders under the age of 21 at the time of conviction of misdemeanor possession of alcohol. A person who is convicted of misdemeanor possession of alcohol while under the age of 21 may petition to have that conviction expunged after 2 years, if there have been no other convictions.

G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with, but not convicted of, any misdemeanor or felony offense can apply to have the charge expunged. Persons who have previously received an expunction, or persons who have previously been convicted of a felony, would not qualify under this provision.

G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. The person can apply to have the charge expunged when: (1) the charge against the person is dismissed, (2) a finding of not guilty is made, or (3) the conviction is set aside. There is no limit to the number of times a person who is the victim of identity fraud can qualify for expunction under this provision.

G.S. 15A-149 provides for the expunction of records for a person who is convicted of a crime and receives a pardon of innocence from the Governor.

G.S. 90-96 and G.S. 90-113.14 provide for the conditional discharge and dismissal of proceedings for certain first-time offenders under the N.C. Controlled Substances Act, the Toxic Vapors Act, and the Drug Paraphernalia Act. Upon discharge and dismissal, an offender age 21 or under may apply for expunction of the record.

- **G.S. 90-96** provides for the expunction of records when a person age 21 or under is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine, and the charges are subsequently dismissed or there is a finding of not guilty. The person may apply to the court for an order to expunge official records relating to the person's arrest, indictment or information, or trial. An order of expunction will be granted if the court determines that the person was not over 21 at the time of any of the proceedings.
- **G.S. 113.14** contains similar provisions for the misdemeanor possession of controlled substances in violation of the Toxic Vapors Act and to possession of drug paraphernalia.

Brenda Carter, counsel to the Senate JII Committee, substantially contributed to this summary.

S262-SMRB-16(CSRB-19) v2

SENATE BILL 262
Judiciary II Committee Substitute Adopted 3/30/09

Short Title: Expunctions/Purge Online Databases. (Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO BOTH CIVIL LIABILITY AND TO A CIVIL PENALTY FOR FAILURE TO CARRY OUT ITS DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.30(b) reads as rewritten:

"(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or ~~information.~~ information and that the conviction be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also ~~order that the said conviction be expunged from the records of the court, and~~ direct all law enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the ~~same~~ conviction to expunge their records of the petitioner's conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting ~~agency.~~ agency and, when applicable, to the Division of Motor Vehicles, the Department of Correction, and any other State or local agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."

SECTION 2.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the ~~said~~ misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the ~~court, and~~ court. The court shall direct all law-enforcement agencies, the Department of Correction, ~~including~~ the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting ~~agency.~~ agency and, when applicable, to the Department of Correction and any other State or local agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."

SECTION 2.(b) G.S. 15A-145(d) reads as rewritten:

"(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense or any person filing a civil action under G.S. 15A-150.1 has been previously granted a discharge."

SECTION 3.(a) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Department of Correction, ~~including~~ the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting ~~agency.~~ agency and, when applicable, to the Department of Correction and any other State or local agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 3.(b) G.S. 15A-146(c) reads as rewritten:

"(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the

names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense or any person filing a civil action under G.S. 15A-150.1 has been previously granted an expungement."

SECTION 4. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Department of Correction, the Division of Motor ~~Vehicles~~ Vehicles, and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) ~~Any~~ The Department of Correction and any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 5. G.S. 15A-149(b) reads as rewritten:

"(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Department of Correction, the Division of Motor ~~Vehicles~~ Vehicles, and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 6. G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any

provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as ~~appropriate,~~appropriate and when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local government agency. ~~and the~~The sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 7. G.S. 90-96(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of

his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as ~~appropriate, and the~~appropriate and, when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local government agency. The arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article or any person filing a civil action under G.S. 15A-150.1 has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 8. G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as ~~appropriate, and the~~ appropriate and, when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local agency. The sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation."

SECTION 9. G.S. 90-113.14(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or

misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Department of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as ~~appropriate, and the~~ appropriate and, when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local agency. The arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article or any person filing a civil action under G.S. 15A-150.1 has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 10. Article 5 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-150. State agency to notify licensed private entities of expunctions.**

When a State agency receives a certified copy of an order to expunge a record under G.S. 14-50.30, 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14, the State agency, in addition to expunging its own records pursuant to the expunction order, shall also notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency's criminal record database to delete the record in question.

"**§ 15A-150.1. Duty of private entity to expunge records upon notice of expunction and to update criminal history record information; civil liability.**

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued.

(b) Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 to 6809), a private entity described by subsection (a) of this section that is licensed to access a State agency's criminal history record database:

(1) May disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity: (i) originally obtains that information; or (ii) receives that information as updated record information to its database; and

(2) Shall notify the State agency if the entity sells any compilation of the information to another similar entity.

(c) A private entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees.

"**§ 15A-150.2. Civil penalty; dissemination of certain criminal history information.**

(a) A private entity that compiles and disseminates for compensation criminal history record information shall not compile or disseminate information with respect to which the entity has received notice that an order of expunction has been issued under G.S. 14-50.30, 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14.

(b) A district court may issue a warning to a private entity for a first violation of subsection (a) of this section. After receiving a warning for the first violation, the private entity is liable to the State for a civil penalty not to exceed one thousand dollars ($1,000) for each subsequent violation.

(c) The attorney general or appropriate district attorney may sue to collect a civil penalty under this section.

(d) A civil penalty collected under this section shall be deposited in the Civil Penalty and Forfeiture Fund established under G.S. 115C-457.1."

SECTION 11. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 12, 2009

TO: Senator Berger of Franklin

FROM: Danielle Seale, Fiscal Research Division

RE: PCS for Senate Bill 262 (S262-CSRB-19[v.2]), Expunctions/Purge Online Databases

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
Judicial Branch	**Indeterminate fiscal impact, some savings anticipated**				
EXPENDITURES:					
Judicial Branch	**Indeterminate fiscal impact, some expenditures anticipated**				
Department of Transportation	**Analysis in progress**				
Department of Correction	**Analysis in progress**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Department of Motor Vehicles, Department of Correcton

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:
Current statutes direct the court to inform law enforcement agencies of an expunction order. This PCS would also require the court to direct the Department of Correction (DOC), the Division of Motor Vehicles (DMV), and any other State or local government agencies identified by the petitioner to expunge their records of the petitioner's criminal conviction.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

This bill would result in both savings and costs to the Administrative Office of the Courts (AOC). The net impact cannot be determined.

Savings/Reduction in Court Workload:
Currently, the clerks of superior court notify only the arresting agency regarding an expunction. As a result, the Department of Corrections' (DOC) records may contain expunged convictions, which are included by third-party vendors in criminal records searches. AOC personnel have received phone calls and other communications from individuals whose records have been expunged but whose convictions still appear in online criminal records searches. If DOC were directed to expunge those records, AOC would anticipate a reduction in future call volume. Similarly, AOC would anticipate some reduction – although not as significant – due to directives to expunge the Department of Motor Vehicles (DMV) and other government records.

Costs/Increases in Court Workload:
Clerks already notify the arresting agency, but they will incur some costs to notify other governmental agencies of an expunction. AOC has the capability to inform DOC electronically, and AOC already informs DMV of expunctions for civil drivers' license revocations. However, this PCS would require that those two agencies be notified with a certified copy of the order by the clerks of superior court. This requirement would impact the court system in the form of court personnel time, supplies, and postage.

New 15A-150 requires AOC to notify any private entity with which it has a licensing agreement for bulk extracts of criminal record data to delete the expunged record. AOC already does this electronically; therefore there would be no impact from this provision. Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology and storage costs associated with this requirement. At this time, AOC cannot determine the exact cost of this requirement.

Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology costs to modify an existing application and storage costs for hard copies. At this time, we cannot determine the exact cost of this requirement.

New 15A-152 establishes a private civil action against a private entity that disseminates expunged record information in violation of the statute. AOC cannot project the number of civil actions that will be brought under this section, although it is likely that some of them are currently brought

under common law libel. Other current actions may be brought under the federal Fair Credit Reporting Act, in which case the alternative state civil action may result in some shift of actions from the federal courts to North Carolina courts. Any increase in civil caseloads will impact court resources.

The PCS would require that a person requesting confirmation of an expunged record swear to an affidavit that the record about which they are inquiring is their own. Falsely swearing an affidavit is punishable as perjury, a Class F felony. *AOC cannot project the number of charges that would result from this bill.* For every new charge, costs to AOC would range from $1,135 (plea) to $10,995 (trial). Indigent defense costs would average $885 per indigent defendant. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Department of Transportation

Fiscal Research is in the process of determining any potential costs or savings for the Department of Transportation that may result from the passage of this bill.

Department of Correction

Fiscal Research is in the process of determining any potential costs or savings for the Department of Correction that may result from the passage of this bill.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 12, 2009

TO: Senator Berger of Franklin

FROM: Danielle Seale, Fiscal Research Division

RE: PCS for Senate Bill 262 (S262-CSRB-19[v.2]), Expunctions/Purge Online Databases

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
Judicial Branch	**Indeterminate fiscal impact, some savings anticipated**				
EXPENDITURES:					
Judicial Branch	**Indeterminate fiscal impact, some expenditures anticipated**				
Department of Transportation	**Analysis in progress**				
Department of Correction	**Analysis in progress**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Department of Motor Vehicles, Department of Correcton

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:
Current statutes direct the court to inform law enforcement agencies of an expunction order. This PCS would also require the court to direct the Department of Correction (DOC), the Division of Motor Vehicles (DMV), and any other State or local government agencies identified by the petitioner to expunge their records of the petitioner's criminal conviction.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

This bill would result in both savings and costs to the Administrative Office of the Courts (AOC). The net impact cannot be determined.

Savings/Reduction in Court Workload:
Currently, the clerks of superior court notify only the arresting agency regarding an expunction. As a result, the Department of Corrections' (DOC) records may contain expunged convictions, which are included by third-party vendors in criminal records searches. AOC personnel have received phone calls and other communications from individuals whose records have been expunged but whose convictions still appear in online criminal records searches. If DOC were directed to expunge those records, AOC would anticipate a reduction in future call volume. Similarly, AOC would anticipate some reduction – although not as significant – due to directives to expunge the Department of Motor Vehicles (DMV) and other government records.

Costs/Increases in Court Workload:
Clerks already notify the arresting agency, but they will incur some costs to notify other governmental agencies of an expunction. AOC has the capability to inform DOC electronically, and AOC already informs DMV of expunctions for civil drivers' license revocations. However, this PCS would require that those two agencies be notified with a certified copy of the order by the clerks of superior court. This requirement would impact the court system in the form of court personnel time, supplies, and postage.

New 15A-150 requires AOC to notify any private entity with which it has a licensing agreement for bulk extracts of criminal record data to delete the expunged record. AOC already does this electronically; therefore there would be no impact from this provision. Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology and storage costs associated with this requirement. At this time, AOC cannot determine the exact cost of this requirement.

Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology costs to modify an existing application and storage costs for hard copies. At this time, we cannot determine the exact cost of this requirement.

New 15A-152 establishes a private civil action against a private entity that disseminates expunged record information in violation of the statute. AOC cannot project the number of civil actions that will be brought under this section, although it is likely that some of them are currently brought

under common law libel. Other current actions may be brought under the federal Fair Credit Reporting Act, in which case the alternative state civil action may result in some shift of actions from the federal courts to North Carolina courts. Any increase in civil caseloads will impact court resources.

The PCS would require that a person requesting confirmation of an expunged record swear to an affidavit that the record about which they are inquiring is their own. Falsely swearing an affidavit is punishable as perjury, a Class F felony. *AOC cannot project the number of charges that would result from this bill.* For every new charge, costs to AOC would range from $1,135 (plea) to $10,995 (trial). Indigent defense costs would average $885 per indigent defendant. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Department of Transportation

Fiscal Research is in the process of determining any potential costs or savings for the Department of Transportation that may result from the passage of this bill.

Department of Correction

Fiscal Research is in the process of determining any potential costs or savings for the Department of Correction that may result from the passage of this bill.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 388
PROPOSED COMMITTEE SUBSTITUTE S388-CSRB-20 [v.2]

5/12/2009 1:48:06 PM

Short Title: Collection of Offender Fines and Fees. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE COLLECTION OF OFFENDER FINES AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-321 reads as rewritten:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

(a) Methods of Payment. – The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders.

(b) Contract to Collect Past Due Amounts. -- ~~In attempting to collect the fines, fees, and costs owed by offenders not sentenced to supervised probation, the Department may:~~The Department may contract with a county or a collection agency to collect unpaid fines, fees, costs, and restitution owed by offenders not sentenced to supervised probation if the amounts remain unpaid 30 days after the time allotted by the court. The Department may assess the offender a collection assistance fee equal to the amount charged by the county or collection agency to collect the amounts past due. The collection assistance fee may not exceed twenty percent (20%) of the amount past due. If the Department assesses a collection assistance fee under this subsection, it may not charge an additional cost of collection pursuant to G.S. 115C-437.

~~(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.~~

~~(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, and costs owed by offenders not sentenced to supervised probation.~~

~~(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.~~

~~(c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, the department may not charge any additional cost of collection pursuant to G.S. 115C-437.~~"

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

SENATE BILL 388:
Collection of Offender Fines and Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 12, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S388-CSRB-20		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 388 clarifies the assessment of the collection assistance fee the General Assembly authorized the Judicial Department to impose in 2007. It specifically provides that the Department may contract with a county to collect past due amounts and to assess a fee equal to the costs incurred. The bill becomes effective when it becomes law.***

CURRENT LAW: In 2007, the Current Operations and Capital Improvements Appropriations Act of 2007 contained a provision authoring the Judicial Department to collect fines, fees and costs that remained unpaid 30 days after the time period allotted by the court through the assessment of a collection assistance fee, through contracts with a collection agency, and through the Setoff Debt Collection Act. The 2007 provision applies to 'offenders not sentenced to supervised probation', meaning it may apply to offenders sentenced to unsupervised probation and offenders sanctioned with only a fine or community service as well as to offenders given active sentences.

The Department is not aware of any instances in which the fee has been assessed.

BILL ANALYSIS: Senate Bill 388 would allow a county to retain the collection assistance fee and would provide that the Judicial Department could pursue civil liens and judgments against offenders, report delinquencies to credit agencies, and make referrals to credit counseling agencies and debt restructuring agencies.

The proposed committee substitute for Senate Bill 388 addresses concerns raised by the Department and technical considerations listed in the fiscal note. It also seeks to address the issue raised by Mecklenburg County as to whether and when a county may retain the collection assistance fee.

The PCS does the following:

- It clarifies that the Department may contract with a county or with a collection agency to collect amounts unpaid 30 days after the time allotted by the court. The Department may assess a collection assistance fee equal to the amount charged by the county or collection agency to collect the amounts due. The collection assistance fee may not exceed 20% of the amounts past due.
- It provides that the amounts that may be collected include not only fines, fees, and costs but also restitution.
- It removes the reference to the Setoff Debt Collection Act from G.S. 7A-321 because it is unnecessary. Chapter 105A, the Setoff Debt Collection Act, governs the interception of tax refund checks.
- It removes the provision from the bill that would allow the Department to pursue civil liens and judgments because it is unnecessary. G.S. 15A-1365 provides for a civil judgment remedy.
- It removes the provision from the bill that would allow the Department to report delinquencies to credit agencies because it is not needed. Credit agencies currently gather

data for credit reports from the public records in the civil judgment indexes. To require the Department to report delinquencies to the credit agencies may subject it to the Fair Credit Reporting Act. The Fiscal Note indicates that significant additional resources would be needed by the Department to meet the requirements of the Act.

- It removes the provision from the bill that would allow the Department to make referrals to credit counseling agencies and debt restructuring services because any collections received through this remedy do not appear to justify the costs associated with it. The Department does not currently maintain lists of such services. If the Department implemented this remedy, it would need to not only compile and maintain a list of these services but also monitor and review the list to ensure the service providers on it are reputable.

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

S388-SMRB-17(CSRB-20) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 388 (First Edition)

SHORT TITLE: Collection of Offender Fines and Fees.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	**Indeterminate fiscal impact**				
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:
Current law allows the Judicial Department (Department) in its efforts to collect the fines, fees, and costs owed by offenders who are not sentenced to supervised probation to assess a collection assistance fee if the amount owed by an offender remains unpaid for 30 days after the time allotted by the court for payment to be made. This bill amends GS 7A-321(b) to permit the county in which the collection assistance fee is collected to retain that fee. Also authorizes the following additional methods for the Department to collect fines and fees from offenders: (1) pursue civil liens and judgments against offenders; (2) report delinquencies to credit agencies; and (3) make referrals to credit counseling agencies and debt restructuring services.
Effective July 1, 2009, and applies to cases adjudicated on or after that date
Source: Bill Digest S.B. 388 (03/03/0200).

ASSUMPTIONS AND METHODOLOGY:

Administrative Office of the Courts

In attempting to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, current G.S. 7A-321(b) allows the courts to assess a collection assistance fee as specified, enter into contracts with collection agencies, and intercept tax refund checks. Current G.S. 15A-1365 also provides for a civil judgment remedy.

This proposed bill would expand the avenues available to the court system to collect fines, fees, and costs from offenders not sentenced to supervised probation. Specifically, the courts would be able to pursue civil liens and judgments, report delinquencies to credit agencies, and make referrals to credit counseling

agencies and debt restructuring services. The bill would also permit the county in which the collection assistance fee is collected to retain the fee. Because this bill would apply to offenders not sentenced to supervised probation, it would cover unsupervised probationers, offenders sanctioned with only a fine or other such punishment, and offenders given active sentences.

The language in proposed 7A-321(b) is permissive – that is, the courts would not be required to engage in any of these activities to collect monies owed. However, if the courts as a whole – or one or more local court officials – were to engage in some of these activities, there would be a cost to the AOC. If these activities were to result in increased collections, there would be an increase in funds for the schools (through collection of fines), counties (through collection of facility fees), the State General Fund, other State funds, and other monies such as attorneys' fees. *AOC cannot determine whether such an increase would in fact occur, or whether the increase would outweigh the costs of implementing the provisions of this bill.*

Collection assistance fee retained by county:
Although the bill language states that a county may retain the current collection assistance fee of 7A-321(b)(1), AOC is unaware of any instances in which the fee has been charged since its enactment in 2007. Thus, *AOC cannot determine what the precise impact of the proposed change in language would be.* As the statute is currently written, a collection assistance fee could be retained by a third party collection agency that has contracted to collect monies due from offenders. This contractor could be a county government and therefore receive the fee under current law. The proposed language appears to permit the county to retain the fee even if the work was carried out by a third party vendor, which could negatively impact the AOC's future ability to contract with vendors for collection assistance. In addition, funds retained by the counties would reduce the amount of funds that would normally be remitted to the General Fund, schools, or the county court facilities.

Pursue civil liens and judgments against offenders:
G.S. 15A-1365 already provides for a civil judgment remedy for fines and costs after a failure to pay. Docketing of civil judgments for attorney fees and restitution to Victim's Rights Act victims are already provided for in other statutes; it is unclear whether the authority granted by SB 388 would be in lieu of or in addition to the docketing permissions of those statutes. Therefore, *AOC cannot determine the impact, if any, from new 7A-321(b)(4).* (See Technical Consideration #3)

Report delinquencies to credit agencies:
This bill allows, but does not require, AOC to report delinquencies to credit agencies. Should AOC decide to do so, the Clerks and AOC could be subject to the Fair Credit Reporting Act (FCRA) and all its requirements. Currently the clerks do not "report" credit information (e.g. judgments); this information is a matter of public record that credit bureaus gather to create credit reports. Therefore, if the courts were to engage in these actions and thus become a "reporting agency", significant additional resources including a debtor/creditor attorney position would be required to ensure compliance with FRCA and related regulations.

If the act of reporting delinquencies were to increase collections, there would be an increase in fines, fees, and other costs collected. *AOC cannot determine whether such an increase would in fact occur, or whether the increase would outweigh the costs of becoming a reporting agency under the FRCA.*

Make referrals to credit agencies and debt restructuring services:
The courts do not currently maintain lists of such services. There would be costs associated with reviewing the agencies and compiling and maintaining lists. If such referrals result in increased collections, there would be an increase in fines, fees and other costs collected.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS:

1. Amends G.S. 7A-321(b)(1): The basis on which the county would retain the fee is unclear. It is also unclear what is intended by the use of the term "county" – the county government, the Clerk of Courts, the school system, etc. Also, this proposed change appears to be unnecessary, as a county could enter into a contract with the AOC to provide collection assistance and thus receive the collection assistance free under current law.

2. It is unclear from an operational standpoint how the provisions in this bill would work – is it the AOC that would be expected to take these measures to local court officials?

3. Pursuit of civil judgments by "the Department" is unclear given that the current statutes provide for docketing via the criminal judgment imposing sentence (attorney fees and restitution) or by order of the court pursuant to failure to pay (fines and costs).

4. It is unclear whether the provisions of this bill would apply to restitution.

5. Given that the provisions of the bill would apply to defendants "not sentenced to supervised probation," it would apply not only to unsupervised probationers, but also to defendants receiving active time.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Denise Thomas

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 5, 2009

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 388
PROPOSED COMMITTEE SUBSTITUTE S388-CSRB-20 [v.2]

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~~(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, and costs owed by offenders not sentenced to supervised probation.~~

~~(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.~~

~~(c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, the department may not charge any additional cost of collection pursuant to G.S. 115C-437.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 388

Short Title:	Collection of Offender Fines and Fees.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL METHODS OF COLLECTING FINES AND FEES OWED BY OFFENDERS AND TO ALLOW COUNTIES TO RETAIN COLLECTION ASSISTANCE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-321(b) reads as rewritten:

"(b) In attempting to collect the fines, fees, and costs owed by offenders not sentenced to supervised probation, the Department may:

(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. A collection assistance fee may be retained by the county in which the fee is collected. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.

(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, and costs owed by offenders not sentenced to supervised probation.

(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.

(4) Pursue civil liens and judgments against offenders.

(5) Report delinquencies to credit agencies.

(6) Make referrals to credit counseling agencies and debt restructuring services."

SECTION 2. This section becomes effective July 1, 2009, and applies to cases adjudicated on or after that date.

SENATE FINANCE COMMITTEE
Wednesday, May 20, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 20, 2009, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator David Hoyle presided. Michael Odom or Clinton, Laura Page of Clinton, Tyler White of Clinton, and Grant Goethe of Wake County served as pages.

H.B. 336 – Richlands/Satellite Annexations.

Representative Tucker was recognized to explain the bill which concerns the cap on satellite annexations for the Town of Richlands. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 201 – Add Division of LESS to CCPS.

Senator Snow was recognized to explain the bill. Senator Jenkins moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS facilitates the transfer of motor vehicles from the United States Department of Defense to local government units, volunteer fire departments, and volunteer rescue squads and clarifies that the Division of Law Enforcement Support Services is a Division of the Department of Crime Control and Public Safety. Senator Garrou moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

H.B. 1508 – Tech Corrections – 2/3rds Bonds Act of 2008.

Representative Owens and Senator Hoyle were recognized to explain the bill. Senator Albertson moved to adopt the PCS for discussion and the motion carried. The PCS makes technical corrections to the Two-Thirds Bond Act of 2008 and provides for the issuance of general obligations to finance the costs of the Biomedical Research Imaging Center. Jim Klingler, an analyst with the Fiscal Research Division, was recognized to explain the reduction of the authorized special indebtedness due to an original estimate of higher interest rates. Vance Holloman, Deputy State Treasurer, was recognized to answer questions. Senator Jenkins and Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 304 – Guaranteed Energy Savings.

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS increase the amount the State may finance under guaranteed energy savings contracts and modifies the reporting requirements. Len Hoey, a program manager with the State Energy Office, was recognized to answer questions. Senator Dannelly moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 80 – Jacksonville Occupancy Tax.

Senator Brown was recognized to explain the bill which authorizes the City of Jacksonville to levy a room occupancy and tourism development tax. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 215 – Robbins Deannexation.

Senator East was recognized to explain the bill which deannexes two described parcels from the corporate limits of the Town of Robbins and enters into an agreement for payments in lieu of reannexation. Senator Tillman and Senator Weinstein moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 479 – Fremont Charter Rewrite.

Senator Rouzer was recognized to explain the bill which revises and consolidates the Charter of the Town of Fremont. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 786 – UNC Nonappropriated Capital Projects.

Senator Stevens was recognized to explain the bill which authorizes the construction and the financing, without appropriations from the General Fund, of certain capital improvement projects of the constituent institutions of The University of North Carolina. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

Subcommittee on Annexation.

Senator Clodfelter announced the creation of the Subcommittee on Annexation to study SB 494 – Annexation/Meaningful Services and Oversight, SB 472 – Annexation Changes, SB 148 – Annexation Referendum, and SB 711 – Annexation Law Omnibus. Senator Clodfelter will chair the subcommittee and Senator Shaw, Senator Stein, Senator McKissick, Senator Hartsell, Senator Purcell and Senator Stevens will serve as members.

The meeting adjourned at 1:43 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 20, 2009

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

FAVORABLE

S.B.	**80**	Jacksonville Occupancy Tax.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.(CS #1)	**215**	Robbins Deannexation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**479**	Fremont Charter Rewrite.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**786**	University Nonappropriated Capital Projects.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**336**	Richlands/Satellite Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, May 21, 2009

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

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

S.B. **304** Energy Savings Contracts' Cap/Program Admin.

Draft Number:	85235
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

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

H.B. **1508** Tech Corrections - 2/3rds Bonds Act of 2008.

Draft Number:	50712
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **201** Add Division of LESS to CCPS.

Draft Number:	30398
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 20, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 80	Jacksonville Occupancy Tax.	Senator Brown
SB 215	Robbins Deannexation.	Senator Blake
SB 304	Energy Savings Contracts' Cap/Program Admin.	Senator Clodfelter
SB 359	Incorporate Sneads Ferry.	Senator Brown
SB 479	Fremont Charter Rewrite.	Senator Rouzer
SB 786	University Nonappropriated Capital Projects.	Senator Stevens
HB 201	Add Division of LESS to CCPS.	Representative Warren Representative Spear
HB 336	Richlands/Satellite Annexations.	Representative Tucker
HB 1508	Tech Corrections - 2/3rds Bonds Act of 2008.	Representative Goforth Representative Womble Representative Owens, Jr.

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 20, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Patrick Baffle	NMRS
DAVID RICE	MANNING FULTON
Alex Pully	OST
Erin Schmeltzer	UNC
Anita Watkins	UNC
TERRANCE TERRICH	UNC
Vance Holloman	State Treasurer
Kerry McDuffie	Town of Fremont
Tim Gasper	Energy Services Coalition
Len Hoey	State Energy Office

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 20, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Wib L. Owen	DENR - DFR
Chris Stanley	Senate Intern
Mac Musselwhite	NC Ref Mem Federation
Barbara Conder	BSEA
John Bowdish	Astra Zeneca
Andrew Cagle	DLC/BSEA
Ken Melton	K. M. A.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 20, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dianne Reeky	Finance
John McAlister	NC Chamber
Kathryn Westcott	AIEC/NC
Johanna Reese	DOT
Paul Stock	NCBA
Christie Barbee	CAPA
Allison Wallace	Charlotte Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 20, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Adam Brueggemann	OSBM
Alicia Dant	MWC
Amy Schilder	MWC
Taylor Delgado	CHTIAS
Laura Pisoni	NCSEA
Joey Gardner	AMV License + Theft
Neil Woodcock	CCPS, LESS
Thomas C. Caves, Sr.	CCPS, OFFSEC
Eddie Caldwell	NC Sheriffs' Assn.
Penny Griffin	School of Gov.
Drew Ball	Sierra Club

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 20, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
RALPH THOMPSON	NC CHAPTER ENERGY SERVICES COALITION
AARON RITTENHOUSE	NC CHAPTER ENERGY SERVICES COALITION
Lorin Baumhover	ASU
TOM BEAN	NCSEA, NC CDF
Mark Benton	ATT
Lisa Martin	NC HBA
Jessi Hays	
Cody Thomas	NC Assn of REALTORS
Katrina English	NCCN
Dan Conrad	NCCN
Paula A. Wolf	Paulatics

Senate Finance Committee
Wednesday, May 20, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 201	Add Division of LESS to CCPS.	Rep. Warren Rep. Spear
HB 336	Richlands/Satellite Annexations.	Rep. Tucker
HB 1508	Tech Corrections - 2/3rds Bonds Act of 2008.	Rep. Goforth Rep. Womble Rep. Owens
SB 80	Jacksonville Occupancy Tax.	Sen. Brown
SB 215	Robbins Deannexation.	Sen. Blake
SB 304	Energy Savings Contracts' Cap/Program Admin.	Sen. Clodfelter
SB 359	Incorporate Sneads Ferry.	Sen. Brown
SB 479	Fremont Charter Rewrite.	Sen. Rouzer
SB 786	University Nonappropriated Capital Projects.	Sen. Stevens

Presentations

Other Business

Adjournment

HOUSE BILL 336
Corrected Copy 3/17/09

Short Title:	Richlands/Satellite Annexations.	(Local)
Sponsors:	Representative Tucker.	
Referred to:	Local Government I, if favorable, Finance.	

March 2, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF RICHLANDS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2008-30 is repealed.

SECTION 2. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

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

HOUSE BILL 336:
Richlands/Satellite Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 20, 2009
Introduced by:	Rep. Tucker	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: House Bill 336 adds the Town of Richlands to the cities and towns that may exceed the ten percent area limitation for a voluntary annexation of a noncontiguous area. The bill also repeals a provision of S.L. 2008-30 relating to the Town of Richlands which if HB 336 is enacted as currently drafted would no longer be applicable.

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. A city may annex an area not contiguous to its primary corporate limits upon the receipt of a valid petition signed by all owners of real property in the area to be annexed and if the area meets the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS:

Section 1 repeals Section 2 of S.L. 2008-30 which excluded a certain tract of property from the Town of Richlands for the purpose of calculating noncontiguous area.

Section 2 adds the Town of Richland to a list of cities and towns that may exceed the ten percent area limitation provided in subdivision 5 of G.S. 160A-58.1(b).

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: The following Cities and Towns are currently authorized to disregard the 5th standard: Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

H336-SMRE-31(e2) v1

Shawn Parker, staff to House Local Government I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 201*

Committee Substitute Favorable 3/4/09
Committee Substitute #2 Favorable 3/18/09
Senate State and Local Government Committee Substitute Adopted 4/15/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H201-CSRB-24 [v.3]

5/20/2009 9:15:27 AM

Short Title: Add Division of LESS to CCPS. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRANSFER OF MOTOR VEHICLES FROM THE UNITED STATES DEPARTMENT OF DEFENSE TO LOCAL GOVERNMENT UNITS, VOLUNTEER FIRE DEPARTMENTS, AND VOLUNTEER RESCUE SQUADS AND TO CLARIFY THAT THE DIVISION OF LAW ENFORCEMENT SUPPORT SERVICES IS A DIVISION OF THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-73(b)

"**§ 20-73. New owner must get new certificate of title.**

(a) Time Limit. – A person to whom a vehicle is transferred, whether by purchase or otherwise, must apply to the Division for a new certificate of title. An application for a certificate of title must be submitted within 28 days after the vehicle is transferred. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.

A person may apply directly for a certificate of title or may allow another person, such as the person from whom the vehicle is transferred or a person who has a lien on the vehicle, to apply for a certificate of title on that person's behalf. A person to whom a vehicle is transferred is responsible for getting a certificate of title within the time limit regardless of whether the person allowed another to apply for a certificate of title on the person's behalf.

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

(1) ~~a~~ A dealer or an insurance company to whom a vehicle is transferred when the transfer meets the requirements of G.S. 20-75. ~~A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.~~

(2) A State agency that assists the United States Department of Defense in purchasing or transferring a vehicle to a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 2. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.

(3a) To one or more of the same co-owners to reflect the removal of one or more other co-owners, when there is no consideration for the transfer.

(4) By will or intestacy.

(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.

(6) By a distribution of marital or divisible property incident to a marital separation or divorce.

(7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.

(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:

a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.

b. By a local board of education.

(9) To a volunteer fire department or volunteer rescue squad that is not part of a unit of local government, has no more than two paid employees, and is exempt from State income tax under G.S. 105-130.11, when the motor vehicle is one of the following:

a. A fire truck, a pump truck, a tanker truck, or a ladder truck used to suppress fire.

b. A four-wheel drive vehicle intended to be mounted with a water tank and hose and used for forest fire fighting.

c. An emergency services vehicle.

(10) To a State agency from a unit of local government, volunteer fire department, or volunteer rescue squad to enable the State agency to transfer the vehicle to another unit of local government, volunteer fire department, or volunteer rescue squad. "

SECTION 3. Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. Law Enforcement Support Services Division.

"**§ 143B-508. Law Enforcement Support Services Division established.**

The Law Enforcement Support Services Division is established within the Department of Crime Control and Public Safety. The Division is authorized to perform the following functions:

(1) Manage State, local, and federal programs that facilitate or enable the transfer of technology, goods, and services through programs for excess property, property acquisition, and equipment loans.

(2) Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and creation and maintenance of a data bank of statewide storage location of postconviction evidence or other similar programs.

(3) Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.

(4) Acquire, maintain, and control equipment to be loaned to law enforcement agencies for use in undercover investigations and to other agencies for other purposes.

(5) Develop, test, and promulgate innovative and technological solutions for the first responder community.

(6) Provide other assistance as may be necessary or appropriate to carry out assigned duties and responsibilities."

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

HOUSE BILL 201:
Add Division of LESS to CCPS

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 20, 2009
Introduced by:	Reps. Spear, R. Warren	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fourth Edition H201-CSRB-24		

SUMMARY: ***House Bill 201 statutorily establishes the Division of Law Enforcement Support Services within the Department of Crime Control and Public Safety. It also provides exemptions from the titling requirement and the highway use tax for State agencies acting as a pass-through for vehicles received through a United States Department of Defense program that are subsequently transferred to an emergency response unit, a law enforcement agency, or fire department.***

The proposed committee substitute removes an unnecessary provision from the bill[1] and makes technical and stylistic changes.

[As introduced, this bill was identical to S139, as introduced by Sen. Snow, which is currently in Senate Finance.]

CURRENT LAW: Federal law provides programs through which vehicles are disbursed from the Department of Defense to emergency response units, local law enforcement, and fire departments.[2] The Federal programs require a State agency to facilitate the transfer of these vehicles. The Department of Crime Control and Public Safety (DCCPS) has been operating one of these programs for over 15 years. Last year, the DCCPS facilitated the transfer of over $1 million in vehicles to local law enforcement through this program. A similar program facilitated by the Department of Environment and Natural Resources (DENR) has been in operation for the past 2 years and has facilitated the transfer for of approximately 90 vehicles.

When vehicles under this program are initially transferred, the Department facilitating the program does not take title to the vehicle. The ultimate recipient, which is either an emergency response unit, local law enforcement, or a fire department, takes title to the vehicle and pays the highway use tax. If the recipient decides the vehicle is no longer needed, the vehicle is transferred to the Department facilitating the program for transfer to another emergency response unit, local law enforcement, or fire department in the State. During this subsequent transfer, the Department may take title, at which point the Department would be required to pay highway use tax.

The program operated by DCCPS was momentarily halted this year after the Division of Motor Vehicles raised the following concerns:

- **Titling:** G.S. 20-73 requires a person to whom a vehicle is transferred to apply to DMV for a new certificate of title within 28 days after the vehicle is transferred. A person who fails to apply for a certificate of title within the required time frame is subject to a $15 civil penalty and is

[1] Section 3 of House Bill 201, 4th Edition, amended the Motor Vehicle Dealers and Manufacturers Licensing Law. However, the State agencies are not included with the definition of the entities to which the law is applicable. Therefore, the amendment to this law is unnecessary.

[2] **10 U.S.C. § 381** establishes procedures under which States and units of local government may purchase law enforcement equipment for counter-drug activities through the Department of Defense. **10 U.S.C. § 2576b** establishes procedures under which States may purchase personal property to assist firefighting agencies.

guilty of a Class 2 misdemeanor. DMV questioned whether the facilitating Department must obtain title when the vehicles are initially transferred.

- **Highway Use Tax:** Article 5A of Chapter 105 imposes a highway use tax at the rate of 3% upon the transfer of a motor vehicle for which a certificate of title is issued. When the Department facilitating the transfers takes title to a vehicle for a subsequent transfer to a second emergency response unit, local law enforcement, or fire department, the Department would be required to pay the highway use tax.

BILL ANALYSIS: The proposed committee substitute for House Bill 201 does three things:

Section 1 addresses the titling issue by exempting the Department of Crime Control and Public Safety and the Department of Environment and Natural Resources from the requirement to apply for a certificate of title within 28 days of the transfer of the vehicle. This exemption will allow both DCCPS and DENR to transfer vehicles under the Federal programs without first obtaining title to the vehicle.

Section 2 addresses the highway use tax issue by exempting the transfer of a motor vehicle by a unit of local government, volunteer fire department, or volunteer rescue squad to a State agency to enable the agency to transfer the vehicle to another unit of local government, volunteer fire department, or volunteer rescue squad.

Section 3 amends Article 11 of Chapter 143B, which creates the Department of Crime Control and Public Safety, to statutorily establish the Law Enforcement Support Services Division. The statutory establishment of a Division within an agency is unnecessary because G.S. 143B-10 provides that each Department head may establish or abolish divisions within a department as needed to achieve economies and efficiencies in accordance with sound administrative practice. Although not required many Departments, such as the Department of Crime Control and Public Safety, choose to seek legislation to codify divisions within their Departments.

EFFECTIVE DATE: The act becomes effective when it becomes law.

Theresa Matula, counsel to House State Government/State Personnel Committee, and Trina Griffin, Counsel to House Finance, substantially contributed to this summary.

H201-SMTD-69(CSRB-24) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: Representatives Spear, R. Warren

TO: May 20, 2009

FROM: Danielle Seale, Fiscal Research Division

RE: PCS for House Bill 201 (H201-CSRB-24[v.1]), Add Division of LESS to CCPS

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	The effects of this bill are anticipated to be revenue neutral				
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Crime Control and Public Safety – Division of Law Enforcement Support Services; Department of Environmental and Natural Resources – Division of Forest Resources

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

BILL SUMMARY:

This bill is intended to clarify that the Division of Law Enforcement Support Services is a division of the Department of Crime Control and Public Safety, to assign duties to the division, and to make corresponding changes to Chapters 20 and 105 of the General Statues to allow Law Enforcement Support Services to transfer motor vehicles to law enforcement agencies without having to become a motor vehicle dealer to pay highway use taxes.

Amends proposed G.S. 143B-508 to authorize the Law Enforcement Support Services Division to provide assistance as may be necessary or appropriate to carry out assigned duties and responsibilities.

Amends G.S. 20-73(b) to create an exemption from requirements to obtain a new certificate of title for the Department of Crime Control and Public Safety, Division of Law Enforcement Support Services, or the Department of Environment and Natural Resources, Division of Forest Resources, when receiving, titling, or transferring any vehicle acquired under 10 U.S.C. Section 381 or any similar acquisition and transfer program administered by the Division of Law Enforcement Support Services or the Division of Forest Resources.

Makes organizational changes to proposed G.S. 105-187.6(a)(10).

Amends G.S. 10-287 to exempt the Department of Environmental and Natural Resources, Division of Forest Resources, when receiving, titling, or transferring any vehicle acquired under provisions of Title 10, Section 285, of the US Code, or any similar acquisition and transfer program administered by the Division of Law Enforcement Support Services, from licensing requirements for any new or used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler engaging in business in the state.

Clarifies in proposed G.S. 105-187.6(a)(10) that a "qualified recipient" includes a fire department (was, volunteer fire department).

ASSUMPTIONS AND METHODOLOGY:
Since 1994, the Law Enforcement Support Services (LESS) program has been operating as part of the Department of Crime Control and Public Safety (CCPS). If ratified, H 201 will amend G.S.143B-508 to establish LESS as a division within CCPS.

This bill would also amend G.S. 20-287 and G.S. 105-187 to allow for LESS and the Department of Environmental and Natural Resources (DENR), Division of Forest Resources, to be exempt from the requirements to become a motor vehicle dealer and to pay highway use taxes when transferring motor vehicles from the ownership of the Department of Defense to local law enforcement agencies. Currently, the highway use tax associated with these transactions is paid by the entity receiving the motor vehicle from LESS or the Division of Forest Resources. **Overall, the changes proposed in this bill are technical changes that will not yield any loss of tax revenue or require any additional budget appropriations to support the program.**

LESS and the Division of Forest Resources have been transferring excess Department of Defense vehicles to state and local law enforcement agencies since 1994 using a form developed by DMV. Last year the DMV determined that they had no formal basis to allow this transfer for LESS or the North Carolina Division of Forest Resources. The proposed new subsection under G.S. 105-187.6(a) will allow LESS and the Division of Forest Resources to continue transferring excess vehicles to state and local law enforcement groups. This is a technical change and will be revenue neutral. An authorizing statute for Law Enforcement Support Services will establish formal authority for LESS to provide its services.

LESS has also been facilitating the purchase of new vehicles for law enforcement agencies under Title 10 USC, Section 381 since 1996. Last year, the Division of Motor Vehicles (DMV) determined that G.S. 20-287 precludes this activity and suggested a change to the statute to exempt LESS from the requirement of registering as a motor vehicle dealer. There is no cost that would be incurred or funds lost by adding the proposed language to G.S. 20-287.

SOURCES OF DATA: Department of Crime Control and Public Safety

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1508
PROPOSED SENATE COMMITTEE SUBSTITUTE H1508-CSRBx-26 [v.1]

5/20/2009 9:34:55 AM

Short Title: Two-Thirds Bonds Act of 2008. (Public)

Sponsors:

Referred to:

April 15, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE TWO-THIRDS BONDS ACT OF 2008 AND TO PROVIDE FOR THE ISSUANCE OF GENERAL OBLIGATIONS TO FINANCE THE COSTS OF THE BIOMEDICAL RESEARCH IMAGING CENTER.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 27.9(d) of S.L. 2008-107, as amended by Section 2.7(c) of S.L. 2008-118, reads as rewritten:

"**SECTION 27.9.(d)** Authorization of Bonds and Notes. – The State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell at one time or from time to time ~~in the fiscal year ending June 30, 2009~~ in the biennium ending June 30, 2011, general obligation bonds of the State to be designated "State of North Carolina General Obligation Bonds," with any additional designations as may be determined, or notes of the State, in the aggregate principal amount of ~~one hundred seven million dollars ($107,000,000),~~ three hundred forty-seven million dollars ($347,000,000), this amount being not in excess of two-thirds of the amount by which the State's outstanding indebtedness ~~was~~ will be reduced during the biennium ~~ended June 30, 2008,~~ ending June 30, 2009, for the purpose of providing funds, with any other available funds, for the purposes authorized by this section.

~~If the one hundred seven million dollars ($107,000,000) maximum principal amount of bonds and notes authorized by this section shall be in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 2008, then the maximum amount of bonds and notes authorized in this section is reduced by such excess.~~"

SECTION 1.(b) Section 27.9(f) of S.L. 2008-107, as amended by Section 2.7(d) of S.L. 2008-118, reads as rewritten:

SECTION 27.9.(f) Allocation of Proceeds. – The proceeds of bonds and notes shall be allocated and expended ~~for paying the cost of the Green Square Project, Department of Environment and Natural Resources.~~ as provided in this subsection:

(1) A maximum aggregate principal amount of one hundred seven million dollars ($107,000,000) to finance the capital facility costs of the Green Square Project, Department of Environment and Natural Resources. The projected allocation may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants. ~~The Director of the Budget may, when the Director determines it is in the best interest of the~~

~~State to do so, use any excess funds, as determined by the Director, to increase the allocation of the project. The Office of State Budget and Management shall provide semiannual reports to the Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division as to the status of the project and allocations made under this subsection.~~

(2) A maximum aggregate principal amount of two hundred forty million dollars ($240,000,000) to finance the capital facility costs of the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill. The project allocation may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants."

SECTION 2.(a) Section 27.8(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 27.8.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of ~~sixty-nine million dollars ($69,000,000)~~sixty-six million six hundred sixty-eight thousand eight hundred one dollars ($66,668,801) to finance the capital facility costs of completing a School of Dentistry building at East Carolina University and no more than 10 satellite dental clinics across the State. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty million dollars ($60,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(2) In the maximum aggregate principal amount of ~~thirty-six million eight hundred thousand dollars ($36,800,000)~~ thirty-six million two hundred ninety-five thousand five hundred thirty-nine dollars ($36,295,539) to finance the capital facility costs of completing a family medicine building at East Carolina University. No more than a maximum aggregate amount of sixteen million six hundred thousand dollars ($16,600,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(3) In the maximum aggregate principal amount of ~~eighteen million dollars ($18,000,000)~~seventeen million five hundred eighty-seven thousand one hundred ninety-five dollars ($17,587,195) to finance the capital facility costs of completing a School of Education building at Elizabeth City State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fifteen million dollars ($15,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(4) In the maximum aggregate principal amount of two million four hundred thirty-eight thousand dollars ($2,438,000) to finance the capital improvement costs of acquiring land and constructing capital facilities for a

horse park in Rockingham County for North Carolina Agricultural and Technical State University.

(5) In the maximum aggregate principal amount of ~~twenty million four hundred ninety thousand dollars ($20,490,000)~~ twenty million thirty-six thousand two hundred eighty-three dollars ($20,036,283) to finance the capital facility costs of completing a general classroom building at North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(6) In the maximum aggregate principal amount of ~~twenty-four million five hundred thousand dollars ($24,500,000)~~ twenty-three million eight hundred eighty-one thousand three hundred fifty-two dollars ($23,881,352) to finance the capital facility costs of completing a nursing building at North Carolina Central University. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of seventeen million dollars ($17,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(7) In the maximum aggregate principal amount of ~~eleven million one hundred thousand dollars ($11,100,000)~~ ten million eight hundred twenty-eight thousand one hundred ninety-one dollars ($10,828,191) to finance the capital facility costs of completing a central storage facility at the North Carolina School of the Arts.

(8) In the maximum aggregate principal amount of ~~twelve million nine hundred thousand dollars ($12,900,000)~~ twelve million four hundred seventy-two thousand eight hundred six dollars ($12,472,806) to finance the capital facility costs of completing a film school production facility at the North Carolina School of the Arts. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars ($2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars ($7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(9) In the maximum aggregate principal amount of ~~one hundred nine million one hundred thousand dollars ($109,100,000)~~ one hundred five million seven hundred ten thousand nine hundred seventy-four dollars ($105,710,974) to finance the capital facility costs of completing the Centennial Campus library at North Carolina State University. No more than a maximum aggregate amount of forty-nine million dollars ($49,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty-eight million one hundred thousand dollars ($68,100,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of ~~one hundred million one hundred thousand dollars ($100,100,000)~~ ninety-two million five hundred sixty-eight thousand eight hundred thirty dollars ($92,568,830) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(10) In the maximum aggregate principal amount of four million dollars ($4,000,000) for the capital facility costs of completing the 4-H Campuses at North Carolina State University.

(11) In the maximum aggregate principal amount of ~~sixty-nine million dollars ($69,000,000)~~sixty-six million six hundred sixty-eight thousand eight hundred one dollars ($66,668,801) to finance the capital facility costs of completing a School of Dentistry expansion at the University of North Carolina at Chapel Hill. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of ~~sixty-one million dollars ($61,000,000)~~fifty-five million eight hundred nineteen thousand five hundred fifty-eight dollars ($55,819,558) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(12) In the maximum aggregate principal amount of ~~fifty-seven million two hundred eighteen thousand dollars ($57,218,000)~~ fifty-five million seven hundred twenty-nine thousand nine hundred eighty-seven dollars ($55,729,987) to finance the capital facility costs of completing the Energy Production Infrastructure Center at the University of North Carolina at Charlotte. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of thirty-two million two hundred eighteen thousand dollars ($32,218,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(13) In the maximum aggregate principal amount of forty-two million six hundred seventy thousand dollars ($42,670,000) to finance the capital facility costs of completing an academic classroom and office building at the University of North Carolina at Greensboro. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(14) In the maximum aggregate principal amount of ten million dollars ($10,000,000) to finance the capital facility costs of installing fire sprinklers in The University of North Carolina System residence halls.

(15) In the maximum aggregate principal amount of twenty-five million dollars ($25,000,000) to finance the capital improvement costs of acquiring State land throughout The University of North Carolina System.

(16) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital improvement costs of purchasing State judicial facilities located at 901 Corporate Drive, Raleigh, NC, and more particularly described as Phase Two, Tract A of Raleigh Corporate Center consisting of 17.28 acres and as shown on the map recorded in Map book 1987, page 720, and Map book 1990, page 576, of the Wake County Register of Deeds.

(17) In the maximum aggregate principal amount of ~~forty-five million one hundred seventy thousand dollars ($45,170,000)~~forty-four million one hundred sixty-nine thousand seven hundred eighty-five dollars ($44,169,785) to finance the capital facility costs of completing a health care and mental health facility at the North Carolina Correctional Institute for

Women. No more than a maximum aggregate amount of twenty-seven million dollars ($27,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(18) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars ($13,010,000)~~ twelve million seven hundred twenty-one thousand nine hundred fifteen dollars ($12,721,915) to finance the capital facility costs of completing a minimum security addition at Scotland Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(19) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars ($18,950,000)~~ eighteen million five hundred thirty thousand three hundred eighty-four dollars ($18,530,384) to finance the capital facility costs of completing a medium security addition at Bertie Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(20) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars ($13,010,000)~~ twelve million seven hundred twenty-one thousand nine hundred fifteen ($12,721,915) to finance the capital facility costs of completing a minimum security addition at Tabor Correctional Institution. No more than a maximum aggregate amount of six million dollars ($6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars ($10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(21) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars ($18,950,000)~~ eighteen million five hundred thirty thousand three hundred eighty-four dollars ($18,530,384) to finance the capital facility costs of completing a medium security addition at Lanesboro Correctional Institution. No more than a maximum aggregate amount of seven million dollars ($7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars ($14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.

(22) In the maximum aggregate principal amount of two million nine hundred twenty-five thousand dollars ($2,925,000) to finance the capital facility costs of completing Phase I of the CSS Neuse State Historic Site.

(23) In the maximum aggregate principal amount of seven million dollars ($7,000,000) to finance the capital facility costs of completing Port of Morehead City Berth Improvements and Phase I of Port of Wilmington Berth 8 Improvements.

(24) In the maximum aggregate principal amount of three million seven hundred thousand dollars ($3,700,000) to finance the capital facility costs of completing a Southeastern North Carolina Agriculture Center Pavilion.

(25) In the maximum aggregate principal amount of ~~eight million one hundred thousand dollars ($8,100,000)~~seven million six hundred twenty thousand eight hundred twenty-three dollars ($7,620,823) to finance the capital facility costs of Department of Agriculture and Consumer Services capital improvements. Sales proceeds shall be allocated between the projects in the following manner:

Project	Allocation of Sales Proceeds
Bathroom and truckshed expansion at The Western North Carolina Farmers' Market	$650,000
Davis Arena renovation and expansion at The Western North Carolina Agricultural Center	~~$7,450,000~~$7,234,370

(26) In the maximum aggregate principal amount of four million three hundred three thousand nine hundred forty-four dollars ($4,303,944) to finance the capital facility costs of completing an oyster hatchery.

(27) In the maximum aggregate principal amount of two million seven hundred thousand dollars ($2,700,000) to finance the capital improvement costs of completing an expansion and renovation to the polar bear exhibit at the North Carolina Zoo.

(28) In the maximum aggregate principal amount of ~~fifty million dollars ($50,000,000)~~ forty-eight million four hundred thousand dollars ($48,400,000) to finance the capital improvement costs of acquiring State park lands and conservation areas for the Land for Tomorrow initiative in the Department of Environment and Natural Resources. Proceeds shall be allocated to support the conservation priorities of the One North Carolina Naturally program."

SECTION 2.(b) Section 29.13(a) of S.L. 2007-323, as amended by Section 27.8(d) of S.L. 2008-107, reads as rewritten:

"**SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of thirty-four million dollars ($34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State University. No more than a maximum aggregate amount of three million dollars ($3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(2) In the maximum aggregate principal amount of ~~twenty-two million five hundred eighty-seven thousand dollars ($22,587,000)~~ twenty-two million eighty-six thousand eight hundred forty-eight dollars ($22,086,848) to finance the capital facility costs of completing a new Science and Technology Complex at Fayetteville State University. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special

indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(3) In the maximum aggregate principal amount of ~~twenty-four million nine hundred twenty thousand dollars ($24,920,000)~~ twenty-four million three hundred twenty-nine thousand twenty-five dollars ($24,329,025) to finance the capital facility costs of completing a new library at the North Carolina School of the Arts. No more than a maximum aggregate amount of one million seven hundred seventy-five thousand six hundred dollars ($1,775,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million three hundred seventy-three thousand six hundred dollars ($14,373,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(4) In the maximum aggregate principal amount of thirty-eight million dollars ($38,000,000) to finance the capital facility costs of completing the Randall B. Terry Companion Animal Hospital at North Carolina State University. No more than a maximum aggregate amount of twenty-eight million five hundred thousand dollars ($28,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(5) In the maximum aggregate principal amount of ~~thirty-four million dollars ($34,000,000)~~ thirty-three million two hundred forty-seven thousand one hundred twenty-six dollars ($33,247,126) to finance the capital facility costs of completing an addition to Engineering Building III in the School of Engineering at North Carolina State University. No more than a maximum aggregate amount of eight million five hundred thousand dollars ($8,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million five hundred thousand dollars ($25,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(6) In the maximum aggregate principal amount of eight million six hundred eighty-seven thousand dollars ($8,687,000) to finance the capital facility costs of renovating Rhoades Hall at the University of North Carolina at Asheville.

(7) In the maximum aggregate principal amount of one hundred nineteen million six hundred eight thousand two hundred twenty-five dollars ($119,608,225) to finance the capital facility costs of a Genomics Science Building at the University of North Carolina at Chapel Hill. No more than a maximum aggregate amount of thirty-one million dollars ($31,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eighty-six million dollars ($86,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(8) In the maximum aggregate principal amount of nineteen million dollars ($19,000,000) to finance the capital facility costs of completing a Nursing and Allied Health Building at the University of North Carolina at Pembroke. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(9) In the maximum aggregate principal amount of thirty-four million five hundred twenty-five thousand dollars ($34,525,000) to finance the capital

facility costs of completing a new teaching laboratory at the University of North Carolina at Wilmington. No more than a maximum aggregate amount of two million five hundred thousand dollars ($2,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eight million six hundred thirty-one thousand two hundred fifty dollars ($8,631,250) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(10) In the maximum aggregate principal amount of ~~forty-one million six hundred five thousand dollars ($41,605,000)~~forty million three hundred seventy-one thousand eighty-two dollars ($40,371,082) to finance the capital facility costs of completing a new Health and Gerontological Building at Western Carolina University. No more than a maximum aggregate amount of eighteen million eight hundred two thousand five hundred dollars ($18,802,500) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(11) In the maximum aggregate principal amount of twenty-eight million five hundred seven thousand dollars ($28,507,000) to finance the capital facility costs of completing a new student activities center at Winston-Salem State University. No more than a maximum aggregate amount of two million dollars ($2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million seven hundred ninety-nine thousand dollars ($14,799,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(12) In the maximum aggregate principal amount of ~~fifty-three million dollars ($53,000,000)~~ fifty-one million eight hundred twenty-six thousand four hundred two dollars ($51,826,402) to finance the capital facility costs of completing a Nanoscience Building to be used jointly by the University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(13) In the maximum aggregate principal amount of thirty-two million five hundred thousand dollars ($32,500,000) to finance the capital facility costs for completing the Coastal Studies Institute. No more than a maximum aggregate amount of eight million dollars ($8,000,000), of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-three million dollars ($23,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.

(14) In the maximum aggregate principal amount of nineteen million eight hundred sixteen thousand five hundred dollars ($19,816,500) to finance the capital facility costs of a medium security facility at the Scotland Correctional Institution. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(15) In the maximum aggregate principal amount of thirteen million one hundred ninety-one thousand three hundred dollars ($13,191,300) to finance the capital facility costs of a minimum security facility at the Alexander Correctional Institution. No more than a maximum aggregate amount of six

million five hundred ninety-five thousand six hundred fifty dollars ($6,595,650) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

(16) In the maximum aggregate principal amount of thirty-five million dollars ($35,000,000) to finance the capital facility costs of a new education and visitors center at Tryon Palace Historic Sites and Gardens. No more than a maximum aggregate amount of five million dollars ($5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million dollars ($25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009."

SECTION 2.(c) Section 23.12 of S.L. 2006-66, as amended by Section 27.8(c) of S.L. 2008-107, reads as rewritten:

"**SPECIAL INDEBTEDNESS PROJECTS**

SECTION 23.12.(a) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million one hundred thirty dollars ($45,130,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of constructing and renovating the project described in this subsection.

SECTION 23.12.(b) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of completing the Central Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(c) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~twenty-four million eight hundred forty-one thousand three hundred dollars ($24,841,300)~~ twenty-four million one hundred sixteen thousand four hundred thirty-three dollars ($24,116,433) to finance the capital facility costs of a new Secondary State Data Center. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(d) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million eight hundred twenty-seven thousand four hundred dollars ($45,827,400) to finance the capital facility costs of a new Center City Classroom Building at the University of North Carolina – Charlotte. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

SECTION 23.12.(e) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of

one hundred one million dollars ($101,000,000) to finance the capital facility costs of the Department of Health and Human Services Public Health Laboratory and Office of Chief Medical Examiner. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007.

SECTION 23.12.(f) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred forty-five million five hundred thousand dollars ($145,500,000)~~ one hundred forty-three million two hundred forty thousand one hundred thirty-one dollars ($143,240,131) to finance the capital facility costs of the Eastern Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of one hundred million dollars ($100,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008.

SECTION 23.12.(g) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred thirty-two million two hundred thousand dollars ($132,200,000) to finance the capital facility costs of the Regional Medical Center and Mental Health Center of the Department of Correction. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of eight million two hundred thousand dollars ($8,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of fifty-eight million two hundred thousand dollars ($58,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of ninety-eight million two hundred thousand dollars ($98,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(h) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred sixty-two million eight hundred thousand dollars ($162,800,000)~~ one hundred sixty million two hundred seventy-one thousand four hundred thirty-two dollars ($160,271,432) to finance the capital facility costs of the Western Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(i) This section is effective when it becomes law."

SECTION 2.(d) Section 1.2 of S.L. 2004-179, as amended by Section 1 of S.L. 2006-231, reads as rewritten:

"**SECTION 1.2.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~forty-two million dollars ($42,000,000)~~thirty-five million two hundred thousand dollars ($35,200,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

SECTION 2.(e) Notwithstanding anything in Section 47.1 of S.L. 2003-284 to the contrary, the maximum amount of special indebtedness authorized by that section for the capital facilities cost of Columbus County Correctional Institution is one hundred one million fifty-six thousand four hundred ninety dollars ($101,056,490).

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

HOUSE BILL 1508:
Two-Thirds Bonds Act of 2008

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 20, 2009
Introduced by:	Reps. Owens, Goforth, Womble	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition H1508-CSRBx-26		

SUMMARY: ***House Bill 1508 modifies the Two-Thirds Bonds Act of 2008, which authorized the issuance of $107 million in non-voted general obligation bond indebtedness for the Green Square Project, by changing the way the term 'biennium' is used for purposes of calculating the two-thirds bonds availability. The effect of this change would extend the authorization for the sale of those bonds into the 2009-2011 biennium.***

The proposed committee substitute adds another project to be financed through non-voted general obligation indebtedness: the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill. The Senate included this capital project in the budget it sent to the House, SB 202, third edition, Section 27.10.

CURRENT LAW: Last year, the General Assembly, in its continuation budget, authorized the issuance of $107,000,000 of non-voted general obligation bond indebtedness to finance the Green Square Project. General obligation bond indebtedness is secured by the faith and credit and taxing power of the State. As a general rule, general obligation bond indebtedness must be approved by the voters. However, under Article V, Sec. 3(f)[1] of the North Carolina Constitution, the State may issue non-voted general obligation bonds in an amount not to exceed 2/3 of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. The term 'biennium' is not specifically defined in the Constitution. The Two-Thirds Bonds Act of 2008 used the term 'biennium' to refer to the preceding two-year period ending on June 30, 2008. Based upon this formula, the State could have issued up to $125,000,000 of non-voted general obligation bonds for fiscal year 2008-2009. No bonds have been issued under this authorization yet.

BILL ANALYSIS: House Bill 1508 changes the way the term 'biennium' is used for purposes of calculating the two-thirds bond availability based upon a recommendation of the State's bond counsel. The current language uses the term 'biennium' to refer to any consecutive two-year period. Specifically, it refers to the two-year period ending June 30, 2008.

The current bond counsel interprets Article V, Section 3 of the North Carolina Constitution to refer to the traditional State biennium beginning on July 1 of odd-numbered years and ending on June 30 of the second following year. Thus, two-thirds bonds may be issued during the biennium ending June 30, 2011 based up on the amount of net debt reductions for the biennium ending June 30, 2009. This interpretation is consistent with the way the State applied the two-thirds provision for bonds authorized by legislation enacted in 1988 (S.L. 1987-1048) and in 1991 (S.L. 1991-760). With this change, the

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[1] **"Sec. 3. Limitations upon the increase of State debt.**

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

...

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium."

issuance of the two-thirds bonds authorized last session for the Green Square Project would be moved to the 2009-2011 biennium.

The proposed committee substitute adds a project to the Two-Thirds Bonds Act of 2008: the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill. The PCS authorizes the issuance of $240,000,000 of non-voted general obligation bond indebtedness to finance the capital costs of this facility.

Under the "two-thirds limitation" authority of Article V, Sec. 3(f) of the Constitution, the State may issue up to $486.8 million of non-voted general obligation bonds this coming biennium. Under the Debt Affordability Study, dated February 2009, the State's recommended debt affordability capacity for each of the next five years is $50.2 million. In conducting is analysis, the Treasurer's Office included anticipated debt of the Green Square Project. The addition of the BRIC project to the bill would cause the State to exceed the recommended debt capacity. Therefore, Section 2 of the bill adjusts the indebtedness for several projects financed through special indebtedness to provide enough debt capacity, under the Debt Affordability Study, to add BRIC to the Two-Thirds Bonds Act of 2008.

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

BACKGROUND: The Green Square Project consists of an office building for the Department of Environment and Natural Resources, the construction of a Nature Research Center for the NC Museum of Natural Science, and an underground parking deck with 426 spaces. The project also consists of another parking deck, authorized in S.L. 2006-231, which will house up to 900 spaces. The total cost of the project, excluding the parking deck authorized in 2006, is $150,000,000. The General Assembly appropriated $25,000,000 for the project last year. Parking receipts will service the debt for parking construction and the Friends of the Museum of Natural Science have committed $27,500,000 towards the cost of the Nature Research Center and $15,500,000 towards the cost of the exhibits.

H1508-SMRB-20(CSRBx-26) v1

PCS for HB 1508

$347 million in 2/3rds Bonds - Debt Service Impact

Senate Finance Committee - May 20, 2009

	A	B	C	D	E	F	G	H	I	J	K	L
1												
2		CANCELLED GO - Green Square			PROPOSED GO - Green Square			SAVINGS FROM	PROPOSED GO - Imaging Research Center (BRIC)		TOTAL DEBT	
3		ORIGINAL ISSUE DATE OF June 1, 2009			ASSUMES ISSUE (CLOSE) DATE OF July 30, 2009			DELAYED GREEN	ASSUMES ISSUE DATES OF March 2010 and March 2011		SERVICE IMPACT	
4		ESTIMATED INTEREST RATE =5.75%			ESTIMATED INTEREST RATE =5.75%			SQUARE ISSUANCE	ESTIMATED INTEREST RATE =5.75%			
5	FISCAL		Principal			Principal			Total	Total Principal	Principal & Interest	FISCAL
6	YEAR	Principal	& Interest		Principal	& Interest			Principal	& Interest		YEAR
7												
8	2008-09								0	0		2008-09
9	2009-10	(5,350,000)	(10,989,792)		5,350,000	9,964,375		(1,025,417)	0	0	(1,025,417)	2009-10
10	2010-11	(5,350,000)	(11,194,875)		5,350,000	11,194,875		0	5,000,000	10,606,250	10,606,250	2010-11
11	2011-12	(5,350,000)	(10,887,250)		5,350,000	10,887,250		0	12,000,000	25,167,500	25,167,500	2011-12
12	2012-13	(5,350,000)	(10,579,625)		5,350,000	10,579,625		0	12,000,000	24,477,500	24,477,500	2012-13
13	2013-14	(5,350,000)	(10,272,000)		5,350,000	10,272,000		0	12,000,000	23,787,500	23,787,500	2013-14
14	2014-15	(5,350,000)	(9,964,375)		5,350,000	9,964,375		0	12,000,000	23,097,500	23,097,500	2014-15
15	2015-16	(5,350,000)	(9,656,750)		5,350,000	9,656,750		0	12,000,000	22,407,500	22,407,500	2015-16
16	2016-17	(5,350,000)	(9,349,125)		5,350,000	9,349,125		0	12,000,000	21,717,500	21,717,500	2016-17
17	2017-18	(5,350,000)	(9,041,500)		5,350,000	9,041,500		0	12,000,000	21,027,500	21,027,500	2017-18
18	2018-19	(5,350,000)	(8,733,875)		5,350,000	8,733,875		0	12,000,000	20,337,500	20,337,500	2018-19
19	2019-20	(5,350,000)	(8,426,250)		5,350,000	8,426,250		0	12,000,000	19,647,500	19,647,500	2019-20
20	2020-21	(5,350,000)	(8,118,625)		5,350,000	8,118,625		0	12,000,000	18,957,500	18,957,500	2020-21
21	2021-22	(5,350,000)	(7,811,000)		5,350,000	7,811,000		0	12,000,000	18,267,500	18,267,500	2021-22
22	2022-23	(5,350,000)	(7,503,375)		5,350,000	7,503,375		0	12,000,000	17,577,500	17,577,500	2022-23
23	2023-24	(5,350,000)	(7,195,750)		5,350,000	7,195,750		0	12,000,000	16,887,500	16,887,500	2023-24
24	2024-25	(5,350,000)	(6,888,125)		5,350,000	6,888,125		0	12,000,000	16,197,500	16,197,500	2024-25
25	2025-26	(5,350,000)	(6,580,500)		5,350,000	6,580,500		0	12,000,000	15,507,500	15,507,500	2025-26
26	2026-27	(5,350,000)	(6,272,875)		5,350,000	6,272,875		0	12,000,000	14,817,500	14,817,500	2026-27
27	2027-28	(5,350,000)	(5,965,250)		5,350,000	5,965,250		0	12,000,000	14,127,500	14,127,500	2027-28
28	2028-29	(5,350,000)	(5,657,625)		5,350,000	5,657,625		0	12,000,000	13,437,500	13,437,500	2028-29
29	2029-30								12,000,000	12,747,500	12,747,500	2029-30
30	2030-31								7,000,000	7,201,250	7,201,250	2030-31
31	2031-32								3,300,000	3,440,875	3,440,875	2031-32
32	2032-33								800,000	823,000	823,000	2032-33
33	2033-34											2033-34
34												
35		(107,000,000)	(171,088,542)		107,000,000	170,063,125		(1,025,417)	240,000,000	378,000,000	376,974,583	
36												
37		Principal payable annually May 1 beginning				Principal payable annually May 1 beginning						
38		May 1, 2010				May 1, 2010						
39		Interest payable semiannually beginning November 1, 2009				Interest payable semiannually beginning November 1, 2009						
40												
41												

Jim Klingler
Fiscal Research Division
05/20/2009 10:34 AM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 304
PROPOSED COMMITTEE SUBSTITUTE S304-CSRBx-23 [v.2]

5/19/2009 5:55:07 PM

Short Title: Energy Savings Contracts' Cap/Program Admin. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THE STATE MAY FINANCE UNDER GUARANTEED ENERGY SAVINGS CONTRACTS AND TO MODIFY THE REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate ~~principal~~ outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~one hundred million dollars ($100,000,000)~~ five hundred million dollars ($500,000,000) at any one time."

SECTION 2. G.S. 143-64.17B(f) reads as rewritten:

"(f) In the case of a State governmental unit, a qualified provider shall, when feasible, after the acceptance of the proposal of the qualified provider by the State governmental unit, conduct an investment grade audit. During this investment grade audit, the qualified provider shall perform in accordance with Part 1 of this Article a life-cycle cost analysis of each energy conservation measure in the proposal. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the State governmental unit or the qualified provider may terminate the project without incurring any additional obligation to the other party. However, if the State governmental unit terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the State governmental unit shall reimburse the qualified provider the reasonable cost incurred in conducting the audit, and the results of the audit shall become the property of the State governmental unit."

SECTION 3. G.S. 143-64.17G reads as rewritten:

"**§ 143-64.17G. Report on guaranteed energy savings contracts entered into by local governmental units.**

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government ~~Commission.~~Commission

and the State Energy Office of the Department of Administration. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State ~~Construction,~~Construction and the State Energy Office, shall evaluate whether expected savings have in fact been realized."

SECTION4. This act is effective when it becomes law.

SENATE BILL 304:
Energy Savings Contracts' Cap/Program Admin

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S304-CSRBx-23		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 304[1] would make the following changes to guaranteed energy savings contracts[2]:***

- ***Increase the cap on financing contracts to $500 million of outstanding debt. The existing cap is $100 million on the aggregate principal amount of the contracts. (The original bill would have removed the cap.)***
- ***Require a life-cycle cost analysis of each energy conservation measure in the proposal.***
- ***Require a local governmental unit that enters into energy savings contracts to report to the State Energy Office.***

CURRENT LAW: An energy conservation measure is an alteration, training, or service that will provide anticipated energy savings with respect to a facility. The financing contracts are known as guaranteed energy savings contracts. Under the contract to implement energy conservation measures, all payments, except obligations on early termination, are to be made over time and energy cost savings are guaranteed to exceed the cost of the contract.

Local governments have had the authority to enter into guaranteed energy savings contract to finance the cost of energy conservation measures since 1994.[3] The General Assembly extended this ability to State agencies in 2002; the law limits the aggregate principal amount payable by the State under these contracts to $100 million.[4] The term of a State guaranteed energy savings contract may not exceed 20 years.

The law provides that a guaranteed energy savings contract is not a pledge of the government's taxing power. The debt is secured by a lien on or a security interest in any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located. It is anticipated that the energy savings will generate enough money to pay the debt service on the contract. Also, the State requires the contractor to guarantee the projected energy savings and repay any contractually guaranteed savings not realized. The guaranteed energy savings contracts provide a means to fund energy conservations related repair and renovation projects without impacting the State's debt capacity.

State agencies that enter into guaranteed energy savings contracts are required to report to the State Energy Office which in turn reports annually to the Joint Legislative Commission on Governmental Operations. State energy conservation measures are subject to inspection and compliance by the State

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[1] As introduced, this bill was identical to H349, as introduced by Reps. Harrison, Samuelson, Bryant, Cotham, which is currently in House Energy and Energy Efficiency, if favorable, Judiciary III.

[2] The PCS also removes the provisions from the original bill that would have imposed a fee on the contractors equal to 1.5% of the cost of the project. The fee revenue was to be used by the State Energy Office to administer the program, including the costs of additional staff support.

[3] GS 160A-20 and GS 143-64.17I.

[4] GS 143-64.17J and Article 8 of Chapter 142.

Construction Office or the local building inspector. The cost of the evaluation of the project and the costs of the necessary building inspections are included in the cost of the contract, and therefore covered as part of the financing costs.

Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. Next, the Council of State must approve the contract by resolution that sets out the maximum maturity, and the maximum interest rates. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 304 makes the following changes to energy savings contracts:

Increase in cap: The cap is increased to $500 million on the amount of the aggregate amount of contracts outstanding. Currently the cap is $100 million on the aggregate amount of total contracts.

Life-cycle analysis: Requires providers to conduct a life-cycle costs analysis of each conservation measure in the proposal. A life-cycle cost analysis considers certain costs of owning and using property over its economic life, including the initial costs, system repair and replacement costs, maintenance costs, operating costs, and salvage value.

Reports: Requires local governments that enter into energy savings contracts to report the term of the contracts to the Energy Office. Currently local governments that enter into energy savings contracts must report the terms of the contract to the Local Government Commission.

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

S304-SMRB-19(CSRBx-23) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 80

Short Title:	Jacksonville Occupancy Tax.	(Local)
Sponsors:	Senator Brown.	
Referred to:	Finance.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF JACKSONVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Jacksonville City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Jacksonville Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The City of Jacksonville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jacksonville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Jacksonville and shall use the remainder for tourism-related expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under

this act, it shall also adopt a resolution creating the Jacksonville Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The Jacksonville City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jacksonville shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jacksonville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, ~~Elizabeth City,~~ Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, High Point, Jacksonville, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

SENATE BILL 80:
Jacksonville Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 80 authorizes the city of Jacksonville to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. The bill conforms to the uniform occupancy tax provisions followed by the House Finance Committee.***

[As introduced, this bill was identical to H30, as introduced by Rep. Grady, which is currently in House Finance.]

CURRENT LAW: Currently, the city of Jacksonville does not have authority to levy a room occupancy tax. Jacksonville is located in Onslow County, which also has authority to levy a 3% occupancy tax. The proceeds of the county tax are deposited in the county's general fund and may only be used to further the development of travel, tourism and conventions in the county.

BILL ANALYSIS: Senate Bill 80 authorizes the City of Jacksonville to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines followed by the House Finance Committee.

UNIFORM OCCUPANCY TAX PROVISIONS	SB 80
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.	Conforms
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.	Conforms
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.	Conforms
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.	Conforms
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.	Conforms

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

S80-SMRE-26(e1) v1 *Trina Griffin, Counsel to Finance Committees, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 215
Stae and Local Government Committee Substitute Adopted 5/12/09

Short Title: Robbins Deannexation. (Local)

Sponsors:

Referred to:

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO DEANNEX TWO DESCRIBED PARCELS FROM THE CORPORATE LIMITS OF THE TOWN OF ROBBINS AND TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF REANNEXATION.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Robbins are reduced by deannexing the following described parcels:

Lying and being in Bensalem Township, Moore County, Robbins, North Carolina, and being more particularly described as follows:

TRACT ONE: Beginning at the center of the intersection of Highways #27 and #705, leading to Robbins, N.C., running thence as Highway #27 South 88 East 263 feet to a point in the center of said highway; thence North 3 East 186.5 feet to an iron stake; then South 81 1/4 West 333 feet to the center of Highway #705; thence as the center of said highway South 20 East 136.5 feet to the beginning, containing 1 acre, more or less.

TRACT TWO: On the north side of Highway No. 27, Beginning at a stake by a pine pointer, and runs thence South 84 West 3.33 chains to a stake; thence South 1 West 57 links to a stake, thence South 80 East 1.43 chains to an iron stake; thence South 3 West 2.84 chains to the center of Highway No. 27; thence with the center of said Highway South 86 East 1.95 chains, thence North 1 East 4.03 chains to the beginning, containing .8 acres, more or less.

For further reference see Deed Book 134, Page 160 in the Moore County Registry.

SECTION 2. This act shall not affect the duty to pay taxes for any prior year and shall not eliminate any liens for taxes for prior years.

SECTION 3. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the Town of Robbins is granted certain contract powers as follows:

(1) The Town of Robbins may, by agreement, limit the circumstances under which that certain property described in Section 1 (the "Property") of this act may be involuntarily annexed by the Town under the General Statutes as they now exist or may be subsequently amended. The Town of Robbins shall not seek to repeal this act upon its approval by the General Assembly. Nothing in this act impairs the right of the General Assembly to annex the property by special local act. That agreement may include, among others, these provisions: that the Town of Robbins provide utility services to the Property at nonresident out-of-town rates; that so long as the Property is not annexed to the Town of Robbins the owner of the Property will pay to the Town an amount equivalent to the property tax that would be paid if the Property were in the city limits of the Town, including any other taxes

normally collected with the property tax, including, but not limited to the Fire District tax and ALS tax; and that the agreement is perpetual and binding on the owner of the Property, the Town, and their successors and assigns, and may be recorded in the Moore County Registry.

(2) Any agreement entered into as provided in subdivision (1) of this section is deemed by this act to be commercial and proprietary in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.

(3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the Board of Commissioners of the Town of Robbins during the full term of such agreement and any extension thereof.

(4) The parties to any agreement entered into as provided in subdivision (1) of this section are authorized by this section to modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

SECTION 4. The Town of Robbins may accept, as consideration for such agreement, "payments in lieu of taxes" and may agree to provide to the Property ongoing response and protection by the Robbins Police Department. The jurisdiction of the Robbins Police Department shall extend to the Property.

SECTION 5. The agreement under subdivision (1) of Section 3 of this act shall apply to the Property described in Section 1 of this act.

SECTION 6. No portion of the Property shall be subject to involuntary annexation or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by the Town of Robbins or any other town or municipality or consolidated government during the term of the agreement referred to in Section 1 of this act, but payments in lieu of taxes do not constitute being subject to the power of municipal taxing authority.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 215:
Robbins Deannexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Blake	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***Senate Bill 215 would deannex two parcels of land from the town limits of Robbins as described in the bill and enter into an agreement for payments in lieu of re-annexation.***

CURRENT LAW: North Carolina law provides for involuntary annexation in some circumstances.

BILL ANALYSIS:

Section 1 of the bill would deannex two tracts of territory, described in the bill, from the town limits of Robbins. Together they consist of about 1.8 acres.

Section 2 of the bill would specify that the deannexation would not affect past tax bills.

Section 3 would empower the Town of Robbins to enter into agreements limiting its power to re-annex involuntarily the deannexed tracts. The bill specifies some of the things the agreement may provide. They could include:

- The town's providing utility services to the people in the tracts at non-resident out-of-town rates.
- Payment of the equivalent of in-town property tax, including other taxes usually collected with it.
- A provision that the agreement is perpetual and binding on the parties.

Section 4 would provide that the town could accept "payments in lieu of taxes" in consideration for the agreement, and may agree to provide ongoing protection by the Robbins Police.

Section 5 would provide that the agreement would apply to the specified two deannexed tracts.

Section 6 would prohibit re-annexation of the tracts during the term of the agreement.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: Robbins is a town of about 1,200 people in northern Moore County.

S215-SMRE-27(e2) v1

William R. Gilkeson, Counsel to Senate State and Local Government Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 479*

Short Title:	Fremont Charter Rewrite.	(Local)
Sponsors:	Senator Rouzer.	
Referred to:	State and Local Government.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF FREMONT.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Fremont is revised and consolidated to read as follows:

"CHARTER OF THE TOWN OF FREMONT.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Sec. 1.1. **Incorporation.** The Town of Fremont in Wayne County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the "Town of Fremont," hereinafter at times referred to as the "Town."

"Sec. 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Fremont specifically by this Charter or upon municipal corporations by general law. The term "general law" is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Wayne County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. **Town Governing Body; Composition.** The Mayor and the Town Board of Aldermen, hereinafter at times referred to as the "Board" shall be the governing body of the Town.

"Sec. 2.2. **Town Board of Aldermen; Composition; Terms of Office.** The Board shall be composed of six members to be elected for terms of four years, or until their successors are elected and qualified.

"Sec. 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years.

"Sec. 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with G.S. 160A-70.

"Sec. 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. **Quorum; Voting Requirements.** Official actions of the Board and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Sec. 2.7. **Qualifications for Office; Compensation; Vacancies.** The qualifications of the Mayor and Board members shall be in accordance with general law. The Mayor and Board members shall receive compensation as they shall from time to time determine. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in the town every four years beginning in 2011 and quadrennially thereafter, and shall be conducted in accordance with the uniform municipal election laws of North Carolina.

"Sec. 3.2. **Mode of Election.** The town shall be divided into six single-member electoral districts and the qualified voters of each district shall elect one board member who resides in the district, for the seat apportioned to that district.

"Sec. 3.3. **Nonpartisan Elections.** Municipal elections shall be conducted according to the nonpartisan plurality election method as provided by G.S. 163-292.

"Sec. 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TAXATION.

"Sec. 4.1. **General Authority to Levy and Collect Taxes.** To raise revenue for defraying expenses incident to the proper government of the Town, the Board may annually levy and collect: (i) a tax on real and personal property and on all other property subject to taxation; (ii) a tax on all businesses, trades, professions, avocations, privileges, and franchises, carried on or enjoyed within the Town; and (iii) any other taxes permitted by general law.

"Sec. 4.2. **Levy, Collection, and Payment of Property Taxes.**

(a) Except as otherwise herein provided, property taxes shall be imposed and collected in the manner provided by general law.

(b) Property taxes shall become due and payable on the date provided by general law. Interest shall be charged for late payment, and discounts may be allowed for prepayment of taxes, in the amounts and during the periods covered by general law.

"Sec. 4.3. **Additional Remedies for Collection of Privilege License Taxes.** In addition to any other civil or criminal remedy available to enforce the collection of privilege license taxes, the Town may employ the remedies of levy upon personal property, attachment and garnishment, in the manner of the subject to the limitations provided in general law.

"Sec. 4.4. **Administration.** The listing and appraisal of property and the levy and collection of property taxes in the Town shall in all respects be governed by the general laws of the State, except as they shall be specifically amended by this Charter.

"ARTICLE V. PUBLIC IMPROVEMENTS.

"Sec. 5.1. **Assessments for Street and Sidewalk Improvements, Petition Unnecessary.**

(a) In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Town may order street improvements and assess the total cost thereof against the abutting property owners, exclusive of the cost incurred at street intersections, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq., without the necessity of a petition, upon the finding by the Board as a fact:

(1) That the street improvement project does not exceed 2,000 linear feet; and

(2) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvements; or

(3) That it is in the public interest to connect two streets, or portions of a street already improved; or

(4) That it is in the public interest to widen a street, or part thereof, which is already improved, provided that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such streets in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

(c) For the purpose of this Article, the term "street improvement" shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq.; provided however, that regardless of the assessment basis or bases employed, the Town may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

(e) In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by G.S. 160A-216 et seq., except those provisions relating to the petition of property owners and the sufficiency thereof.

(f) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of G.S. 160A-216 et seq.

"Sec. 5.2. **Power of Eminent Domain.** The procedures provided in G.S. 136-103 et seq., as specifically authorized by G.S. 136-66.3(c), shall be applicable to the Town in the case of acquisition of lands, easements, privileges, rights-of-way and other interests in real property for streets, sewer lines, storm drains, waterlines, electric power lines, and other utility lines in the exercise of the power of eminent domain. The Town, when seeking to acquire such property or rights or easements therein or thereto, shall have the right and authority, at its option and election, to use the provisions and procedures as authorized and provided in G.S. 136-66(c) and G.S. 136-103 et seq., for any of such purposes without being limited to streets constituting a part of the State highway system; provided, however, that the provisions of this section shall not apply with regard to properties owned by a private condemnor except as permitted by G.S. 40A-5(b).

"ARTICLE VI. NUISANCES.

"Sec. 6.1. **Abatement of Public Health Nuisances.** The Town shall have authority to summarily remove, abate, or remedy everything in the Town limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety pursuant to G.S. 160A-193.

"Sec. 6.2. **Chronic Nuisance Violators.** The Town may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the Town of Fremont gave notice of violation at least

two times under any provision of the public nuisance ordinance. A property owner shall remain a chronic violator until one calendar year after the date of the property owner's last violation.

"Sec. 6.3. **Junked Motor Vehicle.** In applying G.S. 160A-303.2 to the Town, junked motor vehicle means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or removed in the manner in which it was originally intended to move; or

(3) Is more than five years old and appears to be worth less than $500.00."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Fremont and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 244, Private Laws of 1903
Chapter 236, Private Laws of 1913
Chapter 123, Private Laws of 1917
Chapter 203, Private Laws of 1927
Chapter 66, Session Laws of 1957
Chapter 567, Session Laws of 1963
Chapter 113, Session Laws of 1971
Chapter 314, Session Laws of 1981, as to Fremont.

SECTION 4. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

SECTION 5. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 6. All existing ordinances and resolutions of the Town of Fremont and all existing rules or regulations of departments or agencies of the Town of Fremont not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Fremont or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 8. If any part of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 10. This act does not affect the terms of office of the current Mayor and Board of Aldermen of the Town of Fremont.

SECTION 11. This act is effective when it becomes law.

SENATE BILL 479:
Fremont Charter Rewrite

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Rouzer	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: Senate Bill 479[1] would enact a complete rewrite of the Town Charter of Fremont.

[As introduced, this bill was identical to H403[2], as introduced by Rep. Sager, which is currently in House Finance.]

CURRENT LAW: The Charter of the Town of Fremont was last enacted as a whole in 1913. Since that time a string of local acts have been passed to amend the Charter, but none has done a complete rewrite.

BILL ANALYSIS: The bill would rewrite the entire charter. It would provide for a Mayor and 6 Aldermen. The town would be divided into six aldermanic districts, and each Alderman would be elected by the voters of a district. The rewritten charter would not effect the terms of the current Mayor and Aldermen. The Mayor and Aldermen under the new Charter would be elected for the first time in 2011. They would all be elected to 4-year terms.

The Charter also gives the Town the authority to make street improvements it considers to be in the public interest and assess the cost to the abutting property owners. They Town may do that without the property owners having petitioned for the improvements.

EFFECTIVE DATE: When it becomes law. Since the Charter involves town elections, it may not be implemented until the session law has received "preclearance" approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice. Fremont is in Wayne County, which is one of the 40 NC counties covered by Section 5.

BACKGROUND: Fremont is a town in northern Wayne County, near Goldsboro. In the 2000 Census the town's population was 1,463.

S479-SMRE-30(e1) v1

William R. Gilkeson, Counsel to Senate State and Local Government Committee, substantially contributed to this summary.

[1] Senate Bill 479 received a favorable report from Senate State and Local Government Committee on 04-21-2009.
[2] Companion Bill HB 403 received a favorable report from House Local Government I Committee on 04-29-2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 786

Short Title:	University Nonappropriated Capital Projects.	(Public)
Sponsors:	Senators Stevens; and Malone.	
Referred to:	Finance.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENT PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions of The University of North Carolina of the capital improvement projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 4 of this act, or by both, are as follows:

Appalachian State University	
Cone Residence Hall Renovation	12,085,300
Kidd Brewer Stadium Improvements	19,068,000
East Carolina University	
Dining Facilities Improvements	1,400,000
Residence Hall Improvements and Expansions	11,000,000
Elizabeth City State University	
Residence Hall Fire Suppression Sprinkler System Installations	1,115,600
North Carolina A&T State University	
Graduate Engineering Center	4,100,000
North Carolina State University	
West Lot Parking Deck	21,850,000
Centennial Campus Enterprise Services Building	3,600,000
Athletic Facilities Renovations and Expansion	11,500,000

Dining Facilities Improvements	5,000,000
NC State Creamery Building	4,100,000
Carmichael Complex Improvements	7,400,000
The University of North Carolina at Chapel Hill	
Residence Hall Fire Suppression Sprinkler System Installations	7,266,000
Carolina Inn Renovation	10,000,000
Dean Smith Student Activity Center Renovation and Expansion	7,500,000
The University of North Carolina at Charlotte	
Parking Facilities Expansion	5,000,000
Partnership, Outreach, and Research for Accelerated Learning Building	35,000,000
The University of North Carolina at Greensboro	
Guilford and Mary Foust Residence Hall Renovations	4,527,000
The University of North Carolina at Pembroke	
West Hall Replacement	36,331,300
The University of North Carolina at Wilmington	
Dining Facilities Renovations and Expansion	5,000,000
Western Carolina University	
Bookstore Renovation	2,048,300

SECTION 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 4. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Section 2 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 3 of this act.

SECTION 5. With respect to Appalachian State University's Kidd Brewer Stadium Improvements capital project, the institution may accomplish construction, repairs, renovations, acquisition, and financing through arrangements to, from, and with the ASU Foundation, Inc.

SECTION 6. With respect to the University of North Carolina at Pembroke's West Hall Replacement project, the institution may accomplish construction, acquisition, and financing through arrangements to, from, and with The UNCP Foundation, Inc.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 786:
University Nonappropriated Capital Projects

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Stevens	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 786 would authorize the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.***

CURRENT LAW: There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are not payable from tax revenues.

BILL ANALYSIS: Senate Bill 786 would authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods. The projects include academic, research, clinical and administrative space and improvements to student services, residential living, dining, recreation, and athletics facilities. Once approved, a detailed financial plan will be developed in consultation with financial advisors and bond counsel for each project. The plans must be approved by the Chancellor, the Boards of Trustees, the President, and the Board of Governors before construction contracts may be awarded and bonds issued.

The self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds are listed in Section 2 of the bill. The UNC special obligation bond act requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Section 4 of the bill expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Section 2 of the act plus 5%. The additional 5% may be used for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

This year's bill includes 21 capital projects on eleven campuses. The Chancellors and Boards of Trustees for the listed campuses, as well as the President and the Board, have approved these projects. If authorized, construction on the projects is expected to begin before June 30, 2010.

Section 5 authorizes Appalachian State University to construct and finance the expansion and renovation of its multipurpose stadium through lease arrangements to, from, and with ASU Foundation, Inc. Once constructed and approved by state reviewing agencies, the improvements would transfer to the State.

Section 6 authorizes the University of North Carolina at Pembroke to construct and finance its West Hall housing project through lease arrangements to, from, and with The UNCP Foundation, Inc. Once constructed and approved by state reviewing agencies, the improvements would transfer to the State.

S786-SMRB-18(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 786 (First Edition)

SHORT TITLE: University Nonappropriated Capital Projects.

SPONSOR(S): Senators Stevens and Malone

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
EXPENDITURES					
General Fund	**$0**	**$162,996**	**$298,065**	**$303,222**	**$308,559**
POSITIONS (cumulative):		**1.8**	**3.2**	**3.2**	**3.2**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina System

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY:

March 24, 2009

S 786. UNIVERSITY NON-APPROPRIATED CAPITAL PROJECTS. Filed 03/24/09. TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENT PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

Section 1: Authorizes the construction or acquisition of the following capital improvement projects by certain constituent institutions of The University of North Carolina and authorizes their financing with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds or a combination of these funds, but not including funds received from tuition or appropriations from the General Fund.

Section 2: New Projects

Appalachian State University	
Cone Residence Hall Renovation	$12,085,300
Kidd Brewer Stadium Improvements	19,068,000

East Carolina University	
Dining Facilities Improvements	1,400,000
Residence Halls Improvements and Expansion	11,000,000
North Carolina Central University	
Student Facilities Improvements	11,500,00
Elizabeth City State University	
Residence Hall Fire Suppression Sprinkler System Installations	1,115,600
North Carolina A&T State University	
Graduate Engineering Center	4,100,000
North Carolina State University	
West Lot Parking Deck	21,850,000
Centennial Campus Enterprise Services Building	3,600,000
Athletic Facilities Renovations and Expansion	11,500,000
Dining Facilities Improvements	5,000,000
NC State Creamery Building	4,100,000
Carmichael Complex Improvements	7,400,000
The University of North Carolina at Chapel Hill	
Residential Hall Fire Suppression Sprinkler System Installation	7,266,000
Carolina Inn Renovation	10,000,000
Dean Smith Student Activity Center Renovation and Expansion	7,500,000
The University of North Carolina at Charlotte	
Parking Facilities Expansion	5,000,000
Partnership, Outreach, and Research for Accelerated Learning Building	35,000,000
The University of North Carolina at Greensboro	
Guilford and Mary Foust Residence Hall Renovations	4,527,000
The University of North Carolina at Pembroke	
West Hall Replacement	36,331,300
The University of North Carolina at Wilmington	
Dining Facilities Renovations and Expansion	5,000,000
Western Carolina University	
Bookstore Renovation	2,048,300

Section 3: At the request of the Board of Governors of The University of North Carolina, the Director of the Budget may authorize specified changes.

Section 4: Pursuant to G.S. 116D-26, the Board of Governors may, subject to the approval of the Director of the Budget, issue special obligation bonds of the Board of Governors for some projects.

Section 5: With regards to the Appalachian State University Kidd Brewer Stadium Improvements capital project, the institution is permitted to complete the project through an agreement with the ASU Foundation, Inc.

Section 6: With regards to the University of North Carolina at Pembroke West Hall Replacement project the institution is permitted to complete the project through an agreement with the UNCP Foundation, Inc.

ASSUMPTIONS AND METHODOLOGY:

Part I. Self-Liquidating Projects and Planning

(Financial data for these charts was provided by the Division of Finance, University of North Carolina General Administration.)

Chart 1 reports the source of funding, effect of additional debt on students, and operating costs associated with each of the 21 capital improvement projects for a total of $214,891,500. Additional operating cost expenditures have been projected for the first year, and the amount of operating costs supported by the General Fund has been indicated. Operating costs that are supported by the General Fund are associated with buildings that have an academic mission.

Chart 1: Self-Liquidating Capital Improvement Projects

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st year)	General Fund Support of Operating Costs (1st year)
ASU	Cone Residence Hall Renovation	12,085,300	Housing Receipts; 2008 Appropriations		$184,482	
ASU	Kidd Brewer Stadium Improvements	19,068,000	Gifts; Athletic Receipts		403,617	
ECU	Dining Facilities Improvements	1,400,000	Dining Receipts		45,610	
ECU	Residence Halls Improvements and Expansion	11,000,000	Housing Receipts; 2008 Appropriations			
ECSU	Residence Hall Fire Suppression Sprinkler System Installations	1,115,600	Housing Receipts; 2008 Appropriations			
NC A&T	Graduate Engineering Center	4,100,000	Federal Title III Grant		132,054	$132,054
NCSU	West Lot Parking Deck	21,850,000	Parking Receipts		61,272	
NCSU	Centennial Campus Enterprise Services Building	3,600,000	Centennial Campus Receipts		127,237	
NCSU	Athletic Facilities Renovations and Expansion	11,500,000	Student Debt Service Fee; Receipts	$30		

Campus	Project	Amount	Source of Capital Funds	Effect of Debt on Students	Increase in Annual Operating Costs (1st year)	General Fund Support of Operating Costs (1st year)
NCSU	Dining Facilities Improvements	5,000,000	Dining Receipts			
NCSU	NC State Creamery Building	4,100,000	Gifts; Creamery Receipts		183,721	110,233
NCSU	Carmichael Complex Improvements	7,400,000	Student Debt Service Fee	23		
UNC-CH	Residential Hall Fire Suppression Sprinkler System Installation	7,266,000	Housing Receipts; 2008 Appropriations			
UNC-CH	Carolina Inn Renovation	10,000,000	Inn Receipts		57,353	
UNC-CH	Dean Smith Student Activity Center Renovation and Expansion	7,500,000	Athletic Receipts		79,144	52,763
UNCC	Parking Facilities Expansion	5,000,000	Parking Receipts			
UNCC	Partnership, Outreach, and Research for Accelerated Learning Building	35,000,000	Facilities and Administrative Receipts		1,747,676	
UNCG	Guilford and Mary Foust Residence Hall Renovations	4,527,000	Housing Receipts			
UNCP	West Hall Replacement	36,331,300	Housing Receipts		780,160	
UNCW	Dining Facilities Renovations and Expansion	5,000,000	Dining Receipts		115,010	
UNCW	Bookstore Renovation	2,048,300	Bookstore Receipts		101,487	

Total Costs:
Cost of new capital improvement projects: $ 214,891,500

Indebtedness Funding Methods:
Chart 2 summarizes the total debt authority proposed by Senate Bill 786 and the source of funds identified to service the proposed debt (planning projects are not included):

Chart 2: Funding Sources for Full Projects

Parking Receipts	$22,670,000
Debt Service Fees	18,900,000
Housing and Dining Receipts	74,794,300
Facilities and Administrative Receipts	35,000,000
Athletic Receipts	22,500,000
Centennial Campus Receipts	3,600,000
Bookstore and Creamery Receipts	5,648,300
Total	**$ 183,112,600**

Five-year Total General Fund Operating Expenditures
The General Fund's support of operating expenditures has been totaled for the next five fiscal years.

FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
$0	$162,996	$298,065	$303,222	$308,559

The University of North Carolina General Administration provided the first full year's impact to the General Fund for each project. The anticipated recurring General Fund impacts are as follows:

- North Carolina Agricultural and Technical State University Graduate Engineering Center - $132,054
- North Carolina State University Creamery Building - $110,233
- The University of North Carolina at Chapel Hill Dean Smith Student Activity Center Renovation and Expansion - $52,763

The full year's impact was assigned to the fiscal year that the campus is expected to complete construction. The General Fund impact is then inflated according to the Fiscal Research Division Fiscal Note Preparation Manual

SOURCES OF DATA: University of North Carolina General Administration

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Klingler

APPROVED BY:
Marilyn Chism, Director
Fiscal Research Division

DATE: April 22, 2009

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 359
PROPOSED COMMITTEE SUBSTITUTE S359-CSLMx-2 [v.5]

5/19/2009 1:51:52 PM

Short Title: Incorporate Sneads Ferry. (Local)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF SNEADS FERRY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Village of Sneads Ferry is enacted to read:

"CHARTER OF THE VILLAGE OF SNEADS FERRY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Sneads Ferry are a body corporate and politic under the name 'Village of Sneads Ferry.' The Village of Sneads Ferry has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Sneads Ferry are as follows:

BEGINNING at a point where the centerline of Turkey Creek intersects the centerline of the Intracoastal Waterway right-of-way and being the same as shown on a plat recorded in Map Book 10 Page 73 of the Onslow County Registry; thence along the centerline of Turkey Creek in a general Northerly direction to the centerline of NCSR 1529 (commonly known as Turkey Point Road – 60 foot right-of-way); and running thence along the centerline of Turkey Point Road in a general Northwesterly direction where it intersects the centerline of NCSR 1518 (commonly known as Old Folkstone Road – 60 foot right-of-way); thence along the centerline of NCSR 1518 in a general Westerly direction to the centerline of NCSR 1528 (commonly known as Winery Road – 60 foot right-of-way); thence along the centerline of NCSR 1528 in a generally Northerly direction to the centerline of N.C. Highway 172 (100 foot right-of-way); thence along the centerline of N.C. Highway 172 in a general Westerly direction to the centerline of a road (commonly know as Pilchers Branch Road) and recorded as Stone Creek Road – Private and being described as a 60 foot ingress & egress easement as per Deed Book 947 Page 31 and referenced in Map Book 35 Page 81 & Map Book 43 Page 172 of the Onslow County Registry; thence leaving N.C. Highway 172 and running along the most Western line of the property shown in Map Book 43 Page 172 and the Eastern edge of Stone Creek Road in a general Northwesterly direction to a point in the centerline of Indian Grave Branch; thence along the centerline of said branch in a general Southeasterly direction to the centerline of N.C. Highway 210 (100 foot right-of-way) as shown in Map Book 43 Page 172 of the Onslow County Registry; thence along the centerline of N.C. Highway 210 as measured in a general Southeasterly direction to the projected property line of the U.S. Marine Corps property as

shown in Map Book 41 Page 151 of the Onslow County Registry; thence leaving the centerline of N.C. Highway 210 and running along the Southeastern line of the U.S. Marine Corps property as shown in Map Book 45 Page 151 of the Onslow County Registry in a general Northeasterly direction to the run of Everett Creek; thence along the centerline of the run of Everett Creek as measured in a Southeasterly and Northeasterly direction to the centerline of the run of New River; thence along the centerline of the run of New River as measured in a general Southeasterly direction to the centerline of the Intracoastal Waterway; thence along the centerline of the Intracoastal Waterway as measured in a general Southwestern direction to the point and place of beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Village of Sneads Ferry is the Mayor and the Village Council, which shall have six members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2011 provided for by Section 4.2 of this Charter, Scotty J. Everett is appointed Mayor and Robert D. Bryant, Angela B. Edens, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard are appointed council members of the Village of Sneads Ferry, and they shall possess and exercise the powers granted to the Mayor and governing body until their successors are elected or appointed and qualified pursuant to this Charter. Robert D. Bryan shall serve as Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in 2011.

"Section 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council and, except as provided in this section, they shall serve four-year terms. In 2011, the three candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013 and quadrennially thereafter, three members shall be elected to four-year terms. In 2015 and quadrennially thereafter, three members shall be elected to four-year terms. To be eligible for election to the Village Council, an individual must reside in the Village of Sneads Ferry. Vacancies on the Village Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Village shall elect the Mayor. In 2011 and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Village Council, shall advise the Village Council from time to time as to matters involving the Village of Sneads Ferry, and shall have the right to vote as a member of the Village Council on all matters before the Council but shall have no right to break a tie vote in which the Mayor has participated. In the case of a vacancy in the office of Mayor, the remaining members of the Village Council shall choose from their own number a successor for the unexpired term.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Village Council at the organizational meeting after the initial election in 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Village Council, the members of the Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Village Council and shall be considered a member of the Village Council for all purposes.

"Section 3.6. **Compensation of Mayor and Village Council.** The Mayor and members of the Village Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Village who vote on the question in a special referendum.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Village Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held in November, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Village shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Village Attorney.** The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties as required by law or as directed by the Village Council. The Village Attorney shall serve at the pleasure of the Village Council.

"Section 5.3. **Village Clerk.** The Village Council shall appoint a Village Clerk who shall perform duties as required by law or as directed by the Village Council. The Village Clerk shall serve at the pleasure of the Village Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Village Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Village Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2010, the citizens and property in the Village of Sneads Ferry shall be subject to municipal taxes levied for the year beginning July 1, 2010, and for that purpose the Village shall obtain from Onslow County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2010.

"Section 6.3. **Budget.** The Village may adopt a budget ordinance for fiscal year 2010-2011 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2010-2011, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2010.

"Section 6.4. **Ad Valorem Taxes.** The ad valorem tax rate for the Village shall be $0.10/$100.00 valuation until June 30, 2012. After June 30, 2012, the Village Council shall not increase the ad valorem tax rate more than $0.05/$100.00 valuation above the ad valorem tax rate initially established after incorporation of the Village of Sneads Ferry without the vote or consent of a majority of the qualified voters of the Village of Sneads Ferry. The procedures of G.S. 160A-209 shall be followed for any such election.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Village of Sneads Ferry is authorized to adopt such ordinances as the Village Council deems necessary for the governance of the Village.".

SECTION 2. The Onslow County Board of Elections shall conduct an election on May 4, 2010, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Village of Sneads Ferry the question of whether or not the area shall be incorporated as the Village of Sneads Ferry. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The referendum shall be held only if the referendum and the Charter have been approved under section 5 of the Voting Rights Act of

1965. If by March 1, 2010, the conduct of the election and the Charter have not been approved, then the election shall be held on a date set by the Onslow County Board of Elections no later than 120 days after both have been approved.

SECTION 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Village of Sneads Ferry."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Village of Sneads Ferry," Section 1 of this act shall become effective on the date that the Onslow County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. Until Section 1 of this act becomes effective and a Village Attorney is appointed, the members of the Sneads Ferry Incorporation Committee, being Robert D. Bryant, Angela B. Edens, Scotty J. Everett, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard shall be responsible for submitting any information required by G.S. 120-30.9F to the Attorney General of the United States. The committee shall simultaneously submit both the issue of the incorporation referendum and the Charter itself.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 359:
Incorporate Sneads Ferry

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Judy Collier
Analysis of:	PCS to First Edition S359-CSLMx-2		Research Assistant

SUMMARY: ***Senate Bill 359 would incorporate the Village of Sneads Ferry[1]. SB 359 would become effective when it becomes law, subject to a voter referendum and pre-clearance by the U.S. Department of Justice prior to implementation.***

The ad valorem tax rate for the Village is set at $0.10/$100.00 valuation until June 30, 2012. After June 30, 2012, the ad valorem tax rate cannot be increased without consent of the qualified voters of the Village. The Proposed Committee Substitute (PCS) for SB 359 lowers the ad valorem tax rate increases by the Village Council after June 30, 2012 to not more than $0.05/$100.00 valuation. The first edition of the bill allowed $0.10/$100.00 valuation.

CURRENT LAW: Municipalities may be created by the General Assembly and may give such powers and duties to those cities and towns as it may deem advisable. The General Assembly cannot incorporate, as a city or town, any territory meeting any of the following criteria:

- Lying within 1 mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census.
- Lying within 3miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census.
- Lying within 4 miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census.
- Lying within 5 miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census.

Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by a 3/5 vote of all the members of each chamber. Article VII, Section 1, North Carolina Constitution.

Rule 35.1(b) of the House Rules requires that a legislative proposal proposing incorporation must have attached to its bill jacket a report of the Joint Municipal Incorporations Commission prior to a favorable report by a committee of the House. Article 20 of Chapter 120 creates the Joint Municipal Incorporation Commission and sets forth the constitutional and statutory criteria for review of a proposed incorporation.

BILL ANALYSIS: SB 359 would incorporate the Village of Sneads Ferry, to be governed by a six-member town council and a mayor.

EFFECTIVE DATE: SB 359 would become effective when it becomes law, and is subject to voter referendum and pre-clearance by the U.S. Department of Justice prior to implementation.

S359-SMRE-29(CSLMx-2) v3

[1] In its Report to the General Assembly dated February 9, 2009, the Joint Legislative Commission on Municipal Corporations found that the proposed Village of Sneads Ferry meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Village of Sneads Ferry.

SENATE FINANCE COMMITTEE
Wednesday, May 27, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 27, 2009, in Room 544 of the Legislative Office Building. Twenty-four members of the committee were present. Senator Dan Clodfelter presided. Jean Turlington of Clinton, Drew Brack and Thomas Brack of Gastonia, Knox Gibson of Stanley, David Cobb of Asheville, Duncan Dorris of Asheville and Jake Welch of Gastonia served as pages.

H.B. 758 – Apex/Satellite Annexations.

Representative Dollar was recognized to explain the bill which concerns the cap on satellite annexations for the Town of Apex. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 360 – Authorize State Bar to Borrow Funds.

Representative Haire was recognized to explain the bill. The bill authorizes the State Bar to borrow funds, subject to the approval of the Governor and the Council of State. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 367 – Franchise Tax-Overbilling Out of Capital Base.

Senator Jenkins was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Cindy Avrette, a staff attorney with the Research Division was recognized to explain the PCS which removes billings in excess of costs from the franchise tax capital base for taxpayers using the percentage of completion methods of revenue recognition. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 584 – Amend Private Protective Services Act.

Senator Snow was recognized to explain the bill. Senator Hoyle moved to adopt the PCS for discussion and the motion carried. The PCS amends the Private Protective Services Act. Senator Jenkins was recognized to offer an amendment which removed a section regarding armed security guards. Senator Jenkins moved for the adoption of the amendment and the motion carried. Senator Jenkins then moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 674 – Amend Rabies Law.

Senator Purcell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS amends the rabies laws to conform with recommendations for the Centers for Disease Control and the National Association of

State Public Health Veterinarians; and allows stray or feral animals to be euthanized and tested for Rabies after biting a human. Dr. Carl Williams, State Public Health Veterinarian – DHHS, was recognized to speak in favor of the bill and answer questions. Senator Garrou moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:19 PM.

Senator Dan Clodfelter, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 27, 2009

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

FAVORABLE

H.B.(CS #1) **360** Authorize State Bar to Borrow Funds.
Sequential Referral: None
Recommended Referral: None

H.B. **758** Apex/Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

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

S.B. **367** Franchise Tax-Overbilling Out of Capital Base.
Draft Number: 35340
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **584** Amend Private Protective Services Act.
Draft Number: 55410
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **674** Amend Rabies Laws.
Draft Number: 75266
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

Corrected: H758 - Apex/Satellite Annexations and S1007 - Amend Home Inspector Licensure Laws have been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 27, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 360	Authorize State Bar to Borrow Funds.	Representative Blue Representative Daughtry Representative Stam Representative Haire
HB 758	Apex/Satellite Annexations.	Representative Dollar
SB 367	Franchise Tax-Overbilling Out of Capital Base.	Senator Jenkins
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 674	Amend Rabies Laws.	Senator Purcell
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
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SB 674	Amend Rabies Laws.	Senator Purcell

H1587
S1007

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, May 27, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 360	Authorize State Bar to Borrow Funds.	Sen. Blue Rep. Daughtry Rep. Stam Rep. Haire
HB 758	Apex/Satellite Annexations.	Rep. Dollar
SB 367	Franchise Tax-Overbilling Out of Capital Base.	Sen. Jenkins
SB 584	Amend Private Protective Services Act.	Sen. Snow
SB 674	Amend Rabies Laws.	Sen. Purcell
SB 1007	Amend Home Inspector Licensure Laws.	Sen. Hoyle

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Brooks	University Health Systems
[illegible]	NCFB
Bruce R. Rudd	NC-ASHI
Henry Jones	Attorney – Raleigh
Thomas Moore	[illegible]
Rick Zodrow	Realtor
Cady Thomas	NC Assn of REALTORS
Jim Johnson	BSA
Palmer DeCamillis	UNC. IOG
Larry Flannery	President NCAPI
[illegible]	NCPC/FB

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DONALD C. WARNER	DEPT. of INSURANCE - CHAPANOKE RD.
Cam Cowen	BPMHL
BERRY JENKINS	CAROLINAS AGC
WILLIAM DAVIS	BARNHILL CONTRACTING CO
DAVE SIMPSON	Carolinas AGC
Doug Lassiter	NCSTA
Barbara Candler	
Victoria Hawkins	Bone & assoc
John McAlister	NC Chamber
ZEB ALLEY	NMRS
PATRICK BUFFKIN	11
WM POTTER	NCDS & NCPTA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Wohlers	DOI
Rose Williams	NC DOI
Andrew Cagle	DLC + Assoc.
Lu-Ann Chapman	MEIC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
[illegible]	MWC
[illegible]	Biotechnology NC
Pam Meyer	NCLM
EDDIE CALDWELL	NC Sheriffs' Assn.
[illegible]	WCSR
Jim Surbida	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lennie Collins	DOR
AL MILAK	DOR
Bill Fletcher	NC Association of Private Investigators
JS Sicke	NCAPI
Daniel Baum	K+L GATES
David Crawford	AIA NC
Sapna Kalsy	DPH
Chris Holce	DPH.
CARL WILLIAMS	NC DHHS
Will Culpepper	Moore + Van Allen
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 27, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ryan Johnson	Forward Discovery, Durham NC
Jennifer Sasser	Williams Mullen
Ronald Burris	Private Protective Services Board
Charles McDaris	Attorney, Private Protective Services Bd.
Alan Woodard	N.C. Dept. of Revenue
Michael Houser	NC DOR
Ken Lay	NC DOR
Mike Mann	NCBAA
Kathy Hawkins	Progress Energy
Kathryn Westcott	AZEC/NC
Michelle Frazier	MFTS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 360*
Committee Substitute Favorable 3/10/09

Short Title: Authorize State Bar to Borrow Funds. (Public)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BAR TO BORROW FUNDS, SUBJECT TO THE APPROVAL OF THE GOVERNOR AND THE COUNCIL OF STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-17 reads as rewritten:

"**§ 84-17. Government.**

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar referred to in this Chapter as the "Council." The Council shall be composed of a variable number of councilors equal to the number of judicial districts plus 16, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as president. Notwithstanding any other provisions of the law, the North Carolina State Bar may borrow money and may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the borrowing of money and the acquisition, rental, encumbering, leasing and sale of real property. The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the borrowing of money, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments to this Chapter, and all other matters. There shall be one councilor from each judicial district and 16 additional councilors. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district, notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts."

SECTION 2. G.S. 84-23(d) reads as rewritten:

"(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes."

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

HOUSE BILL 360:
Authorize State Bar to Borrow Funds

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 27, 2009
Introduced by:	Reps. Haire, Blue, Daughtry, Stam	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: HB 360 authorizes the North Carolina State Bar to borrow money with the approval of the Governor and the Council of State. Borrowing may be secured or unsecured.

[As introduced, this bill was identical to S286, as introduced by Sen. Rand, which is currently in Senate Finance.]

CURRENT LAW: Article 4 of Chapter 84 of the General Statutes governs the creation and operation of the North Carolina State Bar, an agency of the State. The Bar is responsible for the licensing of attorneys and the regulation of their professional conduct. It has similar authority over certified paralegals. Current powers include the power to acquire and dispose of real and personal property, subject to approval of the Governor and Council of State where real property is concerned. The statute also empowers the Bar to encumber or mortgage real property, but there is no explicit authority to borrow money. Other entities such as counties, cities, airport authorities, hospital authorities, and ABC boards currently have authority to borrow money.

BILL ANALYSIS: The bill amends G.S. 84-17 and 84-23(d) to authorize the borrowing of money by the Bar with the approval of the Governor and Council of State. Borrowing may be secured or unsecured. The employment of necessary professional assistance for borrowing is also authorized.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: The Bar has outgrown its current facility and is in the process of leasing property from the State on which it plans to construct a new building. The Bar has, on two previous occasions, borrowed money with the approval of the Governor and the Council of State for renovations. Arguably, the authority to borrow money is an extension of its current authority to "mortgage property." However, given the current economic climate, the availability of more sophisticated financing arrangements, and the possibility that the Bar may want to borrow money in some manner other than a traditional mortgage, the Bar would like to have the authority explicitly stated in the statute.

Steven Rose, counsel to House judiciary III, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H360-SMTD-72(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 367
PROPOSED COMMITTEE SUBSTITUTE S367-CSRB-28 [v.3]

5/26/2009 7:53:36 PM

Short Title: Franchise Tax-Overbilling Out of Capital Base. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE BILLINGS IN EXCESS OF COSTS FROM THE FRANCHISE TAX CAPITAL BASE FOR TAXPAYERS USING THE PERCENTAGE OF COMPLETION METHOD OF REVENUE RECOGNITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-122(b) is amended by adding a new subdivision in the list of exclusions from surplus and undivided profits to read:

"(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

...

(1a) Billings in excess of costs that are considered a deferred liability under the percentage of completion method of revenue recognition."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2010.

SENATE BILL 367:
Franchise Tax-Overbilling Out of Capital Base

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 26, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S367-CSRB-28		Committee Counsel

SUMMARY: ***Senate Bill 367[1] would exclude from a corporation's franchise tax base billings in excess of costs. The Proposed Committee Substitute changes the effective date so the bill applies to taxable years beginning on or after January 1, 2010. Unlike the income tax, the franchise tax applies to the year in which it is due. Leaving the effective date January 1, 2009, would require the Department to issue refunds for franchise taxes paid in April 2009. The Proposed Committee Substitute also clarifies that the change applies to all billings in excess of costs, as indicated by the title.***

CURRENT LAW: The State imposes a franchise tax on C-corporations and S-corporations. The tax rate is $1.50 per $1,000[2] and is applied to a company's capital stock, surplus, and undivided profits.[3] The term 'surplus' for franchise tax purposes has a broader and more inclusive meaning than the generally accepted accounting definition. G.S. 105-122(b) provides that surplus and undivided profits includes all liabilities, reserves, and deferred credits unless those items are specifically exempt. One of the exemptions from surplus and undivided profits is 'definite and accrued legal liabilities'. The Department of Revenue defines a definite and accrued legal liability as one that meets both of the following conditions:

- The liability is definite in amount, meaning it is exactly determined and not merely accurately estimated.
- The liability will be incurred before the end of the taxable year.

The revenue principle of generally accepted accounting principles requires revenue to be recorded in the period it is earned regardless of when it is billed or when cash is received. In long-term construction contracts, there is often a mismatch between actual billed revenue and earned revenue. Sometimes elements of a contract are billed in advance and sometimes they are delayed. The accounting solution to this problem is the percentage of completion method of revenue recognition. Under this method of accounting, where the costs can be reasonably estimated, revenue is recognized as production takes place. This method of accounting may result in 'billings in excess of costs' or 'cost in excess of billings'. Billings in excess of cost is a balance sheet liability because it represents unearned income. Cost in excess of billings is a balance sheet asset. For purposes of the State's franchise tax, the balance sheet liability of 'billings in excess of cost' is not considered a definite and accrued legal liability because it is based on estimates; therefore, it is included in a corporation's capital base.

BILL ANALYSIS: Senate Bill 367 would exempt billings in excess of costs from surplus and undivided profits, thus excluding them from the franchise tax capital base. Although inherently based upon estimates, billings in excess of costs are exactly determined under the percentage of completion method of revenue recognition.

EFFECTIVE DATE: The bill would become effective for taxable years beginning on or after January 1, 2010.

S367-SMRB-22(CSRB-28) v2

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[1] Senate Bill 367 is identical to House Bill 568, introduced by Rep. Gibson. House Bill 568 is in the House Finance Committee.
[2] The minimum tax is $35.
[3] A corporation's capital base may not be less than 55% of the appraised value of tangible property in NC nor less than its actual investment in tangible property in the State.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 27, 2009

TO: Senator Jenkins

FROM: Barry Boardman
Fiscal Research Division

RE: PCS to S0367v1

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	****See Assumptions and Methodology****				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY: Senate Bill 367v1 would exclude from a corporation's franchise tax base billings in excess of costs. The Proposed Committee Substitute changes the effective date so the bill applies to taxable years beginning on or after January 1, 2010. Unlike the income tax, the franchise tax applies to the year in which it is due. Leaving the effective date January 1, 2009,

could potentially require the Department to issue refunds for franchise taxes paid in April 2009. The Proposed Committee Substitute also clarifies that the change applies to all billings in excess of cost, as indicated by the title.

ASSUMPTIONS AND METHODOLOGY: Senate Bill 367 has the potential to impact general fund revenues. However, according to the Department of Revenue a specific determination was not possible. Currently, the account is either incorrectly included in the liabilities total as definite and accrued, or properly excluded from this amount. Because the exclusion is not specifically reported on the return, it is not possible to quantify the number of taxpayers in compliance with current law or not in compliance. The Proposed Committee Substitute, while changing the effective date and clarifying that the change applies to all billings in excess of cost, does not alter the ability of the Department of Revenue or Fiscal Research to assess the fiscal impact. Therefore, the fiscal impact of the bill remains indeterminable.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 584*

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

S584-ATD-27 [v.1]

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

Date May 27 ,2009

Senator _____

moves to amend the bill on page 1, lines 14 through 27, by deleting the lines and renumbering the sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 584*
Judiciary II Committee Substitute Adopted 4/20/09
PROPOSED COMMITTEE SUBSTITUTE S584-CSTD-44 [v.2]

5/26/2009 4:52:22 PM

Short Title: Amend Private Protective Services Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(b) is amended by adding a new subdivision to read:

"(b) "Private protective services" shall not include any of the following:

...

(17) A person engaged in (i) computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.

...."

SECTION 2. G.S. 74C-3(b)(13) reads as rewritten:

"(b) "Private protective services" shall not include any of the following:

...

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. ~~If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.~~ However, the provisions of this Chapter shall apply if: (i) the employee is an armed security guard who wears, carries, or possesses a firearm in the performance of the employee's duties; or (ii) the person is an armed or unarmed security guard at an establishment that sells alcohol. The term 'establishment' shall include an eating establishment, a private club, or a restaurant as defined in G.S. 18B-1000.

...."

SECTION 3. G.S. 74C-7 reads as rewritten:

"**§ 74C-7. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to

review under G.S. 132-1 until the investigation is complete and a report is presented to the Board. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74C-8(c) reads as rewritten:

"(c) (1) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

(2) For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Director within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless for good cause: (i) the Board, in its discretion, ~~extends this period, for good cause, for a~~ extends the period of time not to exceed three ~~months.~~months; or (ii) following petition by an applicant and a hearing by the Board, the Board extends the period of time not to exceed six months.

(4) The certificate authorizing the business entity to engage in a private protective services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Director, subject to the approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the

Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 74C-8(f) reads as rewritten:

"(f) Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Director shall submit to the Board the application and ~~his~~ the Director's recommendations. Upon completion of the background investigation, the Director may ~~in his discretion~~ issue a temporary license pending approval of the application by the Board at the next regularly scheduled meeting. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services ~~Recovery~~ Education Fund, and certificate of liability insurance."

SECTION 6. G.S. 74C-9(d) reads as rewritten:

"(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of ~~one year.~~two years. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board."

SECTION 7. G.S. 74C-9(e) reads as rewritten:

"(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ~~($150.00);~~($150.00).

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license ~~term;~~term.

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license ~~term;~~term.

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ~~($50.00);~~($50.00) per year of the license term.

(5) A late renewal fee to be paid within 90 days from the date the license, registration, permit, or certification expires in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the ~~license~~ license, registration, permit, or certification has not been renewed on or before the expiration date of the ~~licensee;~~license, registration, permit, or certification.

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ~~($30.00);~~($30.00).

(7) An application fee for a firearm registration permit not to exceed fifty dollars ~~($50.00);~~($50.00).

(8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars ~~($30.00);~~($30.00).

(9) An application fee for certification as a certified trainer not to exceed fifty dollars ~~($50.00);~~($50.00).

(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ~~($25.00);~~($25.00).

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ~~($100.00);~~($100.00).

(12) An unarmed registration transfer fee not to exceed fifteen dollars ~~($15.00);~~($15.00).

(13) A branch office license fee not to exceed fifty dollars ~~($50.00); and~~($50.00) per year of the license term.

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ~~($100.00).~~($100.00) per year of the license term.

(15) A correctable error fee not to exceed one hundred dollars ($100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter."

SECTION 8. G.S. 74C-11(a) reads as rewritten:

"(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

SECTION 9. G.S. 74C-12(a) reads as rewritten:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.

(2) Violated any provision of this Chapter.

(3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(8) Knowingly made any false report to the employer or client for whom information is being obtained.

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person ~~or persons~~ to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding.

(14) Failed to make the required contribution to the Private Protective Services ~~Recovery~~ Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.

(15) Violated the firearm provisions set forth in this Chapter.

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.

(20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative

any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.

(25) ~~Intemperate~~ Demonstrated intemperate habits or ~~lacks~~ a lack of good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.

(26) Advertised or solicited business using a name other than that in which the license was issued.

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).

(29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.

(31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.

(32) Demonstrated a lack of financial responsibility."

SECTION 10. G.S. 74C-12(c) reads as rewritten:

"(c) The following persons may not be issued a ~~license, registration, or permit~~license under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes."

SECTION 11. G.S. 74C-13(a) reads as rewritten:

"(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board."

SECTION 12. G.S. 74C-14 is repealed.

SECTION 13. Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or corporation.**

In the event a company, firm, or corporation licensed under this Chapter transfers ownership, control, or a majority of assets to another person, firm, association, or corporation, the person, firm, association, or corporation acquiring control or ownership shall have the following responsibilities:

(1) Notify the Director of the acquisition or change of ownership or control by registered mail within five business days from the date of the transaction.

(2) Describe the transaction that has occurred by providing the following information:

a. The name and address of the registered agent of the party acquiring control or ownership or otherwise succeeding the licensee.
b. The name and address of the acquiring party, including each individual owner of any interest in the party or, if the party is a corporation, the name and address of each officer of the corporation and member of the board of directors.
c. Any change in location of any branch office.
d. Any change in insurance or bonding limits.

(3) Return to the Director all licenses held by the licensee within five business days from the date of the transaction if the acquiring party does not continue to operate the business under its previous name and license.

(4) Provide to the Director within 60 calendar days from the date of the transaction the following:
a. A list of all registrants or licensees affected by the transaction.
b. Written confirmation of completion of any changes necessary for the acquiring party to comply with the requirements of this Chapter or any applicable rules adopted by the Board on a form approved by the Director."

SECTION 14. G.S. 74C-30 reads as rewritten:

"Article 2.

"Private Protective Services ~~Recovery~~ Education Fund.

"**§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants as deemed appropriate by the Board.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) Repealed by Session Laws 2007-511, s. 10.
(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and
(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from the investments shall be deposited to the credit of the Fund.~~law. The ~~Board~~ Board, in its discretion, may use ~~any and all of the proceeds from the investments or funds that exceed twenty-five thousand dollars ($25,000)~~ the Fund for any of the following purposes:.

(1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of ~~licensees~~ licensees, registrants, and trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 15. G.S. 74C-31, 74C-32, and 74C-33 are repealed.

SECTION 16. This act becomes effective October 1, 2009.

SENATE BILL 584:
Amend Private Protective Services Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 27, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Second Edition S584-CSTD-44		Committee Counsel

SUMMARY: ***Senate Bill 584 makes the following changes to Chapter 74C of the General Statutes, which regulates the private protective services profession:***

- ***Amends an exemption to provide regulation of any security guard working for a business if he or she is armed or is working at an establishment that serves alcohol.***
- ***Provides confidentiality for ongoing investigations of violations by the Attorney General.***
- ***Extends from 3 to 6 months the amount of time a licensed company has to replace a qualifying agent.***
- ***Makes fingerprint background checks optional for renewal applicants.***
- ***Makes the term of a branch office license two years instead of one, clarifies fees that are per year, specifies when a late renewal fee must be paid, and authorizes a reduced fee for applications that are resubmitted for correctable errors.***
- ***Adds four new grounds for which a license may be denied, suspended, or revoked.***
- ***Allows a sworn court official or holder of a company police commission to be registered or permitted.***
- ***Requires registration of a firearm by a licensee within 30 days of employment, and requires the individual to receive training prior to engaging in private protective services.***
- ***Repeals provision allowing use of mace.***
- ***Adds provision setting out requirements for when a licensed business changes ownership.***
- ***Converts the Private Protective Services Recovery Fund to an Education Fund.***

The proposed committee substitute makes a conforming change to the bill to remove a reference to licensed digital forensic examiners. The bill was amended in Judiciary II to remove the requirement for licensure of digital forensic examiners.

BILL ANALYSIS:

Amend proprietary exemption. Under the current law, there is an exemption from licensure for a person who works regularly and exclusively for an employer in connection with the employer's business affairs. The bill excludes from this exemption an armed security guard who carries a firearm, or an armed or unarmed guard at an establishment that serves alcohol. This will require armed security guards and armed or unarmed guards at establishments that serve alcohol to obtain a license.

Confidential investigations. The Attorney General has the authority to investigate violations of Chapter 74C and report to the Board. Records of investigations are public records under G.S. 132-1 since there is no specific exemption. The bill would make these investigations confidential and not subject to the public records law until the investigation is complete and a report is presented to the Board.

Time within which a substitute qualifying agent must be named. A business entity that is licensed by the Board is required to employ a qualifying agent (a person in a management position who is licensed by the Board). If the qualifying agent ceases to serve, the business must obtain a substitute agent within 30 days, but the Board may extend that time to 3 months for good cause. The bill would extend the time within which a substitute qualifying agent must be named to 6 months. A petition by the applicant and a hearing by the Board would be required before the additional 3 month extension would be given.

Background check based on fingerprints. Currently, the Board is required to provide fingerprints to the Department of Justice for background checks of new and renewal license applicants. The bill would require the fingerprint check for new applicants only, and it would be optional for renewals.

License period/fee changes. In 2007, the term for licenses issues by the Board was changed from one year to two years. Because the provision applying to licenses for branch offices is set out in a separate subsection, it was overlooked. The bill amends that provision to make the term of the branch office license two years instead of one. The bill also amends the fee provision to clarify that license fees are per year, and sets a specific time period within which a late renewal fee must be paid (90 days from the date of expiration).

Correctable error fee. The bill creates a new reduced fee for applications that are resubmitted for correctable errors. The Board currently has the authority to charge up to $250 (the regular application fee) for any application that is resubmitted. The bill would provide a reduced fee of up to $100 for an application that is resubmitted for correctable errors.

Grounds for denying, suspending, revoking a license. The bill would add the following new grounds for denying, suspending, or revoking a license:

- Failure to cooperate with the Board during an investigation.
- Failure to make disclosures or provide documents to the Board as required.
- Dereliction of duty or otherwise deceiving, defrauding, or harming the public in the course of professional activities or services.
- Demonstrated lack of financial responsibility.

Persons prohibited from license, registration, permit. Current law prohibits sworn court officials and holders of a company police commission from being licensed, registered, or permitted under Chapter 74C. The bill would allow them to be registered or permitted, but not licensed.

Firearms training and registration requirements. In addition to being licensed, a person who performs private protective services and carries a firearm in the performance of those duties must also be issued a firearm registration permit by the Board. In order to get a firearm registration permit, an applicant must complete training, which includes classroom training and a minimum qualifying score on an approved target course. The bill would require registration of an individual carrying a firearm within 30 days of employment. It would also require that an individual receive training prior to engaging in private protective services activity.

Repeal provision allowing mace. The bill would repeal the provision that authorizes security guards to possess and use mace, as mace is no longer used.

Change of ownership of a licensed business. Chapter 74C does not currently provide requirements for licensed businesses that have a change of ownership or control. The bill adds a new statutory section to Chapter 74C setting out specific requirements for when a licensed business transfers ownership, control, or a majority of assets to another person, firm, association, or corporation. The person or entity acquiring control must:

- Notify the Director of the Board of the change within five business days of the transaction.
- Describe the transaction, including the name and address of the acquiring party and its registered agent, any change in location of a branch office, and any change in insurance or bonding limits.
- Return all licenses within five business days of the transaction if the acquiring party does not continue to operate the business under its previous name and license.
- Within 60 days of the transaction, provide a list of registrants or licensees affected and written confirmation of completion of any required changes.

Convert Private Protective Services Recovery Fund to Education Fund. Under current law, there is a Private Protective Services Recovery Fund, which is intended to be used for the payment of claims of aggrieved parties that have suffered a monetary loss because of acts committed by a licensee under Chapter 74C. New applicants and licensees are charged additional fees to be contributed to the Fund. Money in the Fund is to be invested by the State Treasurer, and the proceeds from the investments or fund in excess of $25,000 may be used for education, training, and research projects to benefit licensees and the industry. The bill would amend the law to make the Fund an education fund only, allowing all of the funds to be used for education, training, and research projects.

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

Kory Goldsmith, counsel to Senate J II, substantially contributed to this summary.

S584-SMTD-70(CSTD-44) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 674
Health Care Committee Substitute Adopted 4/16/09
PROPOSED COMMITTEE SUBSTITUTE S674-CSRBf-27 [v.2]

5/26/2009 9:32:07 PM

Short Title: Amend Rabies Laws. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RABIES LAWS TO CONFORM WITH RECOMMENDATIONS FROM THE CENTERS FOR DISEASE CONTROL AND THE NATIONAL ASSOCIATION OF STATE PUBLIC HEALTH VETERINARIANS AND TO ALLOW STRAY OR FERAL ANIMALS TO BE EUTHANIZED AND TESTED FOR RABIES AFTER BITING A HUMAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-184 reads as rewritten:

"**§ 130A-184. Definitions.**

The following definitions ~~shall~~ apply ~~throughout~~ in this Part:

(1) ~~'Animal Control Officer' means a~~Animal Control Officer. – A city or county employee ~~designated as dog warden, animal control officer, animal control official or other designations that may be used~~ whose responsibility includes animal control.

(2) ~~'Cat' means a~~ Cat. – A domestic ~~feline.~~ feline of the genus and species Felis catus.

(3) ~~'Certified rabies vaccinator' means a~~ Certified rabies vaccinator. – A person appointed and certified to administer rabies vaccine to animals in accordance with this Part.

~~(4) 'Dog' means a~~Dog. -- A domestic ~~canine.~~ canine of the genus, species, and subspecies Canis lupus familiaris.

(4a) Feral. – An animal that is not socialized.

(4b) Ferret. -- A domestic mammal of the genus, species, and subspecies Mustela putorius furo.

(5) ~~'Rabies vaccine' means an~~ Rabies vaccine. – An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.

(6) ~~'State Public Health Veterinarian' means a~~ State Public Heath Veterinarian. – A person appointed by the Secretary to direct the State public health veterinary program.

(6a) Stray. – An animal that meets both of the following conditions:

a. Is beyond the limits of confinement or lost.

b. Is not wearing any tags, microchips, tattoos, or other methods of identification.

(7) ~~'Vaccination' means the~~ Vaccination. – The administration of rabies vaccine by a ~~licensed veterinarian or by a certified rabies vaccinator.~~person authorized to administer it under G.S. 130A-185."

SECTION 2. G.S. 130A-185 reads as rewritten:

"**§ 130A-185. Vaccination ~~of all dogs and cats.~~required.**

(a) Vaccination required. -- The owner of ~~every dog and cat~~ an animal listed in this subsection over four months of age shall have the animal vaccinated against ~~rabies. The time or times of vaccination shall be established by the Commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.~~rabies:

a. Cat.

b. Dog.

c. Ferret.

(b) Vaccination. -- Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. A rabies vaccine may only be administered by one or more of the following:

a. A licensed veterinarian.

b. A registered veterinary technician under the direct supervision of a licensed veterinarian.

c. A certified rabies vaccinator."

SECTION 3. G.S. 130A-187 reads as rewritten:

"**§ 130A-187. County rabies vaccination clinics.**

(a) Local Clinics. -- The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year for the purpose of vaccinating ~~dogs and cats.~~animals required to be vaccinated under this Part. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area.

(b) Fee. – The county board of commissioners may establish a fee to be charged for a rabies vaccination given at a county rabies vaccination clinic. The fee amount may consist of the following:

1. A charge for administering and storing the vaccine, not to exceed ten dollars ($10.00).

2. The actual cost of the rabies vaccine, the vaccination certificate, and the rabies vaccination tag."

SECTION 4. G.S. 130A-188 is repealed.

SECTION 5. G.S. 130A-189 reads as rewritten:

"**§ 130A-189. Rabies vaccination certificates.**

A ~~licensed veterinarian or a certified rabies vaccinator~~ person who administers a rabies vaccine ~~to a dog or cat~~ shall complete a ~~three-copy~~ rabies vaccination certificate. The Commission shall adopt rules specifying the information that must be included on the certificate. ~~The~~An original rabies vaccination certificate shall be given to the owner of ~~each dog or cat~~ the animal that receives the rabies vaccine. ~~One~~A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. ~~The other~~ A copy shall also be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes."

SECTION 6. G.S. 130A-190(a) reads as rewritten:

"(a) Issuance. – A ~~licensed veterinarian or a certified rabies vaccinator~~ person who administers a rabies vaccine ~~to a dog or cat~~ shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." ~~Dogs and~~

~~cats~~Dogs shall wear rabies vaccination tags at all times. ~~However, cats~~ Cats and ferrets must wear rabies vaccination tags unless ~~may be exempted~~ they are exempt from wearing the tags by local ordinance."

SECTION 7. G.S. 130A-192 reads as rewritten:

"**§ 130A-192. ~~Dogs and cats~~ Animals not wearing required rabies vaccination tags.**

The Animal Control Officer shall canvass the county to determine if there are any animals ~~there are any dogs or cats~~ not wearing the required rabies vaccination tag. If ~~a dog or cat~~ an animal required to wear a tag is found not wearing ~~the required tag,~~ one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; or put to death by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association. The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released."

SECTION 8. G.S. 130A-193 reads as rewritten:

"**§ 130A-193. Vaccination and confinement of ~~dogs and cats~~animals brought into this State.**

(a) Vaccination Required. -- ~~A dog or cat~~ An animal brought into this State that is required to be vaccinated under this Part shall immediately be securely confined and shall be vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(b) Exceptions. -- The provisions of subsection (a) shall not apply to:

(1) ~~A dog or cat~~An animal brought into this State for exhibition purposes if the animal is confined and not permitted to run at ~~large; or~~large.

(2) ~~A dog or cat~~An animal brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the ~~dog or cat~~ animal is apparently free from and has not been exposed to rabies and that the ~~dog or cat has received rabies vaccine within the past year.~~animal is currently vaccinated against rabies."

SECTION 9. G.S. 130A-194 reads as rewritten:

"**§ 130A-194. Quarantine of districts infected with rabies.**

An area may be declared under quarantine against rabies by the local health director when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each ~~dog and cat~~animal in the area that is required to be vaccinated under this Part shall be confined on the premises of the owner or in a veterinary ~~hospital. However, dogs or cats~~ hospital unless the animal is on a leash or under the control and in the sight of a responsible ~~adult may be permitted to leave the premises of the owner or the veterinary hospital.~~adult."

SECTION 10. G.S. 130A-195 reads as rewritten:

"**§ 130A-195. Destroying stray dogs and cats in quarantine districts.**

When quarantine has been declared and ~~dogs and cats~~ stray animals continue to run uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the ~~uncontrolled dogs and cats~~stray animals and properly dispose of their bodies."

SECTION 11. G.S. 130A-196 reads as rewritten:

"**§ 130A-196. ~~Confinement~~ Notice and confinement of ~~all~~ biting ~~dogs and cats; notice to local health director; reports by physicians; certain dogs exempt.~~animals.**

(a) Notice. -- When a person has been bitten by ~~a dog or cat,~~ an animal required to be vaccinated under this Part, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event the local health director may authorize the animal be euthanized and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis.

A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age and sex of the person.~~All dogs and cats~~

(b) Confinement. – When an animal required to be vaccinated under this Part ~~that bite~~bites a ~~person~~ person, the animal shall be immediately confined for 10 days in a place designated by the local health director. ~~However, the~~ The local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine ~~his~~ an animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses ~~a dog or cat~~ the animal that has bitten a person refuses to confine the animal as required by this ~~section,~~ subsection, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner. ~~A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the local health director the name, age and sex of that person.~~"

SECTION 12. G.S. 130A-197 reads as rewritten:

"**§ 130A-197. Infected ~~dogs and cats~~ animals to be destroyed; protection of vaccinated ~~dogs and cats.~~animals.**

When the local health director reasonably suspects that ~~a dog or cat~~an animal required to be vaccinated under this Part has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the ~~dog or cat~~animal shall be considered to have been exposed to rabies. ~~A dog or cat~~An animal exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the ~~dog or cat~~animal has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than ~~three weeks~~ 28 days prior to being exposed, and is given a booster dose of rabies vaccine within ~~three~~five days of the exposure. As an alternative to destruction, the ~~dog or cat~~ animal may be quarantined at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director."

SECTION 13. G.S. 130A-198 reads as rewritten:

"**§ 130A-198. Confinement.**

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the local health director or county Animal Control Officer and shall securely confine the animal in a place designated by the local health director. ~~Dogs and cats~~The animal shall be confined for a period of 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian."

SECTION 14. G.S. 130A-199 reads as rewritten:

"**§ 130A-199. Rabid animals to be destroyed; heads to be sent to State Laboratory of Public Health.**

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all ~~dogs and cats~~animals that die during ~~the 10-day~~ a confinement period required by ~~G.S. 130A-196,~~ this Part, shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis."

SECTION 15. This act is effective when it becomes law.

SENATE BILL 674:
Amend Rabies Laws

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 26, 2009
Introduced by:	Sen. Purcell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Second Edition S674-CSRBf-27		Committee Counsel

SUMMARY: Senate Bill 674 makes the following changes to the public health laws related to rabies:

- *It requires the vaccination of domestic ferrets.*
- *It allows a registered veterinary technician to administer a rabies vaccine.*
- *It increases the cap for the administrative fee imposed by local health departments for rabies vaccines.*
- *It directs the Commission for Public Health to adopt rules establishing what information must be included on a rabies vaccination certificate.*
- *It authorizes euthanization of a stray or feral dog, cat, or ferret that has bitten a person.*

The Proposed Committee Substitute increases the cap for the administrative fee, rather than eliminates it, and it lists the animals that must be vaccinated in one place, rather than repeal the list multiple times throughout the Part.

CURRENT LAW: The owner of a dog and cat over four months of age must have the animal vaccinated against rabies.[1] Each county must offer at least one vaccination clinic per year for the purpose of vaccinating dogs and cats.[2] The Administer of the rabies vaccine issues a rabies vaccination tag to the owner of the vaccinated animal. Absent a local ordinance to the contrary, the animal shall wear the tag at all times.[3] Animal Control Officers are directed to canvass their county to determine if there are any dogs or cats not wearing the required rabies vaccination tag.

BILL ANALYSIS: Senate Bill 674 implements the following recommendation of the Centers for Disease Control and the National Association of State Public Health Veterinarians:

- It adds domestic ferret to the animals required to be vaccinated against rabies.
- It defines stray and feral animals and it gives the local health department the authority to euthanize a stray or feral animal that bites someone if an owner cannot be identified within 72 hours. A feral animal is one that is not socialized. A stray animal is one that is beyond the limits of confinement and is not wearing any method of identification.

The bill also does the following:

- It adds registered veterinary technicians to the list of people who may administer a rabies vaccine. The technician may only administer the vaccine under the direct supervision of a licensed veterinarian.
- It increases the cap on the fee a county may impose for a rabies vaccine at a county clinic from $4 to $10. The current cap has been in place since 1983. A private veterinarian typically charges at least $18 for a rabies vaccine.

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

Shawn Parker, Legislative Analyst for Senate Health, substantially contributed to this summary

S674-SMRB-23(CSRBf-27) v2

[1] G.S. 130A-185
[2] G.S. 130A-187
[3] G.S. 130A-190

HOUSE BILL 758

Short Title:	Apex/Satellite Annexations.	(Local)
Sponsors:	Representative Dollar.	
Referred to:	Judiciary II, if favorable, Finance.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF APEX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

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

HOUSE BILL 758:
Apex/Satellite Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 26, 2009
Introduced by:	Rep. Dollar	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 758 is a local bill that would exempt the Town of Apex from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.**

BILL ANALYSIS: House Bill 758 would add the Town of Apex to the list of municipalities for which the fifth requirement stated above has been eliminated. The other municipalities include the following:

Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

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

BACKGROUND: House Bill 758 would allow the Town of Apex to pursue economic development goals that currently exceed the Town's ability to annex and provide municipal services.

H758-SMRE-33(e1) v1

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

SENATE FINANCE COMMITTEE
Wednesday, June 3, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 3, 2009, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator Clark Jenkins presided. Elle Craig, David McCandless, Matt Kearns, Nate Hoggard, Adam Ezell, Jonathan Wimbish, Bret Bledsoe, Emily Scott-Cruz and Seth Toomey served as pages.

Senator Jenkins took a moment to welcome Senator Dan Blue as the newest member of the committee.

H.B. 563 – Delinquent Tax – Deny Building Permit.

Representative Spear was recognized to explain the bill which provides that the Towns of Columbia and Edenton may prohibit the issuance of a building permit to a delinquent taxpayer. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

An Evaluation of North Carolina's Economic Development Incentive Program.

Brent Lane, Director of the UNC Center for Competitive Economies, was recognized. He gave a background of the incentives study and then offered incentives portfolio adjustment recommendations with analysis. A copy of his power point presentation is attached.

S.B. 1073 – Amend Alarm Systems Licensing Act.

Senator Snow was recognized to explain the bill. Senator Purcell moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS amends the North Carolina Alarm Systems Licensing Act and authorizes the North Carolina Alarm Systems Licensing Board to establish a late registration fee. Senator Swindell moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

S.B. 1007 – Amend Home Inspector Licensure Law.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS amends the laws under the North Carolina Home Inspector Licensure Act. Rick Zechini, lobbyist for the NC Association of Realtors, was recognized to speak in favor of the bill and answer questions. Ted Triebel, a public member of the NC Home Inspector Licensure Board, was recognized to speak in opposition to the bill. A copy of his remarks is attached. Bruce Rudd, NC Chapter of American Society of Home Inspectors, was recognized to speak in favor of the bill. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

S.B. 509 – Revenue Laws Technical Changes.

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS makes technical, clarifying, and administrative changes to the tax and related laws. Due to time limits, the members were asked to study the PCS so that it may be taken up at the next meeting. A copy of the PCS and the summary is attached.

The meeting adjourned at 2:15 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, June 3, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 563	Delinquent Tax - Deny Building Permit.	Rep. Spear
SB 509	Rev Laws Tech, Clarifying, & Admin. Changes.	Sen. Hartsell
SB 1007	Amend Home Inspector Licensure Laws.	Sen. Hoyle
SB 1073	Amend Alarm Systems Licensing Act.	Sen. Snow

An Evaluation of North Carolina's Economic Development Incentive Program – Brent Lane, Director, UNC Center for Competitive Economies

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Leann Kelly	Nelson Mullins
Charles McDarris	Alcoholic Systems Licensing Bd.
Kathryn Warren	OLCAFA
Marie Mone	OLCAFA
Rose Chappell	OLCAFA
JOHN SHAW	
Emily Williams	The Policy Group
BRUCE THOMPSON	FARMER FOR
Alicia Otto	~~AAAA~~ MWC
Andrew Cash	DLC / Assoc.
Lewis Ray	MCIC
Barbara Gunnells	NC Bev A
Barbara Carsla	BRC GR
John Goodman	RC Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Allen	US Airways
Rebecca Tinsley	NCACC
[illegible]	NCB
Charlie Smith	NCDVA
Wayne Peedin	NCDVA
DON WARNER	NCHILB
Ted Triebel	NCHILB
Karl Knapp	NCLM
Emily Gallimore	NCBA
John Peterson	NCEDA
[illegible]	JD, AL, PA
John Bowdish	Astra Zeneca

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
April Day	DOR
Lennie Collins	Revenue
Andy Sabol	NC DOR
Ed Strickland	NC DOR
[illegible]	NEACC
Tenisha Jacobs	NC DOJ
M. Bailey	Electri Cities
Will Culpepper	Moore + Van Allen
Doug Hong	NCPCM
Janice Davidson	NC DOR
Donna Oldenburg	NC DOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Haley	DOC
Caroline Hanson	DOC
Penny Griffin	School of Gov
Tammy Bryson	TWC
Allison Roach	NCOMV
David Baker	NCDOR
Rick Zechini	NC Assoc. of Realtors
KIRK BOONE	NC DOR
Lauren Whaley	NC Credit Union League
Morgan Buckley	NCDOR - DOI
Andrew Furuseth	NC DOR - DOT

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 03, 2009

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

FAVORABLE

H.B.(CS #1) **563** Delinquent Tax - Deny Building Permit.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

H563 – Sen. Jones

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, June 04, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1007** Amend Home Inspector Licensure Laws.

Draft Number:	55421
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1073** Amend Alarm Systems Licensing Act.

Draft Number:	55422
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

HOUSE BILL 563
Committee Substitute Favorable 4/13/09

Short Title: Delinquent Tax - Deny Building Permit. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TOWNS OF COLUMBIA AND EDENTON MAY PROHIBIT THE ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies only to the Towns of Columbia and Edenton.

SECTION 2. G.S. 160A-417 is amended by adding a new subsection to read:

"(d) A city may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. The ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes."

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

HOUSE BILL 563:
Delinquent Tax - Deny Building Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 28, 2009
Introduced by:	Rep. Spear	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 563[1] is a local bill that would authorize the Towns of Columbia and Edenton to prohibit the issuance of a building permit to a delinquent taxpayer.***

CURRENT LAW: Both the counties and municipalities have statutory authority governing the issuance of permits within their jurisdiction.[2] In 2005, local legislation was enacted amending the county statute to authorize certain counties to prohibit the issuance of a building permit to a person who owes delinquent property taxes on property owned by the person. The 2005 legislation applied only to Greene, Lenoir, Iredell, Wayne, and Yadkin Counties. In 2006, Davie and Lincoln Counties were given authority. During the 2009 Session, House Bill 103 (= SB 79[3]), giving Alexander, Anson, Catawba, Chowan, and Tyrell Counties this authority, has passed the House and is in Senate Finance. House Bill 1000, adding Alleghany and Surry Counties, has also passed the House and is in Senate Finance.

The current statutory authority reads as follows:

> G.S. 153A-357(c) – A county may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes.

BILL ANALYSIS: House Bill 563 would amend G.S. 160A-417, governing a municipality's authority to issue a permit, by adding language to authorize the Towns of Columbia and Edenton to enact an ordinance to prohibit the issuance of a building permit to a delinquent taxpayer. The ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes. The Town of Columbia is in Tyrrell County and the Town of Edenton is in Chowan County.

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

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[1] HB 563 received a favorable report to committee substitute from House Local Government II Committee on 04/13/2009 and a favorable report from House Finance Committee on 04/29/2009.

[2] G.S. 153A-357(Counties) and G.S. 160A-417(Municipalities) set out almost identical language governing the issuance of permits within the jurisdiction of counties and municipalities.

[3] SB 79 is in House Finance.

§ 160A-417. Permits.

(a) No person shall commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor.

H563-SMRE-34(e2) v2

Martha Walston, Counsel to House Finance Committee, substantially contributed to this summary.

An Evaluation of North Carolina's Economic Development Incentive Programs

UNC Economic Incentives Analysis Findings

June 3 2009

Brent Lane, Director

UNC Center for Competitive Economies (C^3E)

Background

Joint Select Committee
On Economic Development Incentives

- Created mid 2007 in wake of prominent incentive deals: Google, Goodyear/Firestone
- Hired C^3E in January 2008 to examine incentives outcomes and recommend changes
- Multi-institutional approach utilizing colleagues from other UNC, NCSU and ECU

Incentive Portfolio Adjustment Recommendations

- Expand JDIG and One NC programs with increased amounts targeted to distressed counties
- Eliminate Article 3J statutory credits effective 2010
- Retain Research and Development Tax Credit
- Reduce corporate tax rate to competitive neutral rate
- Increase economic development research and marketing budgets for proactive targeting of growth firms
- Institute legislative oversight function for economic development programs

Key Legislative Questions

How have incentives been used?

Which incentives achieve the greatest return?

- Quality Job Creation
- Distressed Areas Benefit
- NC Competitiveness

Are there changes and/or alternatives that better achieve economic priorities?

NC Economic Incentive Types

Statutory Incentives

- Tax credits to qualifying businesses for job creation, training and investment

Lee Act and Article 3J

Discretionary Incentives

- Cash grants to new and expanding businesses for job creation and/or retention
- Job Development Investment Grant (JDIG)
- One North Carolina Fund

NC Incentives Portfolio

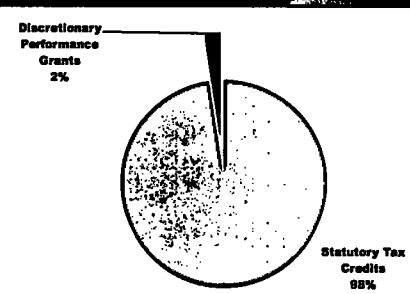
1996 - 2006: $2 billion in economic incentives

5,000+ incented companies form a "portfolio" of investment strategies

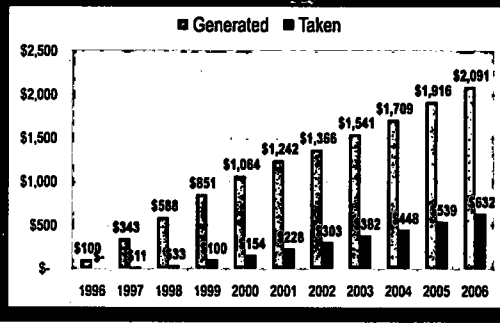
- Pre/post incentive quarterly employment and wage history for each incented firm (250,000 data points)
- Surveys/Case studies of incented firms

Which incentives /companies best achieve NC's economic development priorities?

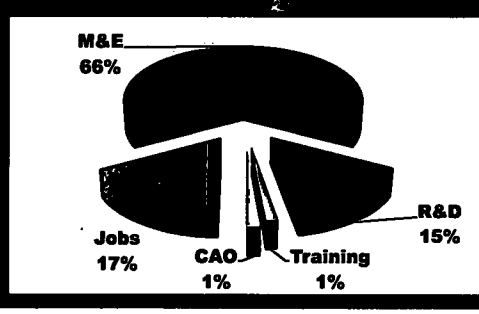
Incentive Portfolio Allocation



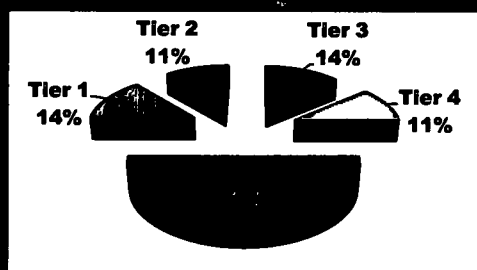
Lee Act "Costs" Have Exceeded $2 Billion



Lee Credits 1996-06 = $2.1 Billion



All Lee Credits - 2002-06 $875 Million



Incentives Have Limited Effect on Corporate Locations

- National surveys indicate incentives are relatively low in importance in location decisions
- **Site Selection** magazine (2008) survey of corporate executives ranked incentives eighth
- UNC survey of NC incented and non-incented ranked incentives 12th and 13th respectively
- Incentives do not compensate for inadequate workforce or infrastructure

Incentives are Most Persuasive When ...

- Other location factors are relatively equal
- Prospects are highly mobile (and more are)
- Tailored to companies' specific priorities
- Benefits are front-loaded (cash > credits)
- Combined with other assistance
- Before the auction starts – "proactivity reward"

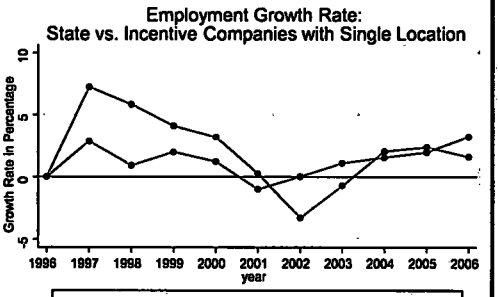
Incentives Have The Greatest Economic Benefit When...

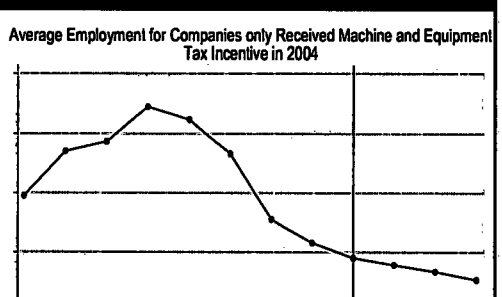
- Company employs local residents, minimizing new public service cost
- Company has high catalytic effect on local economy – "cluster fit"
- Company in growth mode – "new job upside"
- Company is a headquarters in an export industry – "wealth creation"
- Factors describe "targets of opportunity"

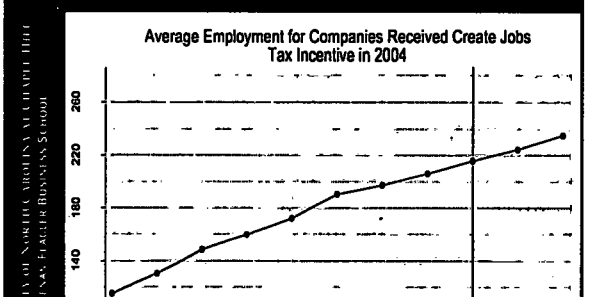
Updating NC's Incentive Portfolio

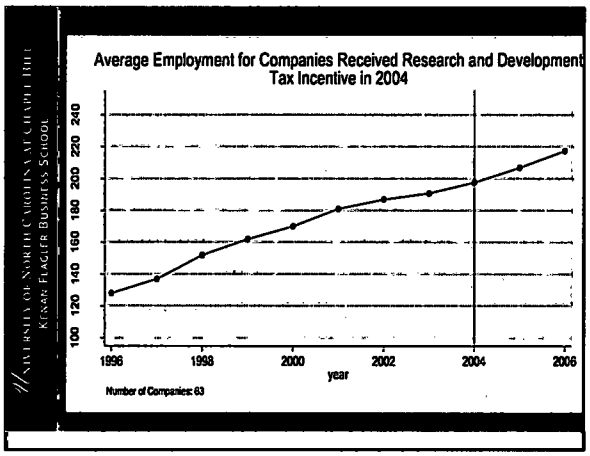
- Current incentive portfolio relies too much on tax credits that are less effective than in 1990s
- Few tax credit incented firms show job growth – most have same or fewer jobs after tax credits
- Most tax credits are for investment - strongly associated with job loss
- Even job creation tax credits show weak effect
- R&D credits best correlated with later job growth

The Carolina Center for Competitive Economies (C3E) Kenan Institute for Private Enterprise









Current Economy Favors Discretionary Incentives

Discretionary incentive programs have flexibility to address more current market priorities

- Tax credits require profits to use
- Discretionary incentives reduce capital/credit requirements
- Performance based incentives offer better accountability and enforcement
- Greater utility for strategic, proactive targeting

The Carolina Center for Competitive Economies (C3E) Kenan Institute for Private Enterprise

Incentive Portfolio Adjustment Recommendations

- Retain Research and Development Tax Credit
- Eliminate Article 3J statutory credits (scheduled to "sunset" in 2011) effective 2010
- Expand JDIG and One NC programs with increased amounts targeted to distressed counties
- Increase economic development research and marketing budgets for proactive targeting
- Institute legislative oversight function for economic development programs

Incentive Portfolio Adjustment Recommendations

- Expand JDIG/One NC with increased amounts targeted to distressed counties
- Eliminate Article 3J tax credits effective 2010
- Retain Research and Development Tax Credit
- Reduce corporate taxes to competitive neutral rate
- Increase research and marketing budgets for proactive targeting of growth firms
- Institute legislative oversight function for economic development programs

Incentive "Targets of Opportunity"

Growth stage HQs fitting regional industry clusters

- Est'd firms with upside employment potential
- Proven rural location and workforce affinities
- Identify and exploit owners' "idiosyncratic externalities"
- Capture synergies in tourism/development marketing

NC Corporate Tax Rate

- UNC survey found executives preferred lower tax rate to selective tax incentives
- Rate reduction positive effect on more firms
- Reallocating incentives portfolio can support corporate tax rate reduction
- Reducing current 6.9% rate to competitive neutral rate of 6.5%

NC Corporate Tax Rate

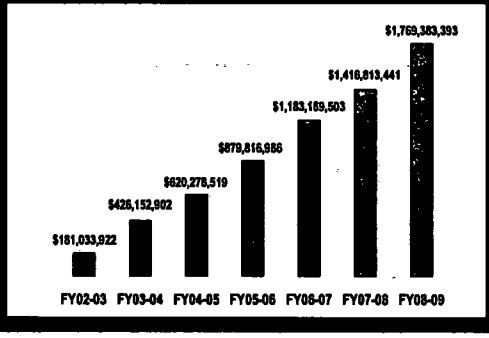
North Carolina	6.9%
Alabama	6.5%
Tennessee	6.5%
Georgia	6.0%
Virginia	6.0%
Florida	5.5%
South Carolina	5.0%

Legislative Oversight Needed

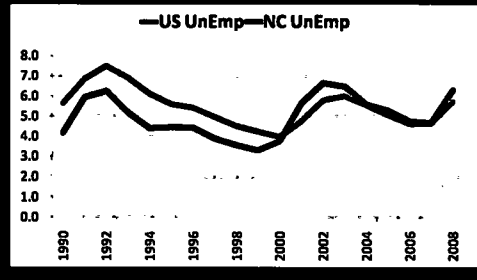
Institute legislative oversight for economic development

- Legislature funds economic development through many programs
- $1.77 Billion between FY02-03 and FY08-09
- Only $177,000 spent on oversight through Economic Development Board
- Program success may not equal NC success

NC Economic Development Spending (cumulative)

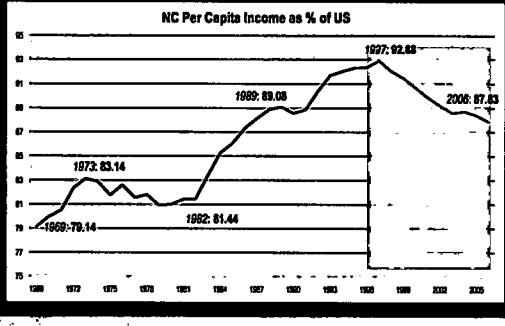


NC Unemployment 1990-2008



Declining Relative Per Capita Income

From 93% of US in 1997 to 87% in 2007



Legislative Oversight Function

Regular and informed assessment of NC economic goals achievement

- Updated state and regional economic data
- Defined NC economic goals and measures
- Alignment of program missions and state policies with strategic economic objectives
- Assessment of economic goals progress
- Direct legislative leadership and commitment

Economic Developers Feedback on Recommendations

- Five regional meetings with economic developers
- Meeting with presidents of regional partnerships
- 27 counties and 7 regions represented
- Presented study findings and recommendations
- Solicited feedback on incentive changes

Discretionary Incentive Feedback

JDIG

- Supported expansion to serve distressed counties
- Revise criteria to allow JDIG to be used for smaller projects in distressed counties
- Sought earlier and clearer incentive amount commitments

Discretionary Incentive Feedback

One NC Fund

- Viewed as most applicable of incentives
- Enthusiasm for program increase
- Favored reduction/elimination of the local match due to local vs. NC revenue mismatch
- Dissatisfaction with communications between local and Commerce developers

Tax Credit Elimination

Support for retention not uniform

- While often ineffective, credits can be influential in developer-led deals
- Economic value clearest in relocations
- Politically valuable for existing firms
- "Bait and switch" backlash
- Statutory nature has marketing "check list"
- Formal application process would enhance performance measurement

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1073
Commerce Committee Substitute Adopted 5/19/09
PROPOSED COMMITTEE SUBSTITUTE S1073-CSTDf-49 [v.2]

6/1/2009 2:42:27 PM

Short Title: Amend Alarm Systems Licensing Act. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA ALARM SYSTEMS LICENSING ACT AND AUTHORIZING THE NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD TO ESTABLISH A LATE REGISTRATION FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74D-2 reads as rewritten:

"**§ 74D-2. Licenses required.**

(a) No person, firm, association, corporation, or department or division of a firm, association or corporation, shall engage in or hold itself out as engaging in an alarm systems business without first being licensed in accordance with this Chapter. For purposes of this Chapter an "alarm systems business" is defined as any person, firm, association or corporation ~~which~~ that does any of the following:

(1) ~~sells~~ Sells or attempts to sell an alarm system device by engaging in a personal solicitation at a residence or business ~~when combined with personal inspection of the interior of the residence or business~~ to ~~advise~~ advise, design, or consult on specific types and specific locations of alarm system ~~devices,~~devices.

(2) ~~installs,~~Installs, services, ~~monitors~~ monitors, or responds to electrical, electronic or mechanical alarm signal devices, burglar alarms, ~~television cameras or still cameras~~monitored or recorded access control, or cameras used to detect burglary, breaking or entering, intrusion, shoplifting, pilferage, ~~or theft.~~theft, or other unauthorized or illegal activity.

A department or division of a firm, association or corporation may be separately licensed under this Chapter if the distinct department or division, as opposed to the firm, association or corporation as a whole, engages in an alarm systems business. Such a department or division shall ensure strict confidentiality of private security information, and the private security information of the department or division must, at a minimum, be physically separated from other premises of the firm, association or corporation.

(b) Repealed by Session Laws 1989, c. 730, s. 1.

(c) (1) No business entity shall do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board.

Provided, however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice or demand required by or permitted by law to be served upon the business entity by the Alarm Systems Licensing Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a business entity in any other manner or hereafter permitted by law.

(2) For the purposes of this Chapter, a "qualifying agent" means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the board.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the board in writing within 10 working days. The business entity must obtain a substitute qualifying agent within ~~30~~ 90 days after the original qualifying agent ceases to serve as qualifying ~~agent unless the board, in its discretion, and upon written request of the business entity, extends this period for good cause for a period of time not to exceed three months.~~agent.

(4) The license certificate shall list the name of ~~at least one designated~~the qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without the prior approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Alarm Systems Licensing Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Alarm Systems Licensing Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~ a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(d) Upon receipt of an application, the board shall cause a background investigation to be made during which the applicant shall be required to show that he meets all the following requirements and qualifications prerequisite to obtaining a license:

(1) That the applicant is at least 18 years of age;

(2) That the applicant is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury;

(3) That the applicant has the necessary training, qualifications and experience to be licensed.

(e) The ~~board~~ Board may require the applicant to demonstrate ~~his~~ the applicant's qualifications by ~~oral or written examination, or both.~~examination.

(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

SECTION 2. G.S. 74D-3(1) reads as rewritten:

"The provisions of this Chapter shall not apply to:

(1) A person, firm, association or corporation which sells or manufactures alarm systems, unless such persons, firm, association or corporation makes personal ~~inspections of interiors of residences or businesses~~ solicitations at a residence or business to ~~advise~~ advise, design, or consult on specific types and specific locations of alarm system devices, installs, services, monitors or responds to alarm systems at or from a protected premises or a premises to be protected and thereby obtains knowledge of specific application or location of the alarm ~~system;~~system. A person licensed under this Chapter may hire a consultant to troubleshoot a location or installation for a period of time not to exceed 48 hours in a one-month period if the licensee submits a report to the Board within 30 days from the date of the consultation designating the consultant as a temporary consultant;"

SECTION 3. G.S. 74D-5.2 reads as rewritten:

"**§ 74D-5.2. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1 until the investigation is complete and a report is presented to the Board. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74D-7 reads as rewritten:

"**§ 74D-7. Form of license; term; assignability; renewal; posting; branch offices; fees.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee;
(2) The name under which the licensee is to operate; and
(3) The number and expiration date of the license.

(b) The license shall be issued for a term of two years. Each license must be renewed before expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this Chapter is not assignable.

(c) No licensee shall engage in any business regulated by this Chapter under a name other than the licensee name or names which appear on the certificate issued by the Board.

(d) Any branch office of an alarm systems business shall obtain a branch office certificate. A separate certificate stating the location and licensed qualifying agent shall be posted at all times in a conspicuous place in each branch office. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices. All licensees of a branch office shall notify the Board in ~~writing, within 10 working days after~~writing before the establishment, closing, or changing of the location of any branch office. A licensed qualifying agent may be responsible for more than one branch office of an alarm systems business with the prior approval of the Board. Temporary approval may be granted by the Director, upon application of the qualifying agent, for a period of time not to exceed 10 working days after the adjournment of the next regularly scheduled meeting of the Board unless the Board determines that the application should be denied.

(e) The Board may charge fees as follows:
(1) A nonrefundable initial license application fee in an amount not to exceed one hundred fifty dollars ($150.00).
(2) A new or renewal license fee in an amount not to exceed five hundred dollars ($500.00).
(3) A late license renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the license.
(4) A new or renewal registration fee in an amount not to exceed fifty dollars ($50.00) plus any fees charged to the board for background checks by the State Bureau of Investigation.
(5) A fee for reregistration of an employee who changes employment to another licensee, not to exceed ten dollars ($10.00).
(6) A branch office certificate fee not to exceed one hundred fifty dollars ($150.00).
(7) A fee not to exceed fifty dollars ($50.00) for each reconsideration of a license or registration permit that has been filed or returned to the applicant for correctable errors.
(8) A late registration fee, to be paid in addition to the registration renewal fee, not to exceed twenty dollars ($20.00) for an application submitted no more than 30 days after the expiration of the registration permit. A registration application submitted more than 30 days after the registration has expired shall be registered as a new applicant.

All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering this Chapter."

SECTION 5. G.S. 74D-8(a) reads as rewritten:

"(a) (1) All licensees of an alarm systems business shall register with the Board within ~~20~~30 days after the employment begins, all of the licensee's employees that are within the State, unless in the discretion of the Director, the time period is extended for good cause. To register an employee, a licensee shall submit to the Board as to the employee: set(s) of classifiable

fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records ~~obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.~~as deemed appropriate by the Board.

(2) Except during the period allowed for registration in subdivision (a)(1) of this section, no alarm systems business may employ any employee unless the employee's registration has been approved by the Board as set forth in this section."

SECTION 6. G.S. 74D-10(a) reads as rewritten:

"(a) The Board may, after notice and an opportunity for hearing, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

(1) Made any false statement or given any false information in connection with any application for a license or registration, or for the renewal or reinstatement of a license or ~~registration;~~registration.

(2) Violated any provision of this ~~Chapter;~~Chapter.

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this ~~Chapter;~~Chapter.

(4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous ~~weapon;~~weapon.

(5) Failed to correct business practices or procedures that have resulted in a prior reprimand by the ~~Board;~~Board.

(6) Impersonated or permitted or aided and abetted any other person to impersonate a law-enforcement officer of the United States, this State, or any of its political ~~subdivisions;~~subdivisions.

(7) Engaged in or permitted any employee to engage in any alarm systems business when not lawfully in possession of a valid license issued under the provisions of this ~~Chapter;~~Chapter.

(8) Committed an unlawful breaking or entering, assault, battery, or ~~kidnapping;~~kidnapping.

(9) Committed any other act which is a ground for the denial of an application for a license or registration under this ~~Chapter;~~Chapter.

(10) ~~Failure~~ Failed to maintain the certificate of liability required by this ~~Chapter;~~Chapter.

(11) Any judgment of incompetency by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or commitment to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3(21), by a court having jurisdiction under Article 5 of Chapter 122C of the General ~~Statutes;~~Statutes.

(12) Accepted payment in advance for services not performed within a reasonable time ~~period;~~period.

(13) A lack of temperate habits or ~~of~~ good moral character. The acts that are prima facie evidence of lack of temperate habits or ~~of~~ good moral character under G.S. 74D-6(3) are prima facie evidence of the same under this subdivision.

(14) Been previously denied a license or registration under this Chapter or previously had a license or registration revoked for cause.

(15) Engaged in the alarm systems profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(16) Advertised or solicited business using a name other than that in which a license was issued.

(17) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(18) Failed to properly make any disclosure or provide documents or information required by this Chapter or by the Board.

(19) Engaged in conduct that constitutes dereliction of duty or otherwise deceives, defrauds, or harms the public in the course of professional activities or services.

(20) Demonstrated a lack of financial responsibility."

SECTION 7. G.S. 74D-11 is amended by adding a new subsection to read:

"(f) The sale, installation, or service of an alarm system by an unlicensed or unregistered person shall constitute a threat to the public safety, and any contract for the sale, installation, or service of an alarm system shall be deemed void and unenforceable."

SECTION 8. Article 1 of Chapter 74D of the General Statutes is amended by adding the following new section to read:

"**§ 74D-14. Proof of licensure to maintain or commence action.**

An alarm systems business may not maintain any action in any court of the State for the collection of compensation for performing an act for which a license or registration is required by this Chapter without alleging and proving that the alarm systems business is appropriately licensed and the employee or agent of the alarm systems business is appropriately registered upon entering into a contract with the consumer. An alarm systems installation, maintenance, or monitoring contract entered into with a consumer shall be void if the consumer confirms through records maintained by the Board that the alarm systems business is not properly licensed or the consumer establishes through records maintained by the Board that the person enticing the consumer to enter into the contract is not properly registered by the Board. The sale, installation, or service of an alarm system by an unlicensed or unregistered employee shall be deemed an unfair and deceptive trade practice and shall be actionable under Chapter 75 of the General Statutes."

SECTION 9. The title of Article 2 of Chapter 74D of the General Statutes reads as rewritten:

"Article 2.

Alarm Systems ~~Recovery~~ Education Fund."

SECTION 10. G.S. 74D-30 reads as rewritten:

"**§ 74D-30. Alarm Systems ~~Recovery~~ Education Fund created; payment to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Alarm Systems ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) On July 1, 1985, the Board shall charge every licensee on that date a fee of fifty dollars ($50.00);

(2) The Board shall charge each new applicant for a license fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license on July 1, 1985; and

(3) The Board is authorized to charge each licensee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from such investments shall be deposited to the credit of the Fund.~~law. The Board in its discretion, may use ~~any and all of the proceeds from such investments~~the Fund for any of the following purposes:

(1) To advance education and research in the alarm systems field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the industry;

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees, and

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the alarm systems field in North Carolina."

SECTION 11. G.S. 74D-31, 74D-32, and 74D-33 are repealed.

SECTION 12. This act becomes effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date.

SENATE BILL 1073:
Amend Alarm Systems Licensing Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 3, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S1073-CSTDf-49		

SUMMARY: ***Senate Bill 1073 makes various amendments to the Alarm Systems Licensing Act, including authorizing a late registration fee and changing the Alarm Systems Recovery Fund to the Alarm Systems Education Fund.***

The PCS to Senate Bill 1073 makes a technical change to conform language in this bill to a similar provision in SB 584: Amend Private Protective Services Act. SB 584 was given a favorable report by the Senate Finance Committee on May 27, 2009.

CURRENT LAW:

The Alarm Systems Licensing Act governs the licensing and registration of all persons engaged in the alarm systems business. The Board examines applicants, issues and renews licenses and registrations, disciplines licensees and registrants and is endowed with such other powers as are necessary to implement the Act. The Board is housed within the Department of Justice and staffed by Department employees. The Attorney General is an ex officio member of the Board and is authorized to appoint the Director. Any person who knowingly violates the Act or a rule of the Board is guilty of a Class 1 misdemeanor. In addition, the Board is authorized to assess a civil penalty of up to $2,000.00 against a licensee or registrant for violation of the Act, in lieu of revoking or suspending the license or registration.

BILL ANALYSIS: Senate Bill 1073 makes several changes to the Alarm Systems Licensing Act, including:

Section 1: Amends the section of the Act relating to who is required to be licensed under the Act by making the following changes:

- Amends the definition of the term "alarm system business" by removing the provision that a person selling alarm system devices must make a personal inspection of the interior of the residence or business to advise, design, or consult with the customer.
- Extends from 30 to 90 days the time within which the business must identify a new qualifying agent when the original qualifying agent ceases to serve.
- Clarifies that the Board may request a criminal record check from the Department of Justice for a renewal applicant based on the applicant's fingerprints in accordance with policy adopted by the Board.

Section 2: Amends the section of the Act relating to exemptions. This section authorizes a licensee to hire an unlicensed consultant to troubleshoot in a specific location for a period of up to 48 hours within a one-month period. The licensee must submit a report on this activity to the Board within 30 days of the consultation.

Section 3: Clarifies that an investigation of a complaint under this Act is deemed confidential and not subject to the Public Records Law until released to the Board upon its completion. However, the report can be released to the licensee before being presented to the Board.

Section 4: Provides that a licensee must notify the Board before making changes to a branch office.

This section also authorizes the Board to charge a late registration fee of up to $20.00 for an application submitted no more than 30 days after the expiration of the registration. After 30 days, the applicant must be registered as a new applicant.

Section 5: Extends from 20 to 30 days the time within which a licensee must register a new employee. In order to register the employee, the licensee must submit (i) the applicant's fingerprints, (ii) a recent color photograph of the applicant, (iii) and statements of any criminal records deemed appropriate by the Board.

Section 6: Expands the list of activities for which the Board may take disciplinary action to include:

- Having previously been denied or had revoked a license or registration under the Act.
- Engaging in the alarm system business under a different name than appears on the license.
- Advertising or soliciting business under a different name than appears on the license.
- Failing or refusing to cooperate with the Board during an investigation of a complaint.
- Failing to disclose information or provide documents required by the Act or the Board.
- Engaging in conduct that constitutes a dereliction of duty or deceives, defrauds, or harms the public in the course of providing professional services.
- Demonstrating a lack of financial responsibility.

Section 7: Amends the provision relating to enforcement of the Act by adding a provision that a contract for sale, installation, or service of an alarm system entered into by an unlicensed or unregistered person is a threat to public safety, and the contract shall be deemed void and unenforceable.

Section 8: Adds a new section to the law requiring that a licensee must be able to prove that the business' license is valid and that the employee or agent is properly registered in order to commence or maintain an action to collect compensation. This provision also makes it an unfair and deceptive trade practice to engage in the alarm systems business without a license or registration.

Section 9: Amends the title of Article 2A to the "Alarm Systems Education Fund".

Section 10: Amends Article 2 of the Act to change the Alarm Systems Recovery Fund to the Alarm Systems Education Fund. Since 1985, the Board has administered a fund for the payment of claims by a person who has suffered monetary loss as a result of the actions of a licensee. The Board was authorized to charge licensees a $50 fee to maintain the fund at the level of at least $100,000. This section changes the purpose of the fund to provide exclusively for the education of licensees and registrants and lowers the maintenance level from $100,000 to $25,000.

Section 11: Repeals sections of Article 2 which define the procedure for the Board to determine claims on the fund and to make payments where appropriate.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date.

Karen Cochrane-Brown, counsel to Senate Commerce, substantially contributed to this summary.

S1073-SMTD-82(CSTDf-49) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 2, 2009

TO: Senator Snow

FROM: Marjorie Rutherford
Fiscal Research Division

RE: Senate Bill 1073 (Second Edition)

FISCAL IMPACT ($)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
NC Alarm Systems Licensing Board	**$600.00**	**$600.00**	**$600.00**	**$600.00**	**$600.00**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Alarm Systems Licensing Board

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:
Senate Bill 1073 makes several changes to the Alarm Systems Licensing Act, including:

Section 1. - Amends the definition of the term "alarm system business" by removing the provision that a person selling alarm system devices must make a personal inspection of the interior of the residence or business to advise, design, or consult with the customer;

This section extends from 30 to 90 days the time within which the business must identify a new qualifying agent when the original qualifying agent ceases to serve; and

This section also clarifies that the Board may request a criminal record check from the Department of Justice for a renewal applicant based on the applicant's fingerprints in accordance with policy adopted by the Board.

Section 2. - Amends the section of the Act relating to exemptions. This section authorizes a licensee to hire an unlicensed consultant to troubleshoot in a specific location for a period of up to 48 hours within a one-month period. The licensee must submit a report on this activity to the Board within 30 days of the consultation.

Section 3. - Clarifies that an investigation of a complaint under this Act is deemed confidential and not subject to the Public Records Law. Once the investigation is complete the report can be released to the licensee before being presented to the Board.

Section 4. - Provides that a licensee must notify the Board before making changes to a branch office.

This section also authorizes the Board to charge a late registration fee of up to $20.00 for an application submitted no more than 30 days after the expiration of the registration. After 30 days, the applicant must be registered as a new applicant.

Section 5. - Extends from 20 to 30 days the time within which a licensee must register a new employee. In order to register the employee, the licensee must submit (i) the applicant's fingerprints, (ii) a recent color photograph of the applicant, (iii) and statements of any criminal records deemed appropriate by the Board.

Section 6. - Expands the list of activities for which the Board may take disciplinary action to include:

- Having previously been denied or had revoked a license or registration under the Act.
- Engaging in the alarm system business under a different name than appears on the license.
- Advertising or soliciting business under a different name than appears on the license.
- Failing or refusing to cooperate with the Board during an investigation of a complaint.
- Failing to disclose information or provide documents required by the Act or the Board.
- Engaging in conduct that constitutes a dereliction of duty or deceives, defrauds, or harms the public in the course of providing professional services.
- Demonstrating a lack of financial responsibility.

Section 7. - Amends the provision relating to enforcement of the Act by adding a provision that a contract for sale, installation, or service of an alarm system entered into by an unlicensed or unregistered person is a threat to public safety, and the contract shall be deemed void and unenforceable.

Section 8. - Adds a new section to the law requiring that a licensee must be able to prove that the business' license is valid and that the employee or agent is properly registered in order to commence or maintain an action to collect compensation. This provision also makes it an unfair

and deceptive trade practice to engage in the alarm systems business without a license or registration.

Section 9. - Amends the title of Article 2A to the "Alarm Systems Education Fund".

Section 10. - Amends Article 2 of the Act to change the Alarm Systems Recovery Fund to the Alarm Systems Education Fund. Since 1985, the Board has administered a fund for the payment of claims by a person who has suffered monetary loss as a result of the actions of a licensee. The Board was authorized to charge licensees a $50.00 fee to maintain the fund at the level of at least $100,000. This section changes the purpose of the fund to provide exclusively for the education of licensees and registrants and lowers the maintenance level from $100,000.00 to $25,000.

Section 11. - Repeals sections of Article 2 which define the procedure for the Board to determine claims on the fund and to make payments where appropriate.

Source: Adopted from the bill analysis done by the Committee Counsel to Senate Commerce on May 18, 2009.

ASSUMPTIONS AND METHODOLOGY:
Senate Bill 1073 makes various amendments to the Alarm Systems Licensing Act, including allowing the NC Alarm Systems Licensing Board to levy a $20.00 late registration fee. According to the Board, they typically receive around 30 late applications each year. The number of late applications multiplied by the $20 late fee results in the expected revenue increase. This results in a $600.00 revenue increase in FY 2009-10. Aside from the new fee, Senate Bill 1073 is not expected to have any additional fiscal impact.

SOURCES OF DATA: NC Alarm Systems Licensing Board

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1007*
Judiciary II Committee Substitute Adopted 5/11/09
PROPOSED COMMITTEE SUBSTITUTE S1007-CSRBf-32 [v.4]

6/2/2009 12:26:03 PM

Short Title: Amend Home Inspector Licensure Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

PART I. CONTINUING EDUCATION REQUIREMENTS

SECTION 1.1. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be ~~more~~ less than 12 credit ~~hours.~~ hours and no more than 20 hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 1.2. The North Carolina Home Inspector Licensure Board has the authority under G.S. 143-151.49(a)(12) and G.S. 143-151.55(a) to establish continuing education requirements as a condition of licensure renewal. Under that authority, the Board must require home inspectors and associate home inspectors licensed on or before September 30, 2011, to complete a continuing education program that focuses on inspection techniques and reporting requirements. The program must consist of 48 hours of instruction, composed of three separate 16 hour segments. A separate segment must be offered each renewal period. A licensee must complete one segment of the program for each of the three license renewal periods beginning with the license renewal period that starts on October 1, 2011. A license must complete the three-year program by October 1, 2014. Completion of each program segment satisfies the continuing education requirements under G.S. 143-151.64 for the renewal period in which it is completed. The Board may not allow continuing education credit for an unapproved course under G.S. 143-151.64(c) to be substituted for the continuing education requirements of this section.

SECTION 1.3. This Part becomes effective October 1, 2009.

PART II. LICENSURE REQUIREMENTS

SECTION 2.1. G.S. 143-151.49 reads as rewritten:

"**§ 143-151.49. Powers and responsibilities of Board.**

(a) General. – The Board has the power to do all of the following:

(1) ~~Determine~~ Examine and determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

(3) Issue, renew, deny, revoke, and suspend licenses under this Article.

(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish fees as allowed by this Article.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(11) Request and receive the assistance of State educational institutions or other State agencies.

(11a) Establish education requirements for licensure.

(12) Establish continuing education requirements for persons licensed under this Article.

(13) Adopt rules necessary to implement this Article.

(b) ~~Exam.~~ Education Requirements. ~~In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience.~~The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board."

SECTION 2.2. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) Licensure Eligibility. -- To be eligible to be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

~~(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).~~

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its ~~equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.~~equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart a.~~ sub-subdivision a of this subdivision.

c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision must remain in good standing with the person's respective licensing board."

(b) License. – The Board must issue a license to an applicant that meets the conditions of licensure under subsection (a) of this section and all of the insurance requirements of this subsection.

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000).

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000).

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

SECTION 2.3. G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 2.4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements provided in G.S. 143-151.58(b)."

SECTION 2.5. G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b)."

SECTION 2.6. This Part becomes effective October 1, 2011.

PART III. ASSOCIATE HOME INSPECTOR LICENSURE SUNSET

SECTION 3.1. The Board may not accept an application for licensure as an associate home inspector after April 1, 2011. The Board may not issue a license for an associate home inspector on or after October 1, 2011. The Board may not renew an associate home inspector license on or after October 1, 2013.

SECTION 3.2. Notwithstanding G.S. 143-151.51, as rewritten by Section 2.2 of this act, a person who holds a license as an associate home inspector on October 1, 2011, may satisfy the education program requirement for licensure as a home inspector by being engaged as a licensed associate home inspector for one year and completing 100 home inspections for compensation. A person licensed as a home inspector under this section must complete the continuing education requirements of Section 1.2 of this act. An associate home inspector may take one or more of the program segments required under Section 1.2 of this act while licensed as an associate home inspector.

SECTION 3.3. G.S. 143-151.45(1), 143-151.52, 143-151.58(c), and 143-151.61 are repealed.

SECTION 3.4. G.S. 143-151.50 reads as rewritten:

"§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home ~~inspector or a licensed associate home inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 3.5. G.S. 143-151.55(d), as amended by Section 2.4 of this act, reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the insurance requirements provided in G.S. 143-151.51(b). ~~The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 3.6. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
~~Application for associate home inspector~~	~~15.00~~
Home inspector examination	75.00
Issuance of home inspector license	150.00
~~Issuance of associate home inspector license~~	~~100.00~~
Late renewal of home inspector license	25.00
~~Late renewal of associate home inspector license~~	~~15.00~~
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 3.7.(a) The catchline of G.S. 143-151.58 reads as rewritten:

"§ 143-151.58. Duties of licensed home ~~inspector or licensed associate home~~ inspector."

SECTION 3.7.(b) G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for

compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 3.8. Sections 3.3 through 3.7 of this Part become effective October 1, 2013. The remainder of this Part becomes effective when it becomes law.

PART IV. HOME INSPECTION REPORTS

SECTION 4.1. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear. The summary page may describe the following:

(1) Any system or component that, based upon documented visible evidence, either requires subsequent examination because the system or component appears not to function as intended or that requires further investigation by a specialist.

(2) Any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

(1) Determine the construction date or dates of the home.

(2) Determine the State, and municipal building codes in effect at the time of construction.

(3) Conduct the home inspection using the building codes in effect at the time of the construction."

SECTION 4.2. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 4.3. This Part becomes effective October 1, 2009.

PART V. OTHER LICENSURE CHANGES

SECTION 5.1. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is

licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 5.2. G.S. 143-151.55(b) and (c) read as rewritten:

"(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~ one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board."

SECTION 5.3. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 5.4. Sections 5.1 and 5.2 of this Part become effective October 1, 2009. The remainder of this Part becomes when it becomes law.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 1007:
Amend Home Inspector Licensure Laws

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 2, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S1007-CSRBf-32		

SUMMARY: ***The proposed committee substitute to Senate Bill 1007 increases the total number of continuing education requirements of licensed home inspectors, requires licensed home inspectors to compete an education program focused on inspection technique and reporting requirements, authorizes the Home Inspector Licensure Board to establish an education program to replace the associate home inspector license, requires licensed home inspectors to maintain certain insurance requirements, and requires licensed home inspectors in include certain information in home inspection reports.***

[As introduced, this bill was identical to H979, as introduced by Reps. Gibson, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

BILL ANALYSIS: The proposed committee substitute to Senate Bill 1007 makes the following changes to the licensure requirements for home inspectors:

Continuing Education Requirements – effective October 1, 2009:

Section 1.1: Increases the total amount of continuing education hours the Board may require of licensees each year. The Board may require no less than 12 credit hours, and no more than 20 credit hours.

Section 1.2: Requires all home inspectors and associate home inspectors licensed before September 30, 2011 to complete a continuing education program focused on inspection techniques and reporting requirements. The program will consist of 3 segments of 16 hours for a total of 48 hours of instruction. A licensee may complete one segment of instruction each year over a three year period, beginning on October 1, 2011. Completion of the technique and reporting requirement instruction can be used to fulfill the general continuing education requirement.

Licensure Requirements – effective October 1, 2011:

Section 2.1: Authorizes the Board to establish an education program required for licensure. The education program may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, and peer review.

Section 2.2: Amends the requirements for licensure in the following ways:

- Licensees must complete an education program approved by the Board. The education program must be completed within three years of the date of the application for licensure.
- General contractors, architects, and professional engineers that may be licensed as a home inspector without completing the education program must be licensed for at least six months in their respective fields and maintain good standing with their respective licensing Board.
- Licensees must maintain the following insurance requirements:
  1. General liability insurance of $250,000.

2. Either minimum net assets in an amount set by the Board of not less than $17,500 and not more than $35,000, a bond in an amount set by the Board of not less than $17,500 and not more than $35,000, or errors and omission insurance of $250,000.

Section 2.3: Provides that a home inspector license shall lapse if the licensee fails to maintain the above insurance requirements.

Section 2.4: Provides that the Board may deny or refuse to renew a license if a person fails to maintain the above insurance requirements.

Section 2.5: Provides it is a duty of all licensed home inspectors to maintain the above insurance requirements.

Associate Home Inspector Licensure Sunset – substantive provisions effective when the bill becomes law.

Section 3.1: Provides that the Board may not accept applications for associate home inspector licensees after April 1, 2011, and the Board may not renew an associate home inspector licenses after October 1, 2013.

Section 3.2: Provides that an individual that is licensed as an associate home inspector on October 1, 2011 may satisfy the education program requirement by being engaged as an associate home inspector for 1 year, completing 100 home inspections for compensation, and completing the inspection technique and reporting requirement instruction program provided in Section 1.2 of the bill.

Sections 3.3, 3.4, 3.5, 3.6, and 3.7: Makes conforming changes to remove references to "associate home inspectors." These conforming changes are effective October 1, 2013.

Home Inspection Reports – effective October 1, 2009:

Section 4.1: Requires a summary page for inspection reports for a prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended. The summary may describe any system or component that poses a safety concern, or any system or component that requires subsequent examination because it appears not to function as intended or requires further investigation by a specialist. Also requires a licensee that includes a deficiency in a written report that is stated as a violation of the building codes to determine the construction date of the home and the building codes in effect at that time, and to conduct the inspection using the building codes in effect at the time of the construction of the home.

Other License Changes – effective October 1, 2009:

Section 5.1: Requires licensees to report criminal convictions and discipline by other occupational licensing boards to the Board within 60 days of the conviction or disciplinary action.

Section 5.2: Provides that the Board may not renew a license that expired more than 5 years prior to the application for renewal. Provides that individuals who seek to change a license from inactive status to active status must complete the continuing education requirements the individual would have been required to take if the license were not inactive. However, the total number of continuing education classes required may not exceed 24 credit hours.

Section 5.3: Provides that an individual who fails to pass the licensure exam must wait at least 180 before retaking the exam.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 3, 2009

TO: Senator Hoyle

FROM: Brian Slivka
Fiscal Research Division

RE: PCS to Senate Bill 1007 (Second Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:		****See Assumptions and Methodology****			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Home Inspector Licensure Board

EFFECTIVE DATE: Sections 1, 2, 3, 6, 6.1, and 7 of this act become effective October 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law.

BILL SUMMARY:

Senate Bill 1007 amends GS 143-151.51(a) to add new requirements for becoming licensed as a home inspector. Enacts GS 143-151.51(c) providing that all home inspectors licensed on or before September 30, 2011 must complete an abbreviated licensing education program prescribed by the Board, but certain home inspectors may apply for a waiver. Effective September 30, 2011, it repeals GS 143-151.49(b), which requires the North Carolina Code Official Qualification Board (Board), in developing licensing examination, to emphasize knowledge gained through experience.

The bill enacts GS 143-151.51(b) requiring applicants to submit evidence of certain general liability insurance and either minimum net assets, a bond, or certain errors and omissions insurance. It also repeals, effective September 30, 2011, GS 143-151.51(a)(3), which requires an applicant for a license as a home inspector to have minimum net assets or a bond in an amount to be determined by the Board. Instead, effective September 30, 2011, the bill amends GS 143-151.51 to add subsection (a1), requiring an applicant who has satisfactorily completed the licensing requirements in subsection (a), to submit evidence to the Board that the applicant has general liability insurance in the amount of $250,000 and one of the following: (1) minimum net assets in an amount determined by the Board, (2) a bond in an amount determined by the Board, and (3) error or omissions insurance in the amount of $250,000. Senate Bill 1007 provides additional guidelines as to minimum and maximum amounts for net assets and the bond.

The bill enacts GS 143-151.51(d), requiring all associate licensed home inspectors with an active license on October 1, 2011, to complete specified steps to receive a home inspector license. Effective on September 1, 2009, it amends GS 143-151.54 to require reporting by license holders who are convicted of felonies or misdemeanors or are disciplined by any governmental agency in connection with an occupational or professional license, and the bill amends GS 143-151.55 pertaining to license renewals, inactive licenses, and lapsed licenses. It directs all licensed associate home inspectors with an active license to complete one of two options for licensure and pass the licensing exam prescribed by the Board (was, complete either of the two options) prior to the issuance of a home inspector license by the Board. The bill provides that if an associate home inspector fails to complete the requirements of proposed GS 143-151.51(c) before October 1, 2013, the Board will cancel the associate home inspector's license. Beginning September 30, 2011, prohibits the Board from issuing new associate home inspector licenses, but permits the Board to renew existing associate home licenses on September 30, 2012. Makes conforming changes, effective September 30, 2013, to GS 143-151.50, 143-151.55(d), 143-151.57(a), 143-151.58(a), and 143-151.58(a1) and (a2) to delete references to the licensing of associate home inspector. Also makes conforming changes to delete references to an associate home inspector or an associate home inspector license by repealing the following, effective September 30, 2013: GS 143-151.45(1), 143-151.52, 143-158(c), and 143-151.61.

Effective October 1, 2011, Senate Bill 1007 amends GS 143-151.56, authorizing the Board to take action including denying or refusing to issue or renew a license when a person has failed to comply with the requirements in GS 143-151.51. It amends GS 143-151.57 to provide that applicants may take the examination only once every 180 days. Also effective on October 1, 2011, the bill amends GS 143-151.58 to require (1) inspectors to provide a summary page with each written report of the home inspection for each pre-purchase home inspection of three or more systems; (2) that if an inspector includes a deficiency in the written report that is stated as a violation of the State Residential Building Code, the inspector must determine the construction

dates of the home State and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction; and (3) licensed home inspectors must maintain general liability insurance as required by G.S. 143-151.

Effective September 1, 2009, the bill amends GS 143-151.64(a) pertaining to continuing education requirements. The bill repeals GS 143-151.51(a)(3) and (5) effective September 30, 2011, and G.S. 143-151.52 effective September 30, 2013. It makes additional clarifying, organizational, and technical changes to the Home Inspector Licensure. And it amends GS 143-151.58 to modify the content required for the summary page of the home inspection report.

The proposed committee substitute to Senate Bill 1007 increases the total number of continuing education requirements of licensed home inspectors, requires licensed home inspectors to compete an education program focused on inspection technique and reporting requirements, authorizes the Home Inspector Licensure Board to establish an education program to replace the associate home inspector license, requires licensed home inspectors to maintain certain insurance requirements, and requires licensed home inspectors in include certain information in home inspection reports.

ASSUMPTIONS AND METHODOLOGY:

According to the North Carolina Home Inspector Licensure Board, there are currently 1,425 licensed home inspectors and 99 licensed associate home inspectors in the state. Effective September 20, 2013, there will no longer be an associate home inspector license. Assuming that all 99 current associate home inspectors fulfill the requirements of becoming a licensed home inspector, the amount of fees collected would increase by less than $5,000 for FY2013-14.

SOURCES OF DATA: North Carolina Home Inspector Licensure Board

TECHNICAL CONSIDERATIONS: None

Subject: SB 1007=HB 979 Senate Finance Committee Wed, June 3, 2009

Co-Chairs and Senators:

My name is Ted Triebel and I was appointed by Speaker Hackney, in July 2008, as the "Public Member" of the NC Home Inspector Licensure Board (NCHILB).

The Board's position, and qualified opposition, to this proposed Bill was formally adopted at our May 8 meeting. The position is posted on our NCHILB web site, and it was also emailed to your offices. I would happy to provide copies if you desire.

This bill is an extensive re-write of exisitng statues with numerous implications, many we have yet to determine. The proposed legislation was essentially developed by lobbyists for the North Carolina Association of Realtors, the North Carolina Home Builders Association, and two Home Inspector Associations in North Carolina [NC-ASHI; NCLHIA] Among other provisions the Home Inspector Licensure Board is legally charged with determining the qualifications of home inspector applicants and implementing new legislation. Our Board was not consulted on this proposed legislation. You can see several of our serious concerns by reading the Board's formal position of May 8.

This legislation (S1007), as crafted by special interests, does not in our view represent the best interests of the citizens of North Carolina. Nor does it represent the opinion of the great majority of home inspectors in this state.

It is the Board's primary responsibility to represent the interests of the public. We trust that you will carefully consider our opposition to aspects of this proposed legislation and make appropriate changes, or delay it for further study. Our Board is fully ready to help with such a process.

I'm pleased to try to answer any questions you may have, or find out the answers.

Thank you.
Ted Triebel

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 509*
PROPOSED COMMITTEE SUBSTITUTE S509-CSRBx-33 [v.5]

6/3/2009 12:29:05 PM

Short Title: Rev Laws Tech, Clarifying, & Admin. Changes. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

PRIVILEGE LICENSE, INCOME, EXCISE, AND INSURANCE TAX CHANGES

SECTION 1. G.S. 105-41(a) reads as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

...

(12) ~~A home inspector~~ An individual licensed under Article 9F of Chapter 143 of the General ~~Statutes.~~ Statutes, the Home Inspector Licensure Act."

SECTION 2. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

(1) Definite and accrued legal liabilities.

(2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets as permitted for income tax purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for

air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation, may deduct from the debt included a proportionate part determined on the basis of the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If the creditor corporation is also taxable under the provisions of this section, the

creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that the debt has been included in the tax base of the parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

(b1) Definitions. – The following definitions apply in ~~this subsection:~~subsection (b) of this section:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 3.(a) G.S. 105-129.27(f) reads as rewritten:

"(f) No Double Credit. – A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in ~~G.S. 105-129.9.~~G.S. 105-129.9 or G.S. 105-129.88."

SECTION 3.(b) This section becomes effective for taxable years beginning on or after January 1, 2007.

SECTION 4. G.S. 105-130.4(h) reads as rewritten:

"(h) The income less related expenses from any other ~~nonbusiness~~ activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments ~~are~~ is located in this State."

SECTION 5. G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method unless it receives a written decision from the Secretary authorizing it to do so."

SECTION 6. Section 4(b) of S.L. 2008-134 reads as rewritten:

"**SECTION 4.(b)** This section is effective for taxable years beginning on or after January 1, ~~2009.~~2008."

SECTION 7. G.S. 105-130.18 and G.S. 105-156 are repealed.

SECTION 8.(a) G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was ~~claimed.~~taken.

(2) The qualifying expenses for which a credit was ~~claimed,~~ taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits ~~claimed.~~taken.

(4) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 8.(b) G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was ~~claimed.~~taken.

(2) The qualifying expenses for which a credit was ~~claimed,~~ taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits ~~claimed.~~taken.

(4) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 9. G.S. 105-228.5B reads as rewritten:

"**§ 105-228.5B. Proceeds credited to High Risk Pool.**

~~Within 75 days after the end of each fiscal year,~~ By November 1 of each year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to the growth in net revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less $475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision."

SALES AND USE TAX AND HIGHWAY USE TAX CHANGES

SECTION 10. G.S. 105-164.3(45a) reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~June 23, 2007.~~May 12, 2009."

SECTION 11. G.S. 105-164.4B(d) reads as rewritten:

"(d) Exceptions. – This section does not apply to the following:

(1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.

(2) Direct mail. – Direct mail that meets one of the ~~conditions of this subdivision~~ following descriptions is sourced to the location where the property is ~~delivered. In all other cases, direct mail is sourced in accordance with the principles principle set out in subdivision (a)(3) of this section.~~delivered, and direct mail that does not meet one of these

descriptions is sourced to the location from which the direct mail was shipped:

a. Direct mail purchased pursuant to a direct pay permit.

b. When the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

(3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A 'florist wire sale' is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered."

SECTION 12. G.S. 105-164.13(40) is repealed.

SECTION 13.(a) G.S. 105-164.14(j)(2)n. reads as rewritten:

"n. Solar electricity generating materials manufacturing. Solar ~~energy~~ electricity generating materials manufacturing means the development and production of one or more of the following:

1. Photovoltaic materials or modules used in producing electricity.

2. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity."

SECTION 13.(b) This section is effective July 1, 2008, and applies to purchases made on or after that date.

SECTION 14.(a) G.S. 105-164.44G reads as rewritten:

"**§ 105-164.44G. Distribution of part of tax on modular homes.**

The Secretary must distribute to counties twenty percent (20%) of the taxes collected under G.S. 105-164.4(a)(8) on modular homes. The Secretary must make the distribution on a monthly basis in accordance with the distribution formula in ~~G.S. 105-520 by including the taxes on modular homes with local tax revenue that is not attributable to a particular county.~~ G.S. 105-486."

SECTION 14.(b) This section becomes effective October 1, 2009, and applies to distributions made on or after that date.

SECTION 15. G.S. 105-187.6(a)(7) is repealed.

SECTION 16. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this ~~subdivision~~ section is forfeited. A taxpayer that forfeits a rate under this ~~subdivision~~ section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the combined general rate from the date the taxes would otherwise have been due, plus interest at the rate established under ~~G.S. 105-241.1(i).~~ G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at the combined general rate from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under ~~G.S. 105-266 shall not be~~ G.S. 105-241.6 is not considered. ~~Interest shall not be computed against the amount of taxes offset by this credit.~~ The credit reduces the amount forfeited and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A

taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 17. G.S. 105-538 reads as rewritten:

"**§ 105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to ~~G.S. 105-164.13B.~~ G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. ~~Notwithstanding the provisions of G.S. 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy.~~"

PROPERTY TAX CHANGES

SECTION 18. G.S. 105-273(6) reads as rewritten:

"(6) Corporation. – An organization having capital stock represented by shares or an incorporated, nonprofit organization."

SECTION 19. G.S. 105-275 reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are ~~hereby~~ designated special classes under ~~authority of~~ Article V, Sec. 2(2), of the North Carolina Constitution and ~~shall not be listed, appraised, assessed, or taxed~~are excluded from tax:"

SECTION 20.(a) G.S. 105-277.1(d) reads as rewritten:

"(d) Ownership by Spouses. – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section."

SECTION 20.(b) G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned ~~and occupied~~ the property as a permanent residence for at least five ~~years.~~consecutive years and has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the ~~occupation requirement~~ length of

occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this ~~section~~ section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes ~~for the three fiscal years preceding the current tax year shall~~ must be carried forward in the records of ~~the~~ each taxing unit ~~or units~~ as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral ~~because of the occurrence~~ as a result of a disqualifying event ~~as provided~~ described in subsection (i) of this section. On or before September 1 of each year, the collector ~~shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.~~must send to the mailing address of a residence on which taxes have been deferred a notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. – Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse ~~residence~~ and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes ~~deferred from the prior tax years~~ are carried forward and are not due and payable ~~but are carried forward~~ until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for ~~deferral,~~ deferral and a disqualifying event occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are ~~carried forward.~~ due and payable.

(k) Repealed by Session Laws 2008-35, s. 1.2, effective July 1, 2008.

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 20.(c) G.S. 105-277.1C reads as rewritten:

"**§ 105-277.1C. Disabled veteran property tax homestead exclusion.**

(a) ~~Exclusion.~~Classification. – A permanent residence owned and occupied by ~~an~~ a qualifying owner ~~who is a North Carolina resident and who is an honorably discharged disabled veteran or the unmarried surviving spouse of an honorably discharged disabled veteran~~ is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars ($45,000) of appraised value of the residence is excluded from taxation. ~~An~~ A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

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

(1) Disabled veteran. – A veteran ~~who, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, receives benefits under 38 U.S.C. § 2101 or has a veteran's disability certification.~~of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability. If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was the result of a service-connected condition.

~~(2) Owner. – Defined in G.S. 105-277.1.~~

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran and has not remarried.

~~(5) Veteran. – A veteran of any branch of the Armed Forces of the United States.~~

~~(6) Veteran's disability certification. – A certification by the United States Department of Veterans Affairs or another federal agency that a veteran has a permanent total disability that is service-connected.~~

(c) Temporary Absence. – An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. – An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101."

SECTION 20.(d) This section is effective for taxes imposed for taxable years beginning on or after January 1, 2009.

SECTION 21.(a) Section 3 of S.L. 2008-171 is repealed.

SECTION 21.(b) G.S. 105-277.14(d) is repealed.

SECTION 21.(c) G.S. 105-282.1(a) reads as rewritten:

"(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period.

(1) No application required. – Owners of the following exempt or excluded property do not need to file an application for the exemption or exclusion to be entitled to receive it:

a. Property exempt from taxation under G.S. 105-278.1 or G.S. 105-278.2.

b. Special classes of property excluded from taxation under G.S. 105-275(15), (16), (26), (31), (32a), (33), (34), (37), (40), ~~or (42).~~(42), or (44).

c. Property classified for taxation at a reduced valuation under G.S. 105-277(g) or G.S. 105-277.9.

(2) Single application required. – An owner of one or more of the following properties eligible to be exempted or excluded from taxation must file an application for exemption or exclusion to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion:

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105- 278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), ~~or (41)~~(41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.10, 105-277.13, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8."

SECTION 21.(d) G.S. 105-282.1(a)(2), as amended by subsection (c) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 21.(e) G.S. 105-282.1(a)(2), as amended by subsections (c) and (d) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the

benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 21.(f) Subsection (c) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Subsection (d) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Subsection (e) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2010. The remainder of this section is effective when it becomes law.

SECTION 22.(a) Article 22A of Chapter 105 of the General Statutes, as rewritten by S.L. 2005-294, S.L. 2006-30, S.L. 2007-471, Section 22 of S.L. 2007-527, and Sections 61 through 66 of S.L. 2008-134, reads as rewritten:

"Article 22A.

"Motor Vehicles.

"§ 105-330. Definitions.

The following definitions apply in this Article:

(1) Classified motor vehicle. – A motor vehicle classified under this Article.

(1a) Collecting authority. – The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.

(2) Motor vehicle. – Defined in G.S. 20-4.01(23).

(2a) Municipal corporation. – Defined in G.S. 105-273(11).

(3) Public service company. – Defined in G.S. 105-333(14).

(4) Registered classified motor vehicle. – Any of the following:

a. A classified motor vehicle that has a registration plate issued under Article 3 of Chapter 20 of the General Statutes and whose registration is current.

b. A classified motor vehicle transferred to an owner who has applied for a registration plate for the motor vehicle.

(5) Registration fees. – Fees set out in G.S. 20-87 and 20-88.

(6) Unregistered classified motor vehicle. – A classified motor vehicle that is not a registered classified motor vehicle.

"§ 105-330.1. Classification of motor vehicles.

(a) Classification. – All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under ~~authority of~~ Article V, Sec. 2(2) of the North Carolina ~~Constitution.~~ Constitution and are considered classified motor vehicles. Classified motor vehicles ~~shall~~ must be listed and assessed as

provided in this Article and taxes on classified motor vehicles ~~shall~~ must be collected as provided in this Article.

(b) Exceptions. – The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.
(2) Manufactured homes, mobile classrooms, and mobile offices.
(3) Semitrailers or trailers registered on a multiyear basis.
(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.
(5) Repealed by Session Laws 2000, c. 140, s. 75(a), effective July 1, 2000.
(6) Motor vehicles registered under the International Registration Plan.
(7) Motor vehicles issued permanent registration plates under G.S. 20-84.
(8) Self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate under G.S. 20-88.

"§ 105-330.2. Appraisal, ownership, and situs.

(a) ~~Date Determined.~~ Determination Date for Registered Vehicle. – The ownership, situs, and taxability of a registered classified motor vehicle is determined annually as of the date on which the vehicle's current registration is renewed, regardless of whether the registration is renewed after it has expired, or on the date an application for a new registration is submitted. The situs of a registered classified motor vehicle may not be changed until the next registration date. The value of a registered classified motor vehicle ~~listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be~~ is determined as ~~of January 1 of the year the taxes are due.~~follows:

(1) For a registration expiring or an application for a new registration during the period January 1 through August 31, the value is determined as of January 1 of the current year.
(2) For a registration expiring or an application for a new registration during the period September 1 through December 31, the value is determined as of January 1 of the following year.
(3) For a new motor vehicle whose value cannot be determined as of January 1 of the year specified in subdivision (1) or (2) of this subsection, the value is determined as of the date that model of motor ~~If the value of a new motor vehicle cannot be determined as of that date, the value of that vehicle shall be determined for that year as of the date that model~~ vehicle is first offered for sale at retail in this State.
(4) For a motor vehicle whose value cannot be determined as of the date set under any other subdivision in this subsection, the value is determined using the most currently available January 1 retail value of the vehicle.

~~The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.~~

(a1) Determination Date for Unregistered Vehicle. – ~~The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2).~~ The ownership, situs, and taxability of ~~a~~ an unregistered classified motor vehicle ~~listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be~~ is determined as of January 1 of the year in which the registration of the motor vehicle ~~is required to be listed.~~ expires and is not renewed or the motor vehicle is acquired and the owner does not

submit an application for registration. The value of an unregistered classified motor vehicle is determined as of January 1 of the year the vehicle is required to be listed.

(b) ~~Value; Appeal.~~ Value. ~~A~~ An assessor must appraise a classified motor vehicle ~~shall be appraised by the assessor~~ at its true value in money as prescribed by G.S. 105-283. The sales price of a classified motor vehicle purchased from a dealer, including all accessories attached to the vehicle when it is delivered to the purchaser, is considered the true value of the vehicle and the assessor must appraise the vehicle at this value. The sales price excludes the tax imposed under Article 5A of this Chapter. ~~If the assessor considers the sales price of the motor vehicle in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter.~~ The Property Tax Division of the Department of Revenue ~~shall~~ must annually adopt a schedule of values, standards, and rules to be used in the valuation of all other classified motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles.

(c) Appeal. – The owner of a classified motor vehicle may appeal the appraised value or taxability of the vehicle ~~in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value~~ by filing a request for appeal with the assessor ~~before the taxes become delinquent pursuant to G.S. 105-330.4.~~ within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. ~~Notwithstanding G.S. 105-312(d), an~~An owner who appeals the appraised value or taxability of a classified motor vehicle ~~shall~~ must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value and taxability of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection.

(c) Repealed by Session Laws 2008-134, s. 61, effective July 28, 2008.

"**§ 105-330.3. ~~Assessor's duty to list~~ Listing requirements for classified motor vehicles; application for exempt status.**

(a) ~~(1)~~ Registered Vehicles. – ~~–~~ The assessor ~~shall list, appraise, and assess all taxable classified motor vehicles for county, municipal, and special district taxes~~ must list a registered classified motor vehicle each year for each taxing unit in the name of the record owner as of the day on which the current vehicle registration is renewed or the day on which an owner to whom the vehicle is transferred applies for a new ~~registration is applied for.~~ registration. The owner of a classified motor vehicle listed pursuant to this ~~subdivision~~ subsection need not list the vehicle as provided in G.S. ~~105-306;~~ 105-306. G.S. 105-312 does not apply to a classified motor ~~vehicles~~ vehicle listed pursuant to this ~~subdivision.~~ subsection.

(a1) ~~(2)~~ Unregistered Vehicles. – ~~–~~ The owner of ~~a~~ an unregistered classified motor vehicle ~~who does not register the vehicle or does not renew the registration of the vehicle on or before the expiration date of the current registration shall~~ must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle ~~is acquired~~ or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle listed pursuant to this ~~section~~ subsection is registered during the calendar year in which it was listed, ~~it shall be~~ the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle. A vehicle required to be listed pursuant to this subdivision that is not listed by January 31 ~~shall be~~ is subject to discovery pursuant to G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.

(b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the assessor. When an approved application is on file, the assessor ~~shall~~ must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105-282.1(a)(1). The remaining provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

(c) Duty to Report Changes. – The owner of a classified motor vehicle that has been omitted from the tax records as provided in subsection (b) ~~shall~~ of this section must report to the assessor any classified motor vehicle registered in the owner's name or owned by ~~him~~ that person but not registered in the person's name that does not qualify for exemption or exclusion for the current year. This report ~~shall~~ must be made within 30 days after the renewal of registration or initial registration of the vehicle or, for an unregistered vehicle, on or before January 31 of the year in which the vehicle is required to be listed by ~~subdivision (a)(2).~~ subsection (a1) of this section. A classified motor vehicle that does not qualify for exemption or exclusion but has been omitted from the tax records as provided in subsection (b) is subject to discovery under the provisions of G.S. 105-312, except that in lieu of the penalties prescribed by G.S. 105-312(h) ~~there shall be assessed~~ a penalty of one hundred dollars ($100.00) is assessed for each registration period that elapsed before the disqualification was discovered.

(d) ~~The provisions of G.S. 105-282.1 do not apply to classified motor vehicles.~~ Criminal Sanction. – A person who willfully attempts, or who willfully aids or abets another person to attempt, in any manner to evade or defeat the taxes subject to this Article, whether by removal or concealment of property or otherwise, is guilty of a Class 2 misdemeanor.

"§ 105-330.4. Due date, interest, and enforcement remedies.

(a) Due Date. – The registration of a classified motor vehicle may not be renewed unless the taxes that are due have been paid. Taxes on a classified motor vehicle are due as follows:

(1) For an unregistered classified motor ~~vehicle listed pursuant to G.S. 105-330.3(a)(2)~~ vehicle, the taxes are due on September 1 following the date by which the vehicle was required to be listed. ~~Taxes on a~~

(2) For a registered classified motor vehicle ~~listed pursuant to G.S. 105-330.3(a)(1)~~ that is registered under the staggered system, the taxes are due each year on the date the owner applies for a new registration ~~is applied for~~ or the fifteenth day of the month following the month in which the registration renewal sticker ~~expired~~ expires pursuant to G.S. 20-66(g).

(3) For a registered classified motor vehicle that is registered under the annual system, taxes are due on the date the owner applies for a new registration or 45 days after the registration expires.

(4) For a registered classified motor vehicle that has a temporary registration plate issued under G.S. 20-79.1 or a limited registration plate issued under G.S. 20-79.1A, the taxes are due on the last day of the second month following the date the owner applied for the plate.

~~(a1) Notwithstanding subsection (a) of this section, taxes on a classified motor vehicle for which the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, are due on the last day of the second month following the date on which the limited registration is applied for.~~

(b) Interest. – ~~Subject to the provisions of G.S. 105-395.1, interest~~ Interest accrues on unpaid taxes and unpaid registration fees ~~on~~ for registered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(1) accrues~~ at the rate of five percent (5%) for the remainder of

the month following the ~~month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).~~ month the taxes are due under subsection (a) of this section. Interest accrues at the rate of three-fourths percent (¾ %) for each following month ~~thereafter~~ until the taxes and fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest accrues on delinquent taxes on unregistered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(2) accrues~~ as provided in G.S. 105-360(a) and the discounts ~~shall be allowed as provided in G.S. 105-360(c).~~ allowed in G.S. 105-360(a) apply to the payment of the taxes.

(c) Remedies. -- ~~Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer.~~ The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor vehicle.

§ 105-330.5. ~~Listing and collecting procedures.~~Notice required; distribution and collection fees.

(a) Notice for Registered Vehicle. – ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the~~ The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division ~~shall~~ must prepare a combined tax and registration notice for each registered classified motor vehicle. The combined tax and registration notice ~~shall~~ must contain all county and municipal corporation taxes and fees due on the motor vehicle as computed by the assessor in the county of registration. If the motor vehicle has a temporary or limited registration plate issued under G.S. 20-79.1 or G.S. 20-79.1A, the combined tax and registration notice must state that the vehicle registration fees for the plate have been paid and that the vehicle's registration becomes valid for the remainder of the year upon payment of the county and municipal corporation taxes and fees that are due. A combined tax and registration notice that sets out the required information on a vehicle issued a limited registration plate constitutes the registration certificate for that vehicle. ~~In~~

In computing the taxes, the assessor ~~shall~~ must appraise the motor vehicle in accordance with G.S. 105-330.2 and ~~shall~~ must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect ~~on the first day of the month in which the current vehicle registration expires or the new registration is applied for.~~ on the date the taxes are computed. The tax on the motor vehicle is the product of a fraction and the number of months in the motor vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12. This procedure ~~shall constitute~~ constitutes the listing and assessment of each classified motor vehicle for taxation. ~~The~~

The combined tax and registration notice ~~shall contain~~ must contain the following:

(1) ~~The date of the combined tax and registration notice.~~

~~(2)~~ The appraised value of the motor vehicle.

~~(3)~~(2) The tax rate of ~~the taxing units.~~ each taxing unit.

~~(4)~~(3) A statement that the appraised value and the taxability of the motor vehicle may be appealed to the assessor ~~before the taxes and fees become delinquent.~~in writing within 30 days of the due date.

~~(5)~~(4) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(5) Instructions for payment.

(a1) Proration. – When a new registration is obtained for a registered classified motor vehicle that is registered under the annual ~~system in a month other than December,~~system, the taxes ~~shall be~~ are prorated for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection ~~(a).~~ (a) of this section. The numerator of the proration fraction is the number of full months remaining in the calendar year following the registration application date ~~the registration is applied for~~ and the denominator of the fraction is 12.

~~(a2) For classified motor vehicles where the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, the Property Tax notice shall contain a statement that registration fees have been paid pursuant to G.S. 20-79.1 or G.S. 20-79.1A and that the registration becomes valid for the remainder of the year upon payment of county and municipal taxes and fees due in the current year.~~

(b) Distribution and Collection Fees. – ~~When the combined tax and registration notice required by subsection (a) or (a2) of this section is prepared, the~~ The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division ~~shall mail~~ must send a copy of the ~~notice, with appropriate instructions for payment,~~ combined tax and registration notice for a registered classified motor vehicle to the motor vehicle ~~owner.~~owner, as defined in G.S. 20-4.01. The Department ~~shall~~ must establish a fee equal to the actual cost of ~~printing~~ preparing, printing, and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may ~~retain~~ receive a fee for collecting these taxes and fees. The amount of this fee ~~retained by the collecting authority shall be an amount~~ must equal ~~to~~ at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The Property Tax Division ~~shall~~ must establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month. ~~Each collecting authority shall provide a weekly financial report containing information required by the Property Tax Division to the taxing units and Division of Motor Vehicles to enable them to account for payments received.~~

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) Notice for Unregistered Vehicle. – ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2.~~ The assessor ~~shall~~ must prepare and send a tax notice for each unregistered classified motor vehicle before September 1 following the January 31 listing ~~date; the tax notice shall~~ date. The notice must include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor ~~shall~~ must use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities ~~shall~~ must list, assess, and tax unregistered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(2)~~ as provided in G.S. 105-326, 105-327, and ~~105-328 and shall send tax notices as provided in this section.~~ 105-328.

(d) Scope of Levy. – ~~The~~ A county ~~shall~~ must include taxes on registered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(1)~~ in the tax levy for the fiscal year in which the taxes ~~become due and shall charge the taxes to the tax collector for that year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due. If that occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year.~~ are collected.

(e) Small Underpayment or Overpayment. – Notwithstanding G.S. 105-357(c), the collecting authority must treat a small underpayment of taxes and fees as fully paid and not refund a small overpayment of taxes and fees unless the vehicle owner requests a refund before the end of the fiscal year in which the small overpayment is made. A "small underpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) less than the taxes and fees due on the vehicle. A "small overpayment" is a payment made, other than in person, that is no more than four dollars and ninety nine cents ($4.99) greater than the taxes and fees due on the vehicle.

...

"§ 105-330.8. Deadlines not extended.

Except as otherwise provided in this Article, the following provisions of ~~G.S. 105-395.1 and G.S. 103-5 do not apply to deadlines established in this Article.~~ the General Statutes do not apply:

(1) G.S. 105-395.1 and G.S. 103-5.
(2) G.S. 105-321(f)
(3) G.S. 105-360.

"§ 105-330.9. Antique automobiles.

(a) Definition. – For the purpose of this section, the term "antique automobile" means a motor vehicle that meets all of the following conditions:

(1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.
(2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.
(3) It is used only occasionally for other purposes.
(4) It is owned by an individual.
(5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Classification. – Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and ~~shall~~ must be assessed for taxation in accordance with this section. An antique automobile ~~shall~~ must be assessed at the lower of its true value or five hundred dollars ($500.00).

...

"§ 105-330.11. Memorandum of understanding.

The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles are directed to enter into a memorandum of understanding concerning the administration of this Article. The memorandum of understanding must include the following:

(1) A procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles.
(2) Information concerning vehicle identification, ~~identification of a vehicle owner by~~the name and address of a vehicle's owner, and other information that will be required on a motor vehicle registration form to implement the tax listing and collection provisions of this Article.
(3) A procedure for the business practices, accounting, and costs of carrying out the integrated computer system for registration renewal and property tax.

collection for motor vehicles once the system has been certified to be in operation by the Department of Revenue and the Department of Transportation. The Departments must consult with the North Carolina Association of County Commissioners, acting on behalf of the counties, and the North Carolina League of Municipalities, acting on behalf of the municipalities, in developing the procedures under this subdivision and obtain their signed endorsements before any part of this procedure is implemented."

SECTION 22.(b) G.S. 20-79.1A reads as rewritten:

"**§ 20-79.1A. ~~Use of limited~~Limited registration ~~plates on motor vehicles.~~plates.**

~~(a) The Division or its authorized agent shall~~ must issue a limited registration plate ~~upon receipt of an application for title and registration fees from a dealer, who is authorized to issue temporary registration plates or markers to owners of vehicles pursuant to G.S. 20-79.1, or from any other person.~~ A limited registration plate is issuable to a person who applies, either directly or through a dealer licensed under Article 12 of this Chapter, for a title to a motor vehicle and a registration plate for the vehicle and who submits payment for the applicable title and registration fees but does not submit payment for any municipal corporation property taxes on the vehicle. A person who submits payment for municipal corporation property taxes receives an annual registration plate. ~~The~~

A limited registration plate must be clearly and visibly designated as ~~"temporary" and shall expire~~ "temporary." The plate expires on the last day of the second month following the date of application of the limited registration plate. The plate may be used only on the vehicle for which it is issued and may not be transferred, loaned, or assigned to another. If the plate is lost or stolen, the vehicle for which the plate was issued may not be operated on a highway until a replacement limited registration plate or a regular license plate is received and attached to the vehicle.

The Division is not required to issue a registration certificate for a limited registration plate. A combined tax and registration notice issued under G.S. 105-330.5 serves as the registration certificate for the plate.

~~(b) Notwithstanding subsection (a) of this section, the Division or its authorized agent shall issue an annual registration plate upon receipt of an application for title, registration fees, and property taxes from the dealer or any other person.~~"

SECTION 22.(c) G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when the act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective July 1, 2011, and apply to combined tax and registration notices issued on or after July 1, 2011. The remainder of this section is effective when it becomes law.

SECTION 23.(a) Section 8 of S.L. 2007-471 reads as rewritten:

"**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2010,~~ July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. "

SECTION 23.(b) Section 79 of S.L. 2008-134 reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. Section 63 of this act is repealed July 1, 2011.

SECTION 24. G.S. 105-361(a) reads as rewritten:

"(a) Duty to Furnish a Certificate. – On the request of ~~any of the persons prescribed~~ a person who is listed in subdivision ~~(a)(1), below,~~ (1) of this subsection and ~~upon the condition prescribed by subdivision (a)(2), below,~~ who complies with subdivision (2) of this subsection,

the tax collector ~~shall furnish~~ must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior ~~years in his hands for collection (together with any penalties, interest, and costs accrued thereon) including the amount due under G.S. 105-277.4(c) if the property should lose its eligibility for the benefit of classification under G.S. 105-277.2 et seq. that are a lien on a parcel of real property in the taxing unit.~~year and the amount of any deferred taxes and interest that would become due if a disqualifying event occurred.

(1) Who ~~May Make Request.~~ may make request. – Any of the following persons ~~shall be entitled to~~ may request the certificate:

a. An owner of the real ~~property;~~property.

b. An occupant of the real ~~property;~~property.

c. A person having a lien on the real ~~property;~~property.

d. A person having a legal interest or estate in the real ~~property;~~property.

e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the ~~property;~~property.

f. The authorized agent or attorney of any person described in ~~subdivisions (a)(1)a through e above.~~this subdivision."

(2) ~~Duty of Person Making Request.~~ Identification of property. – A person requesting a certificate ~~With~~ with respect to ~~taxes, the tax collector shall not be required to furnish a certificate unless the person making the request specifies in whose~~ taxes must specify the name of the person who listed the real property ~~was listed~~ for taxation for each year for which the information is sought. A person requesting a certificate ~~With~~ with respect to ~~assessments, the tax collector shall not be required to furnish a certificate unless the person making the request furnishes such identification of~~ assessments must identify the real estate ~~as may be reasonably~~ in the manner required by the tax collector."

SECTION 25.(a) G.S. 160A-215.2 reads as rewritten:

"**§ 160A-215.2. Heavy equipment gross receipts tax in lieu of property tax.**

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

(1) Heavy equipment. – Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A city may, by ~~resolution,~~ ordinance, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the ~~city finance officer.~~ city. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or

rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the ~~resolution~~ ordinance imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution~~ ordinance is adopted.

(f) Repeal. – A city may, by ~~resolution,~~ ordinance, repeal a tax imposed under this section. The repeal is effective on the date set in the ~~resolution.~~ ordinance. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution~~ ordinance is adopted."

SECTION 25.(b) A heavy equipment gross receipts tax levied by a city ordinance or a city resolution on or before the effective date of this act is valid and remains in effect until amended or repealed.

OCCUPANCY TAX CHANGES

SECTION 26. Section 1 of S.L. 2008-33 reads as rewritten:

"**SECTION 1.** Chapter 1055 of the 1983 Session ~~Laws~~ Laws, as amended by Section 21(e) of S.L. 2007-527, reads as rewritten:

'Section 1. ~~Levy of Tax.~~ Occupancy Tax. –

(a) Authorization and Scope. – The Cherokee County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development ~~tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Cherokee County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~Sec. 2. Occupancy Tax.~~

~~(a) The county room occupancy and tourism development tax that may be levied under this act shall be a percentage~~ tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county ~~now~~ that is subject to ~~the three percent (3%)~~ sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). ~~During the first year in which a tax levied under this act is in effect, the tax shall be three percent (3%) of the gross receipts derived from the rental of taxable accommodations in the county. Thereafter, the rate of tax shall continue to be three percent (3%) unless the Cherokee County Board of Commissioners, by resolution, adopts a rate of less than three percent (3%). A change in the occupancy tax rate adopted by the board of commissioners becomes effective the first day of the second succeeding calendar month following the date of adoption of the resolution. The Cherokee County Board of Commissioners may not change the occupancy tax rate more than once a year.~~

~~(b)~~ The occupancy tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, ~~benevolent,~~ or religious organizations.

(b) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Cherokee County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection,

administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this act. Cherokee County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

'Sec. 3. Administration of Tax. – A tax levied under this act shall be levied, collected, administered, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

~~(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~'Sec. 4. Collection of Tax. Every operator of a business subject to the tax levied pursuant to this act shall collect the tax on and after the effective date of the levy of the tax.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Cherokee County. The room occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

'Sec. 5. ~~Disposition of Taxes Collected.~~Distribution and Use of Tax Revenue. – Cherokee County ~~shall~~ shall, on a quarterly basis, remit the net proceeds of ~~all revenues received from~~ the room occupancy tax to the Cherokee County Tourism Development Authority.~~Authority appointed pursuant to this act.~~ The Authority shall use at least two-thirds of the funds remitted to it under this act to promote travel and tourism in Cherokee County and shall use the remainder for tourism-related expenditures. ~~"Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax. The Authority may expend these funds only to further the development of travel, tourism, and conventions in the county through advertising and promotion.~~

The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or

business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

'Sec. 6. ~~Appointment, Duties of~~ Cherokee County Tourism Development Authority. –

(a) Appointment and Membership. – When the Cherokee County Board of Commissioners adopts a resolution levying a room occupancy ~~tax,~~ tax under this act, it shall also adopt a resolution creating a County Tourism Development ~~Authority composed of the director of the Cherokee County Chamber of Commerce and the following four members appointed by the Cherokee County Board of Commissioners:~~

~~(1) an owner of a hotel, motel, or other accommodations subject to the tax levied by this act;~~

~~(2) a member of the board of county commissioners;~~

~~(3) a town commissioner or the mayor of the Town of Murphy; and~~

~~(4) a town alderman or the mayor of the Town of Andrews.~~

~~The director of the Cherokee County Chamber of Commerce shall serve as an ex officio member of the Authority. The members appointed by the board of county commissioners shall serve three year terms, except the initial appointees. Of the initial appointees, the board of commissioners shall designate one to serve a one year term, two a two year term, and one a three year term. Vacancies created by an appointed member shall be filled by the board of commissioners. Members appointed to fill vacancies shall serve the remainder of the unexpired term for which they are appointed to fill.~~ Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Cherokee County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. ~~The members of the Tourism Development Authority shall elect from its membership a chairman. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer of Cherokee County shall serve ex officio as accountant for the Authority.~~

(c) Reports. – The ~~Tourism Development~~ Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and disbursements for the preceding quarter and for the year in such detail as the board may require.

~~'Sec. 7. Repeal of Levy.~~

~~(a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Cherokee County, but no repeal of taxes levied under this act is effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that~~

~~accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~

'Sec. 8. This act is effective upon ratification."

SECTION 27. The catchline for Section 21(j) of S.L. 2007-527 reads as rewritten:

"**SECTION 21.(j)** Subsection (a) of Section 4 of Chapter 929 of the 1985 Session ~~Laws as amended by S.L.1985-929~~ Laws, as amended by Chapter 319 of the 1987 Session Laws, reads as rewritten:"

SECTION 28. Section 1(b) of S.L. 2005-68 reads as rewritten:

"**SECTION 1.(b)** Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session ~~Laws and S.L. 2001-402.~~ Laws, S.L. 2001-402, and Section 21(cc) of S.L. 2007-527. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section."

MOTOR FUEL TAX CHANGES

SECTION 29.(a) G.S. 105-449.45(a) reads as rewritten:

"(a) Report. – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January. A report must be filed in the form required by the Secretary."

SECTION 29.(b) This section becomes effective January 1, 2010.

SECTION 30. G.S. 105-449.47A reads as rewritten:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.**

The Secretary may refuse to register and issue a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 31. G.S. 105-449.72 is amended by adding a new subsection to read:

"(f) Exemption. – The requirement to obtain a bond or an irrevocable letter of credit does not apply to a distributor, an importer, or a motor fuel transporter who supplies motor fuel when the market for motor fuel is disrupted and emergency supplies are needed, as identified by an executive order of the Governor."

SECTION 32.(a) G.S. 105-449.81 reads as rewritten:

"**§ 105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(3b) Fuel grade ethanol that meets any of the following descriptions:

a. Is produced in this ~~State,~~ State and is removed from the storage facility at the production ~~location, and is not delivered to a terminal in this State.~~location.

b. Is imported to this State outside the terminal transfer ~~system and is not delivered to a terminal.~~system.

~~c. Is removed from a terminal.~~

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and is subject, upon transfer, to the federal excise tax imposed by section 4081 of the Code or is transferred to a person who is not licensed under this Article as a supplier."

SECTION 32.(b) G.S. 105-449.83A reads as rewritten:

"**§ 105-449.83A. Liability for tax on fuel grade ethanol.**

The excise tax imposed by G.S. 105-449.81(3b) on fuel grade ethanol is payable by the refiner or fuel alcohol provider."

SECTION 32.(c) Subsection (a) of this section becomes effective January 1, 2010. The remainder of this section becomes effective when it becomes law.

SECTION 33.(a) G.S. 105-449.95 is recodified as G.S. 105-449.105B. G.S. 105-449.105B, as recodified by this section, reads as rewritten:

"**§ 105-449.106A. ~~Quarterly~~ Monthly hold harmless refunds for licensed distributors and some licensed importers.**

~~(a) Calculation. At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor or licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the is less than~~ If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier ~~during each month of the quarter under the following schedule:~~ under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

~~(b) Refund. If the amount the licensed distributor or licensed importer received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor or importer would have received on the distributor's or importer's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor or importer a refund check for the difference.~~ In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for ~~gasoline~~ motor fuel purchased in a month, a

distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State."

SECTION 33.(b) This section becomes effective January 1, 2010, and applies to motor fuel purchased on or after that date.

SECTION 34.(a) G.S. 105-449.115 reads as rewritten:

"(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A refiner, a terminal ~~operator and~~ operator, a fuel alcohol provider, and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document ~~a terminal operator or the operator of a bulk plant~~ must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons ~~loaded.~~loaded if the motor fuel is loaded onto a transport truck, and the gross pounds loaded if the motor fuel is loaded onto a railroad tank car.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a refiner or a terminal operator, the document must be machine ~~printed and it~~ printed. If the motor fuel is loaded onto a transport truck, the document must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A ~~terminal operator or bulk plant operator~~ person who issues a shipping document may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. – The ~~following~~ acts listed in this subsection are grounds for a civil ~~penalty:~~penalty. The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. The grounds for a civil penalty are:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

~~The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.~~

(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion and received a confirmation number for the diversion before the imposition of the penalty.

(2) Tax was timely paid on the diverted fuel, unless the person is a motor fuel transporter.

(h) ~~Sanctions Against Terminal Operator.~~ Sanctions. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a ~~terminal operator~~ person who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 34.(b) This section becomes effective January 1, 2010.

SECTION 35. G.S. 105-449.121(b)(2) reads as rewritten:

"(2) Audit a distributor, a retailer, a ~~bulk end user,~~ bulk end-user, or a motor fuel user that is not licensed under this Article."

SECTION 36. G.S. 105-449.136 reads as rewritten:

"**§ 105-449.136. Tax on alternative fuel.**

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent

rate. The exemptions from the tax on motor fuel in ~~G.S. 105-449.88(2), (3), and (4)~~ G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

OTHER CHANGES

SECTION 37. G.S. 143B-437.63 reads as rewritten:

"**§ 143B-437.63. JDIG Program cash flow requirements.**

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve ~~Fund~~ established pursuant to ~~G.S. 143-15.3E~~ G.S. 143C-9-6 to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year."

SECTION 38.(a) Section 12.8 of S.L. 2006-66 is repealed.

SECTION 38.(b) G.S. 150B-1(d)(15) is repealed.

SECTION 39. The prefatory language of Section 28.19.(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.19.(a)** G.S. 105-164.13B(a) ~~is amended by adding a new subdivision to read:~~reads as rewritten:"

SECTION 40. The prefatory language of Section 28.25(c) of S. L. 2008-107 reads as rewritten:

"**SECTION 28.25.(c)** ~~G.S. 105-134(e)(5b)~~ G.S. 105-134.6(c)(5b)reads as rewritten:"

SECTION 41. The prefatory language of Section 67(a) of S.L. 2008-134 reads as rewritten:

"**SECTION 67.(a)** G.S. ~~58-5-25(a)(2)~~58-6-25(a)(2) is repealed."

SECTION 42.(a) Section 1.4 of S.L. 2008-146 reads as rewritten:

"**SECTION 1.4.** This ~~section~~ Part becomes effective July 1, 2009, and mandatory advancements in G.S. 105-286(a)(2), as amended by ~~this section~~ Section 1.1 of this Part, apply to notices sent under G.S. 105-284(c) on or after that date."

SECTION 42.(b) Section 2.3 of S.L. 2008-146 reads as rewritten:

"**SECTION 2.3.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 42.(c) Section 3.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 3.2.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2009."

SECTION 42.(d) Section 4.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 4.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

SECTION 42.(e) Section 5.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 5.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

EFFECTIVE DATE

SECTION 43. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 509:
Rev Laws Tech, Clarifying, & Admin. Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 2, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S509-CSRBx-33		

SUMMARY: ***Senate Bill 509[1] makes several technical, clarifying, and administrative changes to the revenue laws and related statutes. The proposed committee substitute adds the provisions highlighted in the chart.***

BILL ANALYSIS: Senate Bill 509 makes the following technical, clarifying, and administrative changes:

Section	Explanation
Privilege License, Income, Excise, and Insurance Tax Changes	
1	Clarifies the privilege license tax on home inspectors applies to an individual licensed under the Home Inspector Licensure Act so that associate home inspectors will be taxed similarly. S.L. 2008-206 imposed an annual State privilege license tax of $50 on a licensed home inspector but it failed to mention associate home inspectors. Without this change, an associate home inspector would be subject to local privilege license tax in each city that levies the tax.
2	Moves the definitions from subsection (b) to a newly created subsection (b1). The current subsection (b) contains two different subdivision lists within the same subsection. This change puts the defined terms, listed by subdivisions, into a new subsection.
3	Clarifies that a recycling facility[2] that is eligible for the tax credit for investing in large or major recycling facility is not also eligible for the Article 3J tax credit for investing in business property. This section becomes for taxable years beginning on or after January 1, 2007, the year the Article 3J tax credits became effective.
4	Changes the term 'nonbusiness activities' to 'activities producing nonapportionable income', which is a defined term in the statute that sets out the manner in which corporations must allocate and apportion their income to North Carolina for income tax purposes. In 2002, the terms 'business income' and 'nonbusiness income' were replaced by apportionable and nonapportionable. This subsection was missed when those changes were made.
5	Clarifies that a corporate taxpayer may not use an alternative apportionment method unless it receives a written decision from the Secretary authorizing it to do so.
6	Corrects an effective date relating to changes made to the statute designating who may sign an income tax return. These changes were originally part of the major rewrite of the tax appeals procedure in 2007 (SB 242).
7	Repeals an unnecessary statute in the corporate and personal income tax laws. The

[1] H553, as introduced by Rep. Wainwright, is the House companion bill. H553 is currently in House Finance

[2] The General Assembly enacted the credit as a tax incentive for Nucor in 1985.

	Department of Revenue does not ask taxpayers to file a 'supplemental' return. A taxpayer files either an original return or an amended return. If the Department determines additional tax is due, it proposes an assessment.
8	Clarifies the reporting requirements for the film industry credit. The term 'claimed' may have several different meanings. The Department of Revenue requested clarity as to the meaning of the term.
9	Changes the date by which the State Treasurer must make a transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund. The current statute provides that ***within 75 days after the end of each fiscal year***, the Treasurer must transfer to the Fund an amount equal to the growth in net revenue from the gross premiums tax on insurance companies. Insurance tax returns are due by March 15. Insurance companies are also required to prepay their tax in installments. The first installment of the fiscal year is due by October 15. Therefore, until those installments are remitted, little or no funds are available for transfer. This section changes the date from within 75 days after the end of the fiscal year, or September 14, to November 1, as recommended by the Department of Revenue.
Sales and Use Tax and Highway Use Tax Changes	
10	Updates the reference to the Streamlined Agreement from June 23, 2007 to May 12, 2009. North Carolina does not need to amend its sales and use tax laws to conform to the changes made in the Agreement since June 23, 2007. A copy of the Agreement, as well as a document summarizing the changes made to the Agreement since June 23, 2007, may be found on the Streamlined Sales Tax Project's website: www.streamlinedsalestax.org
11	Makes two conforming changes to the general sales tax sourcing principles. It provides that direct mail is sourced to the location where the property is delivered, and if that is unknown, it is sourced to the location from which the direct mail was shipped. This change ensures compliance with the Streamlined Agreement. This section also codifies the long-standing sourcing method used for florist wire sales: the sale is sourced to the business location of the florist that takes the order for the sale.
12	Repeals an unnecessary sales tax exemption. GS 105-164.13(40) exempts sales to the Department of Transportation from sales tax; however, subdivision (52) exempts all sales to State agencies from sales tax. S.L. 2003-431 allowed a sale and use tax exemption, instead of a sales and use tax refund, for purchases by State agencies. The exemption for DOT predated this exemption. It is no longer necessary.
13	Replaces the word 'energy' with the word 'electricity' for consistency. This term appears in the statute enacted last year authorizing a sales tax refund for materials used to build a facility that manufactures solar electricity generating materials. This section is effective July 1, 2008, the effective date of the original provision.
14	Provides a new distribution methodology for the allocation of sales tax collected o modular homes to local governments. The methodology currently references the distribution under the third ½ cent local sales and use tax; but this tax is repealed effective October 1, 2009. A 2.5% State sales tax applies to the sale of a modular home. Twenty percent of the tax collected is distributed to the counties. This amounts to approximately $1 million annually. This section provides that 20% of the sales tax collected on modular homes will be allocated to the counties on a per capita basis, and

	distributed to the county and its municipalities as provided in the first ½ cent local sales tax.
15	Repeals an unnecessary highway use tax exemption. A transfer of a motor vehicle to a handicapped person from the Department of Health and Human Services after the vehicle is equipped by the Department for use by the handicapped is exempt from highway use tax. The exemption is not needed because the Department never takes title to the vehicle.
16	Corrects two incorrect statutory references.
17	Clarifies how a bundled transaction that includes food is taxed under the local option ¼ cent county sales tax article. *See GS 105-164.4D.*
Property Tax Changes	
18	Reinserts the word 'shares', which was inadvertently deleted when changes were made in 2008 to the circuit breaker statute.
19	Modernizes language..
20(a)	Clarifies that the homestead exclusion applies uniformly to a husband and wife, regardless of how they hold title to the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
20(b)	Makes the following clarifying and technical changes to the homestead circuit breaker: • Clarifies that the property owned by a qualifying owner must have been the owner's permanent residence for at least five consecutive years but that the owner's five-year occupancy does not have to be consecutive. • Clarifies that the occupancy and ownership requirement refers to "length" of occupancy and ownership. • Clarifies that law applies uniformly to a husband and wife, regardless of how they hold title to the property. • Removes an unnecessary word. • Clarifies that only the deferred taxes for the last three years prior to the disqualifying event become due and payable. • Clarifies that notice of the sum of deferred taxes and interest that are due and payable must be sent annually to the mailing address of the residence subject to the circuit breaker benefit as opposed to mailing notice to each owner of the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
20(c)	Makes the following clarifying changes to the disabled veteran homestead exclusion: • Adds a definition for "qualifying owner" • Provides that a disabled veteran must have "separated" instead of "been discharged" from a branch of the Armed Forces. This change more clearly reflects the language used by the Armed Forces. • Provides that the term 'disabled veteran' includes a veteran whose separation was

	under honorable conditions. The Division of Veterans Affairs would like to expand the definition to include both veterans honorably discharged and discharged under honorable conditions. The Department of Revenue would like clarification. An honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. Separation under honorable conditions is warranted when the positive aspects of the service member's conduct or performance of duty outweigh negative aspects of the service member's conduct or performance of duty as documented in the member's service record. • Clarifies that the surviving spouse of a disabled veteran is eligible for the exclusion as long as the spouse does not remarry and the disabled veteran had the service connected, permanent, and total disability prior to the date of death. • Expands eligibility to a surviving spouse of a disabled veteran when the veteran's death was the result of a service-connected condition. • Clarifies that the exclusion is available to a disabled veteran who "received" instead of "receives" federal benefits to adapt his or her housing, since these benefits are generally a one-time payment. • Clarifies that the exclusion applies uniformly to a husband and wife, regardless of how they hold title to the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
21	Makes the following conforming changes to the statute that sets out the application procedure for property tax exemptions: • Adds drug samples to the list of exempt property not requiring an application, effective for taxes imposed for taxable years beginning on or after July 1, 2008. (subsections b and c) • Adds solar energy electric systems to the list of property excluded from taxation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2008. (subsection c) • Adds working waterfront property to the list of property classified for taxation at reduced valuation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2009. (subsection d) • Adds wildlife conservation to the list of property classified for taxation at reduced valuation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2010. (subsection e)
22	Makes technical, clarifying, and administrative changes to the combined motor vehicle property tax system. Subsection (a) does the following: • **G.S. 105-330** – Adds a definition defining registration fees collected under the Act as passenger vehicle registration fees (G.S. 20-87) and registration fees for property-hauling vehicles (G.S. 20-88). • **G.S. 105-330.1** – Exempts the following motor vehicles from classification

under the combined system: motor vehicles issued permanent registration plates and self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate.

- **G.S. 105-330.2** – Subsection (a) adds language clarifying the period in which the value of a classified motor vehicle is determined so that the date of valuation will continue to be January 1. Adds language that if the value cannot be determined on January 1, then the value will be the most currently available January 1 retail value of the vehicle. Subsection (b) adds language that the initial appraised value of a vehicle purchased from a dealer is the sales price, including all accessories attached to the vehicle. Subsection (c) clarifies the right to appeal the appraised value or taxability of a vehicle by requiring that this right must be set out in the combined tax and registration notice or the tax receipt and by giving the lessee of a motor vehicle the right to appeal the value if the lessee is required to pay the tax on the vehicle under the terms of the lease. Clarifies that situs of a vehicle is determined on the date registration is applied for or renewed and may not be changed until the next registration date.
- **G.S. 105-330.3** - Add subdivision headings, and adds subsection (d) setting out penalty for willfully attempting or to aid or abet any person to evade or defeat the taxes imposed under Article 22A.
- **G.S. 105-330.4** – Subsection (a) adds language clarifying that taxes on a classified motor vehicle and registered under the annual system are due on the date a new registration is applied for or 45 days after the registration expires and removes unnecessary language. Subsection (b) deletes unnecessary language. Subsection (c) amends the law regarding enforcement remedies for unpaid taxes.
- **G.S. 105-330.5** – Subsection (a) gives the Department the authority to select a third party contractor to prepare and mail combined tax and registration notice; clarifies that if there is a pre-payment of taxes, the tax rate used will be the rate in effect on the date the taxes are computed; and adds clarifying language to the combined tax and registration notice regarding the time to appeal and instructions for payment. It provides that the combined tax and registration notice will serve as the registration certificate for a vehicle issued a limited registration plate. Subsection (b) clarifies that the definition of "owner" is the same definition of "owner" in Chapter 20, which include the lessee of the vehicle, so the lessee will receive the combined notice; clarifies that the fee for sending the combined notice also includes the actual cost of preparing the notice; clarifies that the collecting authority "receives" not "retains" a fee for collecting the taxes and fees; and deletes unnecessary language. Subsection (d) clarifies that that taxes on motor vehicles be included in the tax levy for the fiscal year in which the taxes are collected, since owners are able to renew their tags six months early or late; and adds a new subsection (e) stating how small underpayments and overpayments will be handled.
- **G.S. 105-330.6** no changes.
- **G.S. 105-330.7** no change
- **G.S. 105-330.8** clarifies that G.S. 105-321(f) (Minimal Taxes) and G.S. 105-360 (Due date; interest for nonpayment of taxes; discounts for prepayment) do not apply to Article 22A when the integrated computer system is in operation
- **G.S. 105-330.9** – Adds subdivision headings.

	• **G.S. 105-330.10** no change • **G.S. 105-330.11** adds clarifying language. Subsection (b) amends **G.S 20-79.1A** to add clarifying language that a limited registration plate may be used only on the vehicle for which issued, and that if lost or stolen, a replacement limited registration plate or regular plate must be received and attached to the vehicle before it can be driven. This is identical to language governing temporary registration plates.
23	This section corrects effective date errors and provides that the changes made by the section become effective July 1, 2011. It removes the provision that would hasten the effective date upon certification by the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation. This contingency is not likely to happen before July 1, 2011. The provision specifically provides that nothing in this section will require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2011.
24	Clarifies that the amount of taxes that a tax collector must report on a tax certificate includes any deferred taxes that would become due if a disqualifying event occurs.
25	Changes the word 'resolution' to 'ordinance' to reflect that cities adopt ordinances; counties adopt resolutions. The section provides that a tax levied prior to the effective date of this legislation remains valid and in effect until amended or repealed, regardless of what the city called the action: either a resolution or an ordinance. This section also removes the reference to the 'city finance officer' because in some instances, the city contracts with the county to collect this tax.
Occupancy Tax Changes	
26	Adds a Session Law reference that was inadvertently omitted when the Cherokee County local occupancy tax act was amended last year. In 2007, a number of local occupancy tax local acts were amended to change the due date for remitting occupancy tax proceeds and filing returns from the 15th to the 20th of the month to conform to current sales tax statutes. The Cherokee County local occupancy tax act was one of the acts so amended. However, when the rest of the local act was amended in 2008, the 2007 change was not incorporated. To make this technical change, the entire local act must be set out under drafting convention. However, no substantive change is being made.
27	Corrects an incorrect Session Law reference.
28	Adds to S.L. 2005-68, a Session Law reference to the 2007 act referenced above that made changes to a number of local occupancy tax acts related to the due date of the tax and return. S.L. 2005-68 is the act that authorized the additional occupancy tax to finance the NASCAR Hall of Fame Museum.
Motor Fuel Tax Changes	
29	Provides the Secretary with the ability to mandate electronic filing of motor carrier tax returns. The Secretary may currently mandate electronic filing of motor fuel tax returns.

	The Department developed an online filing system for motor carrier returns six years ago. To date, voluntary compliance is around 19%. This section becomes effective January 1, 2010.
30	Inserts a missing word.
31	Provides an exception to the requirement that a distributor, importer, or motor fuel transporter must obtain a bond or irrevocable letter of credit when the person is supplying motor fuel into the State because the market for motor fuel has been disrupted and emergency supplies are needed, as identified by an executive order of the Governor. The bonding requirement became an issue during the recent motor fuel supply shortages in the western part of the State.
32	Specifies that the tax on fuel grade ethanol is payable by the refiner or fuel alcohol provider. The difference between a refiner and a fuel alcohol provider is the amount of fuel the person produces. A refiner is a person who produces an average of more than 500,000 gallons a month; a person who produces less than this amount is a fuel alcohol provider. This section changes the law enacted last year in S.L. 2008-134 that specified when fuel grade ethanol was subject to tax. Effective January 1, 2009, the fuel is taxable when it was removed from a terminal or when it is produced in the State or imported to the State and not delivered to a terminal. However, the Department has had difficulty administering this provision. Ethanol is primarily shipped by railroad tank car and once imported into the State the ethanol may not be off-loaded for weeks. Since the tax is imposed upon importation, this delay in off-loading creates a loop-hole for filers. This section provides that the ethanol produced in this State is taxable when it is removed from the storage facility at the production location; ethanol produced outside the State is taxable when it is imported to the State. Prior to 2009, fuel grade ethanol was first subject to tax when it was blended. This section becomes effective January 1, 2010.
33	Changes the hold harmless refund from a quarterly one the Department calculates and administers to a monthly one the taxpayer requests. This section becomes effective January 1, 2010, and applies to motor fuel purchased on or after that date.
34	Requires a shipping document to transport fuel grade ethanol since the ethanol is now subject to tax before it is blended. This section accomplishes this change by expanding the statute to include refiners and fuel alcohol providers. This section also recognizes that the content of a shipping document issued for motor fuel transported by railroad tank car differs from a one issued for fuel transported by transport trucks. This section becomes effective January 1, 2010.
35	Corrects a misspelled word.
36	Conforms the tax exemptions for alternative fuel to the tax exemptions for motor fuel.
Other Changes	
37	Corrects an incorrect statutory reference. The statute cited was repealed in 2006.
38	Repeals the session law that created the Economic Development Reserve and its exemption from rule-making. The Reserve had a one-time appropriation. The money in the fund has been drawn down. The Reserve has served its intended purpose and is no longer necessary.
39	Corrects the prefatory language of Section 28.19.(a) of S.L. 2008-107.

40	Corrects the prefatory language of Section 28.25.(c) of S.L. 2008-107.
41	Corrects an incorrect statutory reference.
42	Corrects the effective date sections in S.L. 2008-146 to refer to 'Parts' rather than 'sections'.

S509-SMRB-26(CSRBx-33) v3

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 10, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 359	Incorporate Sneads Ferry.	Senator Brown
SB 509	Rev Laws Tech, Clarifying, & Admin. Changes.	Senator Hartsell
SB 700	Dry-Cleaning Solvent Act Amends.	Senator Rand
SB 935	Amend Marriage & Family Licensure Laws/Fees.	Senator Goss
HB 103	Chowan/Delinquent Tax - Deny Building Permit.	Representative Spear
HB 225	Delegate Authority Re: Stamp Tax Overpayment.	Representative Alexander
HB 280	Belmont/Satellite Annexations.	Representative Neumann, IV
HB 1180	Consumer Choice and Investment Act of 2009.	Representative Brubaker Representative Tolson Representative Holliman Representative Tillis
HB 1530	Rescind Advanced Property Tax Appraisal.	Representative Holloway Representative Starnes Representative Cole Representative Burr

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk _____
Reading Clerk _____

Corrected: H422 – Kannapolis Annexation has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

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Wednesday	June 10, 2009	1:00 PM	544 LOB

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HB 280	Belmont/Satellite Annexations.	Representative Neumann, IV
HB 395	Surry County Occupancy Tax.	Representative McCormick Representative Stevens
HB 422	Kannapolis Annexation.	Representative Steen, II Representative Coates
HB 1180	Consumer Choice and Investment Act of 2009.	Representative Brubaker Representative Tolson Representative Holliman Representative Tillis
HB 1530	Rescind Advanced Property Tax Appraisal.	Representative Holloway Representative Starnes

Representative Cole
Representative Burr

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

SENATE FINANCE COMMITTEE
Wednesday, June 10, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 10, 2009, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator David Hoyle presided. Anna Paschall, Elyse Marder and Coralie Watts of Gastonia, Travis Curlin and Cristian Apodaca of El Paso, TX, and Katelyn Mitchell of Cary served as pages.

H.B. 1530 – Rescind Advanced Property Tax Appraisal.

Representative Cole was recognized to explain the bill. Senator Apodaca moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS validates the schedule of values used to appraise real property for the taxable year beginning July 1, 2009, by a county that adopted a resolution to postpone a 2009 reappraisal between January 1, 2009, and March 31, 2009. Pete Rodda, representing the NC Association of Assessing Officers, was recognized to speak in favor of the bill. Senator Berger moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 280 – Belmont/Satellite Annexations.

Representative Neumann was recognized to explain the bill which removes the cap on satellite annexations for the City of Belmont. Senator Hartsell moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 395 – Surry County Occupancy Tax.

Representative Stevens was recognized to explain the bill. It creates a special taxing district made up of the unincorporated areas of Surry County and authorizes the special taxing district in Surry County to levy a six percent room occupancy tax. Senator Dannelly moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 422 – Kannapolis Annexation.

Representative Steen was recognized to explain the bill, which annexes certain described property to the corporate limits of the City of Kannapolis. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 225 – Delegate Authority Re: Stamp Tax Overpayment.

Representative Alexander was recognized to explain the bill, authorizes an initial review of appeals for refunds of overpayment of excise tamp taxes for purposes of streamlining

resolution. Senator Clodfelter moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 103 – Chowan/Delinquent Tax – Deny Building Permit.

Representative Spear was recognized to explain the bill. Senator Jenkins moved to adopt the PCS for discussion and the motion carried. The PCS provides that Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokes, Surry, and Tyrrell Counties may prohibit the issuance of a building permit to a delinquent taxpayer. Senator Stein moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1180 – Consumer Choice and Investment Act of 2009.

Representative Tolson was recognized to explain the bill. Senator Clodfelter moved to adopt the PCS for discussion and the motion carried. The PCS provides an alternative plan of regulation for telephone providers. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1523 – S.A.F.E. Mortgage Licensing Act.

Senator Blue was recognized to explain the bill, which rewrites the North Carolina Mortgage Lending Act in order to conform to the requirements of federal law. Senator Blue then offered a clarifying amendment and moved for its adoption. The motion carried. Senator Soles moved to report the bill favorable as amended and the motion carried. A copy of the bill, the amendment, the fiscal note, and the summary is attached.

S.B. 935 – Amend Marriage & Family Licensure Laws/Fees.

Senator Goss was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS amending the marriage and family therapy licensure laws and authorizes the North Carolina Marriage and Family Therapy Licensure Board to increase fees. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the fiscal note and the summary is attached.

S.B. 700 – Dry-Cleaning Solvent Act Amends.

Senator Rand was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS (1) extends sunset dates applicable to the Dry-Cleaning Solvent Cleanup Act, the Dry-Cleaning Solvent Cleanup Fund, and the Dry-Cleaning Solvent Tax; (2) allows the use of State and local land-use controls and deed notices in lieu of land-use restrictions for properties in the area of contaminated dry-cleaning sites, not including properties on which a dry-cleaning facility is or was located which is the source of a site's contamination; (3) modifies notice and comment requirements associated with a notice of intent to remediate; and (4) removes the limitation on disbursement of monies from the Dry-Cleaning Solvent Cleanup Fund for costs incurred to address dry-cleaning solvent contamination on State-owned property. Dexter Matthews, director of the Waste Management Division of the Division of Environment and Natural Resources, was recognized to answer questions. Senator

Swindell moved for a favorable report and the motion carried. A copy of the PCS, the fiscal note, and the summary is attached.

S.B. 359 – Sneads Ferry Incorporation.

Senator Brown was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS incorporates the Village of Sneads Ferry. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 509 – Revenue Laws Tech, Clarifying & Admin. Changes.

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS makes several technical, clarifying, and administrative changes to the revenue laws and related statutes. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 2:47 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Senate Finance Committee
Wednesday, June 10, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 103	Chowan/Delinquent Tax - Deny Building Permit.	Rep. Spear
HB 225	Delegate Authority Re: Stamp Tax Overpayment.	Rep. Alexander
HB 280	Belmont/Satellite Annexations.	Rep. Neumann
HB 395	Surry County Occupancy Tax.	Rep. McCormick Rep. Stevens
HB 422	Kannapolis Annexation.	Rep. Steen Rep. Coates
HB 1180	Consumer Choice and Investment Act of 2009.	Rep. Brubaker Rep. Tolson Rep. Holliman Rep. Tillis
HB 1523	S.A.F.E. Mortgage Licensing Act.	Rep. Blue
HB 1530	Rescind Advanced Property Tax Appraisal.	Rep. Holloway Rep. Starnes Rep. Cole Rep. Burr
SB 359	Incorporate Sneads Ferry.	Sen. Brown
SB 509	Rev Laws Tech, Clarifying, & Admin. Changes.	Sen. Hartsell
SB 700	Dry-Cleaning Solvent Act Amends.	Sen. Rand
SB 935	Amend Marriage & Family Licensure Laws/Fees.	Sen. Goss

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 10, 2009

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

FAVORABLE

H.B. **225** Delegate Authority Re: Stamp Tax Overpayment.
Sequential Referral: None
Recommended Referral: None

H.B. **280** Belmont/Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **395** Surry County Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **422** Kannapolis Annexation.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B.(SCS #1) **1523** S.A.F.E. Mortgage Licensing Act.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

S.B. **509** Rev Laws Tech, Clarifying, & Admin. Changes.
Draft Number: 35343
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **103** Chowan/Delinquent Tax - Deny Building Permit.

Draft Number:	70454
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1530** Rescind Advanced Property Tax Appraisal.

Draft Number:	50732
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: **8**

Committee Clerk Comments:

H103 – Sen. Jones
H225 – Sen. Clodfelter
H280 – Sen. Hoyle
H395 – Sen. East
H422 – Sen. Brock
H1523 – Sen. Blue
H1530 – Sen. Berger of Rockingham

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 10, 2009

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

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

S.B. **359** Incorporate Sneads Ferry.

Draft Number:	85243
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **700** Dry-Cleaning Solvent Act Amends.

Draft Number:	55430
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **935** Amend Marriage & Family Licensure Laws/Fees.

Draft Number:	55431
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1180** Consumer Choice and Investment Act of 2009.

Draft Number:	11001
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

H1180 – Sen. Clodfelter

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MARMAN	RUTA
Johanna Reese	DOT

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hartkopf	Freedom Works
Roy Hoffler	Freedom Works
Bob & Brunhilde Bryant	Sneads Ferry N.C. 28460
Pete Rodda	Forsyth Co Tax Assessor/Collector
[illegible]	APP VOICES
Margaret Hastzell	Environment North Carolina
Ginny Upchurch	NC Dept of Revenue
Walter Wells	AT&T
[illegible]	AT&T
Bill Willis	DOR
Donna Alderman	DOR

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Senate Finance Committee — June 10, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Janice W. Davidson	NC DOR
Andy Sasol	NC DOR
Lennie Collins	NC DOR
Ed Strickland	NC DOR
Charlie Smith	NCDVA
Wayne Peedin	NCDVA
Dan Lamm	Law Offices of RBC
CRAIG HANSEN	MERCK & CO., INC
[illegible]	S.A.
Mike Taylor	Stanly County
Jennifer Hancock	Wilson County

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Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

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Will Culpepper	Moore + Van Allen
Johanna Reese	DOT
Amanda Mustafa	NSUS
Victoria Hawkins	Bode & Assoc.
Lemuel Hinton	NCLIC
Daniel Long	"
Todd Lanham	AT&T
Chuck Greene	AT+T
LaVoy Spooner	AT&T
April Day	NCOOR
Evelyn Hawthorne	DTGR

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Senate Finance Committee — June 10, 2009

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Martha Brock	Wake CFAC (Human Service Cary, NC
McNeil Chestnut	For the Comm. Bics

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Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill McAulay	PSNC Energy
Pam Melton	EMBARQ
Jason Miller	e-NC
Paul Stark	NCBA
Brad Phillips	TWC
Elizabeth Duncan	WCSR
Bill Lord	~~aulay~~
Lisa H. Corbett	NCDOT NCMFTLB
Wanda Nicholson	NC MFT Licensure Board
Jon Carr	NCAMFT
Linda Andrews	NCFB

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Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Tracy Kimbrell	Parker Poe
Sammy Roberson	TWC
Joyce Peters	JP Assoc
Jim Blackburn	NC Association of County Commissioners
Heather Barrett	Hunton & Williams
Lauren Maley	NC Credit Union League
Mia Bailey	Electric Cities of NC, Inc.
Doug Howey	NC PCM
Richard Tayse	NC 911 Board
Jenny Sheffer	NCALDC
Debra DeCamillis	UNC-IOG

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Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Hance Haney	Discovery Institute Seattle, WA
Steve Brewer	EMBARQ
Marty Bocock	EMBARQ
DAVID BARNES	Poyner Spruill
Chris Edwards	North Carolina Assoc. of Launderers & Cleaners
Jenny Dorsett	JDA
Chris Kukla	CKC
Bob Powers	NCFA
Keith Leonard	NCACC
Rebecca Troutman	NCACC
Jack Cottrell	WCSR

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Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	K2G
Cady Thomas	NC Assn of REALTORS
Kristi Hutt	NCHCFA
Thomas Mesmo	Tuggs & Walls
Amy McConkey	Smith Anderson
Elizabeth Dunn	NCRMA
Jack Gray	NCMHA
Rick Zechini	NC Assoc. of Realtors
Scott Falcone	Duke Energy
Ron Kaylor	Kaylor Law Firm
E Finley	NCMC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Conklin	BBCR
John Bowdeish	Astra Zeneca
Lee-Ann Duncan	MCIC
Deanna Downey	NCUC Public Staff
John Garrison	NCUC Public Staff
Robert Gruber	NCUC Public Staff
Jack Cozort	Wimble
[illegible]	[illegible]
Lee Harris	NCDOR
David Baker	NCDOR
Cam Cozen	BP on HL

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1530
Committee Substitute Favorable 4/29/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1530-CSRB-37 [v.2]

6/10/2009 9:05:37 AM

Short Title: Rescind Advanced Property Tax Appraisal. (Public)

Sponsors:

Referred to:

April 22, 2009

A BILL TO BE ENTITLED

AN ACT TO VALIDATE THE SCHEDULE OF VALUES USED TO APPRAISE REAL PROPERTY FOR THE TAXABLE YEAR BEGINNING JULY 1, 2009, BY A COUNTY THAT ADOPTED A RESOLUTION TO POSTPONE A 2009 REAPPRAISAL BETWEEN JANUARY 1, 2009, AND MARCH 31, 2009.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 105-285 and G.S. 105-317, a county may change the value of real property after January 1, 2009, effective for the taxable year beginning July 1, 2009, based upon the schedule of values used to appraise real property in the county for its last reappraisal if the county adopted a resolution to postpone a 2009 reappraisal between January 1, 2009, and March 31, 2009. This authorization does not affect the requirement in G.S. 105-286 to reappraise property at least once every eight years. If a county changes its values of real property pursuant to this section, the schedule of values adopted by the board of county commissioners and used to appraise real property in the county for its last reappraisal will remain the schedule of values to be used to appraise real property until the county reappraises all real property in accordance with G.S. 105-286.

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

HOUSE BILL 1530:
Rescind Advanced Property Tax Appraisal

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2009
Introduced by:	Reps. Cole, Holloway, Burr, Starnes	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition H1530-CSRB-35		

SUMMARY: ***The proposed committee substitute for House Bill 1530 validates a resolution adopted by a county between January 1, 2009, and March 31, 2009, to change the schedule of values used to appraise real property in the county for the taxable year beginning July 1, 2009. The bill is effective when it becomes law.***

CURRENT LAW: G.S. 105-285(d) requires the value of real property to be determined as of January 1of the year of a reappraisal of property. G.S. 105-317(c) requires the schedule of values used to appraise real property to be approved by the board of county commissioners before January 1 of the year they are applied. The statutes do not provide a means to change the schedule of values used to appraise real property once the schedule becomes effective on January 1.

BILL ANALYSIS: At least three counties, Caldwell, Rockingham, and Stanly Counties, adopted a resolution between January 1, 2009, and March 31, 2009, to rescind the 2009 tax appraisal. The counties reinstated the schedule of values used to appraise real property adopted for its last reappraisal and changed the property tax values accordingly. An advisory opinion from the Attorney General's office found that the resolutions purporting to postpone the 2009 reappraisal were void and of no effect. County and municipal budgets must be submitted by June 1 of each year and the budgets must be adopted by July 1 of each year. In formulating their budgets and tax rates for the taxable year beginning July 1, 2009, these three counties and the municipalities in them have used the reinstated schedule of values. The PCS for House Bill 1530 validates the resolutions adopted by these three counties so that those counties, and the municipalities in them, can proceed with their budgets and tax levies for the taxable year beginning July 1, 2009.

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

BACKGROUND: Real property reappraisals must be conducted at least once every eight years. The purpose of a reappraisal is to help a county fairly and equitably distribute the tax burden between the different classes of property. To accomplish this purpose, a county may voluntarily advance its reappraisal schedule to a shorter cycle by passing a resolution setting a different reappraisal cycle. A county that has an advanced it reappraisal cycle may also pass a resolution to go back to a longer cycle, so long as the octennial requirement continues to be met.

Caldwell, Rockingham, and Stanly Counties had an advanced reappraisal schedule. All three counties approved a schedule of values prior to January 1, 2009, and conducted reappraisals for the 2009 taxable year based upon that schedule. For various reasons, the counties adopted resolutions to postpone the 2009 reappraisal. Had the actions been taken prior to January 1, there would not have been an issue. However, because the actions were taken after January 1[1], the validity of the resolutions is questionable.

[1] Caldwell County passed its resolution on January 5, 2009; Stanly County passed its resolution on January 20, 2009; and Rockingham County passed its resolution on March 9, 2009.

HOUSE BILL 280
Corrected Copy 3/17/09

Short Title:	Belmont/Satellite Annexations.	(Local)
Sponsors:	Representative Neumann.	
Referred to:	Local Government I, if favorable, Finance.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF BELMONT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

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

HOUSE BILL 280:
Belmont/Satellite Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2009
Introduced by:	Rep. Neumann	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 280[1] is a local bill that would exempt the City of Belmont from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[2] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: House Bill 280 would permanently exempt the City of Belmont from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (92) from this 10% rule by local act.

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[1] House Bill 280 received a favorable report from House Local Government I Committee on April 8, 2009. House Bill 280 also received a favorable report from House Finance Committee on April 22, 2009.

[2] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: The City of Belmont is seeking to join other municipalities in Gaston County that have obtained exemption from the 5th requirement of G.S.160A-58.1(b) as follows:

1. Town of Cramerton S.L. 2007-62
2. Town of Dallas S.L. 2001-37
   S.L. 2004-203
3. City of Gastonia S.L. 2003-30
4. City of Mount Holly S.L. 2004-57

H280-SMRE-39(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 395
Committee Substitute Favorable 3/19/09

Short Title: Surry County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL TAXING DISTRICT MADE UP OF THE UNINCORPORATED AREAS OF SURRY COUNTY AND TO AUTHORIZE THE SPECIAL TAXING DISTRICT IN SURRY COUNTY TO LEVY A SIX PERCENT ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Surry County District S created. – Surry County District S is created as a taxing district. Its jurisdiction consists of that part of Surry County that is located outside of incorporated areas within the County. Surry County District S is a body politic and corporate and has the power to carry out the provisions of this act. The Surry County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the County shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Occupancy tax. – (a) Authorization and Scope. – The governing body of Surry County District S may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Surry County District S were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 2.(c) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 2.(d) Distribution and use of tax revenue. – Surry County District S shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Surry County District S Tourism Development Authority. The Authority shall use at least two-thirds of the proceeds remitted to it to promote travel and tourism in Surry County District S and shall use the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Surry County District S. None of the proceeds may be used to promote travel or tourism in areas within Surry County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

SECTION 3. Surry County District S Tourism Development Authority. – (a) Appointment and Membership. – When the governing body of the district adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Surry County District S Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Surry County shall be the ex officio finance officer of the Authority.

SECTION 3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 2 of this act. The Authority shall promote travel, tourism, and conventions in the district, sponsor tourist-related events and activities in the district, and finance tourist-related capital projects in the district.

SECTION 3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body of the district on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body of the district may require.

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington Counties, to Surry County District S, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

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

HOUSE BILL 395:
Surry County Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2009
Introduced by:	Reps. Stevens, McCormick	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 395 creates Surry County District S and authorizes the district to levy a 6% room occupancy and tourism development tax. The district consists of all areas in the county that are not within an incorporated area. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. The bill conforms to the occupancy tax guidelines adopted by the North Carolina Travel & Tourism Coalition and the House Finance Committee.***

The Occupancy Tax Subcommittee gave this bill a favorable report on May 7, 2009.

CURRENT LAW: Surry County does not have authority to levy a room occupancy tax. The four municipalities in Surry County (Dobson, Elkin, Mount Airy, and Pilot Mountain) have authority to levy up to a 6% room occupancy tax. The county tax authorized by this bill would not increase the total room occupancy tax rate in these municipalities.

BILL ANALYSIS: House Bill 395 creates Surry County District S and authorizes the district to levy a 6% room occupancy tax. The district consists of all areas in the county not within an incorporated area. The proceeds must be remitted to a District S Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures, all within District S. These administrative and use provisions conform to the uniform guidelines followed by the House Finance Committee.

UNIFORM OCCUPANCY TAX PROVISIONS	HB 395
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.	Conforms
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.	Conforms
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.	Conforms
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.	Conforms
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.	Conforms

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

H395-SMRE-37(e2) v1

Trina Griffin, counsel to House Finance Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 422*
Committee Substitute Favorable 4/8/09

Short Title: Kannapolis Annexation. (Local)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are extended to include the following described territory:

Being tracts of GDRM Gateway, LLC in China Grove Township, Rowan County, North Carolina, and more particularly described as follows:

FIRST TRACT East side Interstate 85

Beginning at a railroad spike in the center line of Brunner Sloop Rd. SR 1418. Said railroad spike being N 03-00-00 E 30.84 ft. to an iron pipe at the corner of second tract and seventh tract of GDRM Gateway, LLC.

Thence with Tony L. Beaver line S 03-00-00 W 513.80 ft. to an iron pin corner of Tony I. Beaver and Ernest L. Cole. Thence 2 lines with Earnest L. Cole (1) N 86-56-54 W 1,346.04 ft. to an iron pin, (2) Thence S 01-32-52 W 324.73 ft. to an iron pin on Earlene Wallace line. Thence with Earlene H. Wallace N 86-42-14 W 1,359.04 ft. to an iron pin Earlene Wallace and Thomas N. Corl corner. Thence six lines with Thomas N. Corl (1) N 85-42-27 W 285.77 ft. to a White Oak tree (2) N 02-49-55 E 10.39 ft. to an iron pin (3) N 86-34-54 W 505.02 ft. to a point (4) N 12-58-11 E 89.91 ft. to an iron pin (5) N 86-35-54 W 80.14 ft. to an iron pin (6) S 12-57-43 W 99.98 ft. to an iron pin on Jeffrey P. Fritts line. Thence with Jefferey P. Fritts line N 86-31-16 W 122.11 ft. to a stone on Floyd W. Propst line. Thence three lines with Floyd W. Propst (1) N 04-19-13 E 546.62 ft. to an iron pipe (2) N 87-30-00 E 1,058.00 ft. to an iron pipe (3) S 00-30-00 E 271.66 ft. to an iron stake corner of R.E. Archie and on the line of Floyd W. Propst. Thence with the lines of R.E. Archie and D.W. Leonard N 88-00-00 W 849.00 ft. to a point on the right-of-way of Interstate 85 North. Thence six lines with the right-of-way of Interstate 85 North (1) N 00-07-34 E 1,005.58 ft. to a pipe (2) N 07-56-44 E 14.57 ft. to a concrete monument (3) N 07-14-04 E 467.78 ft. to a concrete monument (4) N 23-35-33 W 198.93 ft. to a concrete monument (5) N 08-09-48 E 5.78 ft. to an iron pipe (6) along a curve having a radius of 11,313.16 ft., arc of 640.98 ft. and a chord bearing of N 03-58-43 E 640.90 ft. to an iron pipe, J.L. Morris corner of the right-of-way of Interstate 85 North. Thence with J.L. Morris, A.R. Beaver, R.S. Morris, and J.L. Vanover lines S 87-42-45 E 1,055.53 ft. to a stone and iron pipe on J.L. Vanover line. Thence with J.L. Vanover, C.G. Keller, and S.M. Garmon lines S 87-30-00 E 1,468.00 ft. to a stone S.M. Garmon corner. Thence with S.M. Garmon line N 03-30-00 E 313.00 ft. to a stone on S.M. Garmon line and Barbara R. Lentz corner. Thence with Barbara R. Lentz and C.H. Daugherty lines S 88-00-00 E 1,419.00 ft. to a pine knot on the line of Virgina Efird line. Thence with Virgina Efird line S 03-00-00 W 198.00 ft. to a stone. Thence with Virgina Efird line and the right-of-way of Backwood Lane

SR 1343 S 80-00-00 E 1,435.48 ft. to an iron pin on the right-of-way of Backwood Lane. Thence with Tracy P. Eddy line S 10-14-51 W 569.78 ft. to an iron pin corner of Tracy P. Eddy on R.J. Roberts line. Thence with R.J. Roberts line N 88-00-00 W 395.06 ft. to an iron stake R.J. Roberts corner. Thence with R.J. Roberts, R.M. Bassinger, L.W. Bassinger, and N.R. Bassinger line S 05-00-00 W 613.80 ft. to an iron stake, N.R. Bassinger corner. Thence with N.R. Bassinger line S 88-00-00 E crossing and axle at 33.74 ft. and continuing 696.26 ft. for a total distance of 729.50 ft. to a stone and iron pipe J.D. Rivers corner on N.R. Bassinger line. Thence with J.R. Rivers line S 04-46-00 W 387.57 ft. to an iron at J.R. Rivers corner. Thence with J.R. Rivers line S 03-43-00 W crossing an iron at 210.89 ft. and continuing 30.84 ft. for a total distance of 241.73 ft. to a railroad spike in the center line of Brunner Sloop Road SR 1418 to the place of Beginning, containing 296.86 acres more or less.

For back title see the following Deeds:

Deed Book 1132 Page 724

Deed Book 1111 Page 588

Deed Book 1115 Page 835

Deed Book 1115 Page 734

Deed Book 1110 Page 969

SECOND TRACT West side Interstate 85

Lying in China Grove Township, Rowan County, North Carolina, and being more particularly described as follows:

Beginning at an iron stake in the southern line of E.O. Moose said beginning being N 88-00-00 W approximately 708.00 ft. to the center line of China Grove Road S.R. 1238. Thence with the southern line of E.O. Moose S 88-00-00 E 1,150.00 ft. to a point in the right-of-way of Interstate 85 South. Thence in a southerly direction with the right-of-way of Interstate 85 South approximately 990.00 ft. as it curves to a point Charles R. Raymer corner. Thence with Charles R. Raymer and V.H. Wilhelm line N 88-00-00 W 1,380.00 ft. to an iron stake V.H. Wilhelm and D.B. Brown corner. Thence in a northeasterly direction along D.B. Brown line approximately 511 ft. to an iron stake. Thence 2 lines with R.N. White (1) N 75-45-00 E 121.00 ft. to an iron stake (2) N 03-00-00 W 396.00 ft. to an iron stake place of Beginning, containing 30.10 acres more or less and is subject to the right-of-way and easement contained in Deed Book 558, Page 838.

For back title see the following deeds:

Deed Book 1034 Page 0172

Deed Book 1115 Page 801

ALSO INCLUDED

That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

SECTION 2. This act becomes effective September 30, 2011.

HOUSE BILL 422:
Kannapolis Annexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2009
Introduced by:	Reps. Steen, Coates	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 422[1] is a local bill that would annex approximately 327 acres adjacent to I-85 in southern Rowan County into the corporate limits of the City of Kannapolis.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. **No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.**
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: House Bill 422 would annex approximately 327 acres adjacent to I-85 in southern Rowan County into the City of Kannapolis as described in the bill:

1. First Tract East side Interstate 85, containing 296.86 acres more or less.
2. Second Tract West side Interstate 85, containing 30.10 acres more or less.
3. That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

EFFECTIVE DATE: House Bill 422 would become effective September 30, 2011.

BACKGROUND: The City of Kannapolis and GDRM, LLC, the owners of approximately 327 acres in southern Rowan County have explored the possibility of a partnership among local governments in southern Rowan County to facilitate the development of this property for a corporate business park, Southland Development. The property owners have determined that Kannapolis is the logical long-term provider of services to the Southland Development property and the property owners have formally requested that the approximately 327 acres comprising the Southland Development property be voluntarily annexed into the City of Kannapolis. The City and the Property Owners have agreed that the action requested should not become effective until a formal Development Agreement is adopted by both

[1] House Bill 422 was given a favorable report in House Local Government I Committee on April 1, 2009, and in House Finance Committee on April 8, 2009.

parties to define responsibilities for the successful development of the Southland Development properties.

The majority of the Southland development property is closer to either China Grove or Landis than to Kannapolis and, as a result, Kannapolis is limited in its ability to unilaterally act on this annexation request by NCGS 160A-58.1(b)(2) which provides that a municipality's satellite corporate limits may not be closer to the primary corporate limits of another municipality.

On February 23, 2009, the City Council of the City of Kannapolis adopted a Resolution requesting special local legislation to annex into the City of Kannapolis approximately 327 acres adjacent to I-85 known as the Southland Development properties in southern Rowan County, with an effective date of September 30, 2011.

H422-SMRE-40(e2) v1

Martha Walston, Counsel to House Finance Committee, substantially contributed to this summary.

HOUSE BILL 225

Short Title:	Delegate Authority Re: Stamp Tax Overpayment.	(Local)
Sponsors:	Representative K. Alexander.	
Referred to:	Local Government II, if favorable, Finance.	

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN INITIAL REVIEW OF APPEALS FOR REFUNDS OF OVERPAYMENT OF EXCISE STAMP TAXES FOR PURPOSES OF STREAMLINING RESOLUTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Mecklenburg County only.

SECTION 2. G.S. 105-228.37(b) reads as rewritten:

"(b) Hearing by County. – A board of county commissioners may delegate to a county manager the authority to consider written requests for a refund filed in accordance with subsection (a) of this section and the authority to either grant or deny such requests. If the county manager decides that the refund requested is due, the county must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the county manager finds that the refund requested is not due, the board of county commissioners must conduct a de novo hearing on a request for refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, ~~it~~ the county must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission."

SECTION 3. This act is effective when it becomes law. The procedures for review of disputed tax matters enacted by this act apply to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a taxpayer may appeal or has appealed to the Property Tax Commission.

HOUSE BILL 225:
Delegate Authority Re: Stamp Tax Overpayment

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2009
Introduced by:	Rep. K. Alexander	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: House Bill 225 would authorize the board of county commissioners to delegate to the county manager the authority to conduct an initial review of a taxpayer's request for a refund on the overpayment of an excise stamp tax. This act applies to Mecklenburg County only.

Companion Bill, Senate Bill 269, as introduced by Senator Clodfelter, was given a favorable report in Senate Finance on April 1, 2009.

CURRENT LAW: Excise stamp taxes apply to conveyances in real estate located in North Carolina other than governmental units or instrumentalities of governmental units. G.S. 105-228.28. A taxpayer who pays more than he or she owes may request a refund of the overpayment by filing a written request with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due. G.S. 105-228.37(a).

A board of county commissioners must conduct a hearing on a request for refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission. A decision of the Property Tax Commission is also subject to judicial review. G.S. 105-228.37(b)-(d).

BILL ANALYSIS: House Bill 225 would permit the board of county commissioners of Mecklenburg County to delegate to a county manager the authority to consider written requests for refunds of the overpayment of an excise stamp tax. If the county manager decides that the refund requested is due, the county must refund to the taxpayer the county's portion of the overpayment with any applicable interest. If the county manager finds that the refund requested is not due, the board of county commissioners must conduct a de novo hearing on a request for refund.

EFFECTIVE DATE: This act is effective when it becomes law. The procedures for review of disputed tax matters enacted by this act apply to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a taxpayer may appeal or has appealed to the Property Tax Commission.

H225-SMRE-41(e1) v1

Brad Krehely, Counsel to House Local Government II, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 103
Committee Substitute Favorable 2/25/09
Committee Substitute #2 Favorable 3/26/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H103-CSRB-38 [v.1]

6/10/2009 11:14:55 AM

Short Title: Delinquent Tax - Deny Building Permit. (Local)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT ALEXANDER, ALLEGHANY, ANSON, BERTIE, CATAWBA, CHOWAN, STOKES, SURRY, AND TYRRELL COUNTIES MAY PROHIBIT THE ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3(b) of S.L. 2005-433, as amended by Section 2 of S.L. 2006-150 and Section 1 of S.L. 2007-58, reads as rewritten:

"**SECTION 3.(b)** This section applies to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes, Surry, ~~Tyrrell,~~ Wayne, and Yadkin Counties only."

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

HOUSE BILL 103:
Delinquent Tax - Deny Building Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 10, 2009
Introduced by:	Rep. Spear	**Prepared by:**	Judy Collier
Analysis of:	PCS to Third Edition H103-CSRB-38		Research Assistant

SUMMARY: ***House Bill 103[1] is a local bill that, as introduced, added Chowan County to the list of counties authorized to prohibit the issuance of a building permit to a delinquent taxpayer.***

- ***Alexander and Catawba Counties were added to the bill in House Local Government II. Committee.***
- ***Anson and Tyrrell Counties were added to the bill in House Finance Committee.[2]***

The Proposed Committee Substitute for House Bill 103 would add Alleghany and Surry Counties[3], Bertie County[4], and Stokes County[5] to the list of counties authorized to prohibit the issuance of a building permit to a delinquent taxpayer.

CURRENT LAW: In 2005, the General Assembly enacted local legislation authorizing Greene, Lenoir, Iredell, Wayne, and Yadkin Counties to prohibit the issuance of a building permit to a person who owes delinquent property taxes on property owned by the person. Davie and Lincoln Counties were given the authority in 2006. The relevant part of G.S. 153A-357(c), as enacted for these counties, reads as follows:

> A county may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes.

BILL ANALYSIS: The PCS to the 3rd Edition of House Bill 103 adds the following counties to the list of counties who have the authority to prohibit issuance of a building permit to a delinquent taxpayer: Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokes, Surry, and Tyrrell.

EFFECTIVE DATE: This act would become effective when it becomes law.

H103-SMRE-42(CSRB-38) v1

Martha Walston, Counsel to House Finance Committee, substantially contributed to this summary.

[1] House Bill 103, as introduced is identical to Senate Bill 79, introduced by Senator Jones, and currently in House Finance.
[2] House Bill 246 is a local bill in House Finance that would add Anson County to the list.
[3] House Bill 1000 is a local bill currently in Senate Finance that would add Alleghany and Surry Counties to the list.
[4] Sen. Jones requested that Bertie County be added to the bill. He also sponsored the Senate companion bill, SB 79.
[5] Sen. East requested that Stokes County be added to the bill.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1180

Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Commerce Committee Substitute Adopted 6/1/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1180-CSTD-51 [v.3]

6/10/2009 11:31:57 AM

Short Title: Consumer Choice and Investment Act of 2009. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, Voice-over Internet Protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional consumer choices for these services; and

Whereas, traditional telephone service providers remain subject to certain antiquated statutory and regulatory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive consumers of traditional telephone companies of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions for traditional telephone companies will relieve consumers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to consumers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, the General Assembly hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.5 is amended by adding a new subsection to read:

"(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan

described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. A local exchange company shall not be permitted to make the election under this section unless it commits to provide stand-alone basic residential lines to rural customers at rates comparable to those rates charged to urban customers for the same service.

(1) Definitions. – The following definitions apply in this subsection:

a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).

b. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).

c. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.

d. Open to competition from competing local providers. – Both of the following apply:

1. G.S. 62-110(f1) applies to the franchised area and to local exchange and exchange access services offered by the local exchange company.

2. The local exchange company is open to interconnection with competing local providers that possess a certificate of public convenience and necessity issued by the Commission. The Commission is authorized to resolve any disputes concerning whether a local exchange company is open to interconnection under this section.

(2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.

b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines.

(3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.

b. Otherwise regulate any of the local exchange company's retail services.

(4) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.

(5) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1.

(6) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning the following:

a. Enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.

b. The telecommunications relay service pursuant to G.S. 62-157.

c. The Life Line or Link Up programs consistent with Federal Communications Commission rules, including, but not limited to, 47 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission.

d. Universal service funding pursuant to G.S. 62-110(f1).

e. Carrier of last resort obligations pursuant to G.S. 62-110.

f. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company."

SECTION 2. G.S. 62-133.5 is amended by adding a new subsection to read:

"(i) To the extent applicable, a competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section."

SECTION 3. G.S. 62-133.5 is amended by adding a new subsection to read:

"(j) Notwithstanding any other provision of this Chapter, the Commission has jurisdiction over matters concerning switched access and intercarrier compensation of a local exchange company that has elected to operate under price regulation, as well as a local exchange carrier or competing local provider operating under any form of regulation covered under this Article or G.S. 62-110(f1)."

SECTION 4. G.S. 62-133.5 is amended by adding a new subsection to read:

"(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Utility Review Committee must review the annual reports and decide whether to recommend that the General

Assembly take corrective action in response to those reports. The report shall include the following:

(1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from enactment of the Consumer Choice and Investment Act of 2009.

(2) An analysis of service quality based on customer satisfaction studies from enactment of the Consumer Choice and Investment Act of 2009.

(3) An analysis of the level of local exchange rates from enactment of the Consumer Choice and Investment Act of 2009."

SECTION 5. Article 4 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-73.1. Complaints against providers of telephone services.**

(a) A local exchange company or competing local provider that is unable to resolve a customer complaint shall (i) provide notice to the consumer of the consumer's right to contact the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact information for the Public Staff, including both a toll-free telephone number and an electronic mail address.

(b) The Public Staff shall keep a record of all complaints received pertaining to the provider, including the nature of each complaint and the resolution thereof. If the Public Staff determines that it cannot reasonably resolve the matter, the matter shall be referred to the Commission. The standard for review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate."

SECTION 6. G.S. 62-302(b)(4) reads as rewritten:

"(b) Public Utility Rate. –

...

(4) As used in this section, the term "North Carolina jurisdictional revenues" ~~means~~ means:

a. ~~all~~ All revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

b. All revenues derived from retail services no longer otherwise regulated by the operation of G.S. 62-133.5(h) for a local exchange company or competing local provider that has elected to be regulated under that subsection."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1180:
Consumer Choice and Investment Act of 2009

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 10, 2009
Introduced by:	Reps. Holliman, Brubaker, Tillis, Tolson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fourth Edition H1180-CSTD-51		

SUMMARY: ***House Bill 1180 would provide an alternative plan of regulation for telephone providers. The proposed committee substitute makes technical changes and provides a definition for "open to competition from competing local providers."***

CURRENT LAW: Prior to 1996, all regulated incumbent local telephone providers (ILECs) operated under rate-of-return regulation. S.L. 1995-27 allowed incumbent local exchange providers to elect for regulation under different methods including price regulation.[1] In price regulation plans, the price of services is related to the value of specific services, and the competition to offer those services. ILECs must apply to the Utility Commission to elect price regulation, and provide notice to interested parties. In order to approve price regulation the Commission must find that the plan:

1. Protects the affordability of basic local exchange service.
2. Reasonably assures the continuation of basic local exchange service that meets the service standards adopted by the Commission.
3. Will not unreasonably prejudice any class of telephone customers, including telecommunication companies.
4. Is otherwise consistent with the public interest.

S.L. 1995-27 also allowed competitive offerings of local exchange telephone service. In order to offer this service, prospective competing local providers (CLPs) must make certain showings to the Commission including that it is capable, and financially able to render such service, the service to be provided will reasonably meet the service standards that the Commission may adopt, and the provision of the service will not adversely impact the availability of reasonably affordable local exchange service.

BILL ANALYSIS: The proposed committee substitute allows an incumbent local exchange provider (ILEC) open to competition from competing local providers, and to the extent applicable a competing local provider (CLP), to elect to have its rates, terms and conditions of service determined pursuant to a new plan. An ILEC may only choose this new plan if the ILEC commits to provide stand-alone basic service to rural customers at rates comparable to those rates charged to urban customers for the same service.

Rates for basic service: After entering into this plan, the ILEC may not increase the amount charged for basic residential service more than the percentage increase of the GDP each year, unless otherwise authorized by the Commission. Other than to enforce this rate increase standard, the Commission cannot regulate rates or service standards for basic service.

[1] S.L. 1995-27 also permitted the Utilities Commission to deregulate a particular telecommunications service, or an entire telecommunications public utility.

Authority retained by the Utilities Commission: The Utilities Commission retains authority over the following:

1. Obligations of ILECs under sections 251 and 252 of the Federal Telecommunications Act of 1996.
2. Federal requirements of ILECSs marketing requirements.
3. Telecommunications relay service.
4. Lifeline or Link Up programs.
5. Universal Service Programs.
6. Carrier of last resort obligations.
7. The ability to hear consumer complaints regarding ILECs.
8. Intercarrier compensation rates of ILECs.
9. The authority delegated to the Commission by the FCC to manage numbering resources.

Report: Each ILEC or CLP offering basic local residential exchange service that chooses this new plan must report to the General Assembly annually on its operations. The report must include the following from the enactment of this Act:

1. Analysis of competition including lines lost and lines gained.
2. Analysis of consumer satisfaction studies.
3. Analysis of rates.

Consumer complaints: ILECs and CLPs must inform any customer complainants that the customer may contact the Public Staff of the Utilities Commission, and provide contact information for the Public Staff. The Public Staff must keep a record of all complaints. If the Public Staff cannot dispose of the complaint, the matter may be referred to the Commission. The standard of review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate.

Utility Regulatory Fee: The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing regulated utility service in North Carolina. House bill 1180 amends the definition of jurisdictional revenues to include revenue derived from retail services but no longer subject regulation due to the election of a company to this new plan,

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

H1180-SMTD-87(CSTD-51) v3

HOUSE BILL 1523

Committee Substitute Favorable 4/30/09
Senate Commerce Committee Substitute Adopted 6/3/09

Short Title: S.A.F.E. Mortgage Licensing Act. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

Whereas, the General Assembly finds that activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this State's consumers, this State's economy, and the neighborhoods and communities of this State, and the housing and real estate industry; and

Whereas, North Carolina has had licensed mortgage loan originators and companies that employ them since 2002, and such licensure has been essential for the protection of the citizens of the State and the stability of the State's economy; and

Whereas, this legislation is necessary to bring North Carolina's mortgage lending laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 19A of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"The Secure and Fair Enforcement Mortgage Licensing Act.

"**§ 53-244.010. Title.**

This act may be cited as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act."

"**§ 53-244.020. Purpose and construction.**

(a) Purpose. – A primary purpose of this Article is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the General Assembly establishes within this Article an effective system of supervision and enforcement of the mortgage lending industry by giving the Commissioner of Banks broad administrative authority to administer, interpret, and enforce this Article and adopt rules implementing this Article in order to carry out the intentions of the General Assembly.

(b) Construction. – It is the intent of the General Assembly that provisions of this Article be liberally construed to effect the purposes stated or clearly encompassed by the Article.

"**§ 53-244.030. Definitions.**

For purposes of the Article, the following definitions apply:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq.), as amended from time to time.

(2) "Audited Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting financial condition of the licensee as of the date specified in the statement.

(2a) "Banking Commission" means the North Carolina Banking Commission. For the purpose of complying with this Article by credit unions, Banking Commission means the North Carolina Credit Union Commission.

(3) "Branch manager" means the individual who is assigned to, is in charge of, and is responsible for the business operations of a branch office of a mortgage broker or mortgage lender.

(4) "Branch office" means an office of a mortgage broker or mortgage lender that is separate and distinct from the mortgage broker's or lender's principal office and from which its employees engage in the mortgage business. A branch office shall not be located at an individual's home or residence.

(5) "Certified Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer or licensee as fairly and accurately reflecting the financial condition of the licensee as of the date specified in the statement.

(6) "Commissioner" means the North Carolina Commissioner of Banks and the Commissioner's designees. For the purpose of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(7) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.

(8) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.

(9) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence.

(10) "Engaging in the mortgage business" means:

a. For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an application for a residential mortgage loan from prospective borrowers, solicit or offer to solicit a residential mortgage loan from

prospective borrowers, negotiate the terms or conditions of a residential mortgage loan with prospective borrowers, issue residential mortgage loan commitments or interest rate guarantee agreements to prospective borrowers, or engage in tablefunding of residential mortgage loans, whether any such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or prospective borrowers.

b. To make or fund, or offer to make or fund, or advance funds on residential mortgage loans for compensation or gain, or in the expectation of compensation or gain.

c. To engage, whether for compensation or gain from another or on one's own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the residential mortgage loan, the residential mortgage loan servicing documents, or servicing contract, or otherwise to meet the definition of the term "servicer" in 12 U.S.C. § 2605(i)(2) with respect to residential mortgage loans.

(11) "Employee" means an individual who has an employment relationship with a mortgage broker, mortgage lender, or mortgage servicer and who is treated as a common law employee for purposes of compliance with the federal income tax laws and whose income is reported on IRS Form W-2.

(11a) "Exclusive mortgage broker" means an individual who acts as a mortgage broker exclusively for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender and who is licensed pursuant to G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage broker shall be subject to the requirements of a mortgage broker under this Article.

(12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(13) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild, or the spouse of an immediate family member. This term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(14) "Individual" means a natural person.

(15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.

(16) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this Article. Clerical or support duties may include, subsequent to the receipt of an application:

a. The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

Any person who represents to the public, through advertising or other means of communication, or provides information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be deemed to be a loan processor or underwriter under this definition.

(17) "Loss mitigation specialist" means an employee of a mortgage servicer authorized to (i) collect or receive payments, including payments of principal, interest, escrow amounts, and other amounts due on existing residential mortgage loans due and owing to the licensed lender or servicer when the borrower is in default or in reasonably foreseeable likelihood of default, (ii) work with the borrower to collect data, and (iii) make decisions necessary to modify, either temporarily or permanently, certain terms of those residential mortgage loans or to otherwise finalize collection through the foreclosure process. Such decisions shall include any change in the principal amount of the debt, the rate of annual interest charged, the term of the loan, the waiver of any fees or charges, including late charges, the deferral of payments, or any other similar matter.

(18) "Make a residential mortgage loan" means to advance funds, to offer to advance funds, to make a commitment to advance funds to a borrower under a mortgage loan, or to fund a residential mortgage loan.

(19) "Mortgage broker" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section.

(20) "Mortgage lender" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction.

(21) "Mortgage loan originator" means:

a. An individual who for compensation or gain or in the expectation of compensation or gain, whether through contact by telephone, by electronic means, by mail, or in person with prospective borrowers, either:

1. Takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan,
2. Accepts or offers to accept applications for mortgage loans,
3. Solicits or offers to solicit a mortgage loan,
4. Negotiates the terms or conditions of a mortgage loan, or
5. Issues mortgage loan commitments or interest rate guarantee agreements to prospective borrowers.

b. The term includes an individual acting solely as a loss mitigation specialist if the United States Department of Housing and Urban Development issues a guideline, rule, regulation, or interpretative letter that such individuals are loan originators as the term is defined by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and only to the extent of such an issuance or determination.

c. The term does not include:
1. An individual engaged solely as a loan processor or underwriter;
2. A person or entity that only performs real estate brokerage activities and is licensed or registered as such in accordance with State law, unless the person or entity is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator;
3. A person or entity solely involved in extensions of credit or sale of time share instruments relating to time share plans, as that term is defined in G.S. 93A-41(9a); or
4. An individual who only informs a prospective borrower of the availability of persons engaged in the mortgage business, does not take or assist in the completion of a loan application, and does not discuss specific terms or conditions of a mortgage loan. The taking of basic preapplication information for facilitating a residential mortgage loan transaction, such as the name and contact information of the prospective borrower, the prospective borrower's own assessment of creditworthiness, desired loan types, and resources to make a down payment, but not including social security number, credit score, credit or employment history, or specific rates of a desired mortgage loan, to connect prospective borrowers to persons engaged in the mortgage business does not prevent an individual from qualifying for this exclusion.

(22) "Mortgage servicer" means a person engaged in the mortgage business who directly or indirectly engages in the mortgage business as defined in sub-subdivision c. of subdivision (10) of this section.

(23) "Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(24) "Nontraditional mortgage product" means any residential mortgage loan product other than a 30-year fixed rate mortgage.

(25) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(26) "Principal office" means a principal place of business that shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. A principal office shall not be located at an individual's home or residence.

(27) "Qualifying individual" means a person who meets the experience and other requirements of G.S. 53-244.050(b) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage lender or mortgage servicer.

(28) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under Chapter 93A of the General Statutes; and
e. Offering to engage in any activity, or act in any capacity, described in sub-subdivision a., b., c., or d. of this subdivision.

(29) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry and is an employee of:
a. A depository institution;
b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
c. An institution regulated by the Farm Credit Administration.

(30) "Residential mortgage loan or mortgage loan" means any loan made or represented to be made to a natural person or persons primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) "Residential real estate" means any real property located in this State upon which is constructed or intended to be constructed a dwelling.

(32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.

(33) "Tablefunding" means a transaction in which a person closes a residential mortgage loan in its own name but with funds provided by another and in which the loan is assigned to the mortgage lender actually providing the funds within one business day of the funding of the loan.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

"§ 53-244.040. License and registration requirements.

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(b) Four types of licenses are granted to entities under this Article, and it shall be unlawful for any person, other than an exempt person, to engage in the mortgage business without one of the following licenses:

(1) A mortgage broker license authorizes a person to act as a mortgage broker as defined in G.S. 53-244.030(19)

(2) A mortgage lender license authorizes a person to act as a mortgage lender as defined in G.S. 53-244.030(20), a mortgage broker as defined under G.S. 53-244.030(19), and upon notice to the Commissioner, a mortgage servicer as defined in G.S. 53-244.030(22).

(3) A mortgage servicer license authorizes a person to act only as a mortgage servicer as defined in G.S. 53-244.030(22).

(4) An exclusive mortgage broker license authorizes a person to act as an exclusive mortgage broker as defined in G.S. 53-244.030(11a).

(c) Each mortgage loan originator and person engaged in the mortgage business must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(d) The following are exempt from all provisions of this Article except the provisions of G.S. 53-244.111:

(1) Registered mortgage loan originators as defined in G.S. 53-244.030(29);

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual when making the family member a residential mortgage loan;

(3) Any individual seller who offers or negotiates terms and makes a residential mortgage loan secured by the dwelling that served as the selling individual's residence;

(4) An attorney licensed pursuant to Chapter 84 of the General Statutes who negotiates the terms of a residential mortgage loan on behalf of a client in the course of and incident to the attorney's representation of the client, so long as the attorney does not hold himself out as engaged in the mortgage business and is not compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator when negotiating the terms of a residential mortgage loan;

(5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of the notice of exemption filed with the Commissioner as specified in G.S. 53-244.050(g);

(6) Any officer or employee of an entity described in subdivision (5) of this subsection when acting within the scope of his or her employment; or

(7) A State or federally chartered credit union, upon filing of a notice of exemption with the Administrator of the Credit Union Division of the Department of Commerce as specified in G.S. 53-244.050(g).

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

(f) Mortgage lenders and mortgage brokers may not operate branch offices, except as permitted by this Article. Each principal office and each branch office of a mortgage broker or mortgage lender licensed under this Article shall have a branch manager who meets the experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's business also may serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage lender licensed under this Article shall file through the

Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of branch manager for each branch. Each mortgage broker or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of the change of any branch manager.

"**§ 53-244.050. License and registration application; claim of exemption.**

(a) Applicants for a license shall apply through the Nationwide Mortgage Licensing System and Registry on a form acceptable to the Commissioner, including the following information:

(1) The applicant's name and address, including street address, mailing address, e-mail, telephone contact information, and social security number or taxpayer identification number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:

a. A description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;

b. Any conviction, within the past 10 years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business; and

c. Any felony convictions.

(5) With respect to an application for licensing as a mortgage lender, mortgage broker, or mortgage servicer, the applicant's financial condition, credit history, and business history, and, with respect to an application for licensing as a mortgage loan originator, the applicant's credit history and business history.

(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a person other than a natural person, each individual who has control of the applicant or who is the qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision.

(b) The eligibility requirements for an application for licensure under this Article are as follows:

(1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:

a. Be at least 18 years of age;

b. Have satisfactorily completed, within the three years immediately preceding the date of application, the mortgage lending prelicensing education as required under G.S. 53-244.070; and

c. Have passed, within the three years immediately preceding the date of application, the test required under G.S. 53-244.080.

(2) Each applicant for licensure as a mortgage broker or mortgage lender or mortgage servicer at the time of application shall comply with the following requirements:

a. If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

b. If the applicant is a corporation, limited liability company, general or limited partnership, association, or other group engaged in a joint enterprise, however organized, at least one of its principal officers, managers, or general partners shall have three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

c. If the applicant will be a qualifying individual or branch manager, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

(3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(11) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully completes a 16-hour residential mortgage lending course approved by the Commissioner supplementing the prelicensing education required under G.S. 53-244.070.

b. Acts exclusively as a mortgage broker and shall be an agent for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender, who:

1. Shall be responsible for supervising the broker as required by this Article and in accordance with a plan of supervision approved by the Commissioner in the Commissioner's discretion;

2. Shall sign the license application of the applicant; and

3. Shall be jointly and severally liable with the broker for any claims arising from the broker's mortgage brokering activities.

c. Shall be compensated on a basis that is not dependent upon the interest rate, fees, or other terms of the loan brokered, provided that this sub-subdivision shall not prohibit compensation based on the principal balance of the loan.

d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products by that lender.

e. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

f. Shall meet the surety bond requirement of a mortgage broker or otherwise be covered by a surety bond provided by the mortgage lender or broker licensee or exempt mortgage lender of the lesser of

five million dollars ($5,000,000) or an amount equal to or greater than the sum of the surety bond requirements for each exclusive mortgage broker supervised by the broker or lender.

(c) In connection with an application for licensing as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:

a. Independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

b. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The personal history may be obtained by the Commissioner at any time and the fingerprint information shall be furnished upon the Commissioner's request.

(4) An authorization for the Commissioner to obtain personal history or fingerprint information at any time.

(d) For the purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of the criminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(e) For the purposes of this section and in order to reduce the points of contact that the Commissioner may have to maintain for purposes of the noncriminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Justice may provide a criminal record check to the Commissioner for any person who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license as provided by this section. The Commissioner shall provide the Department of Justice, along with the request, the fingerprints of the person, any additional information required by the Department of Justice, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

(g) Except as provided by subsection (h) of this section, persons engaged in the mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify the Commissioner in order to claim and confirm the exemption and to facilitate the referral of consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a claim of exemption that shall contain:

(1) The name of the exempt person;

(2) The basis of the exempt status of the exempt person;
(3) The principal business address and contact information for the exempt person; and
(4) The State or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation.

(h) A State or federally chartered credit union may claim and confirm an exemption from this Article by notifying the Administrator of the Credit Union Division of the Department of Commerce and providing substantially the same information required by subsection (g) of this section.

(i) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"**§ 53-244.060. Issuance of license.**

If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license unless the Commissioner finds any of the following:

(1) The applicant has had a mortgage loan originator or mortgage lender, mortgage broker, or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation.
(2) The applicant or its controlling persons have been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court:
a. During the seven-year period preceding the date of the application for licensing and registration; or
b. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

A pardon of a conviction shall not be a conviction for purposes of this subdivision.
(3) The applicant or any of its controlling persons have been convicted of or plead guilty or nolo contendere to any charge in a domestic, foreign, or military court, within the past five years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business.
(4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan originator or other licensee will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:
a. Current outstanding judgments, except judgments resulting solely from medical expenses;
b. Current outstanding tax liens or other government liens and filings;
c. Foreclosures within the past three years; or
d. A pattern of serious delinquent accounts within the past three years.
(5) The mortgage loan originator applicant has failed to complete the prelicensing education requirement described in G.S. 53-244.070.

(6) The mortgage loan originator applicant has failed to pass a written test that meets the requirements described in G.S. 53-244.080.

(7) The mortgage lender, mortgage broker, or mortgage servicer applicant has failed to meet the surety bond requirement described in G.S. 53-244.103.

(8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails to meet the minimum net worth requirement as described in G.S. 53-244.104.

(9) The applicant's participation in the mortgage business will not be in the public interest.

"**§ 53-244.070. Educational requirements for mortgage loan originators.**

(a) In order to be eligible to apply for a mortgage loan originator license, an individual must complete at least 24 hours of prelicensing education approved in accordance with subsection (b) of this section, which shall include:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for nontraditional mortgage products; and

(4) Four hours of North Carolina laws and regulations.

(b) Prelicensing education courses and the course providers shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry using reasonable standards consistently applied, subject to the Commissioner's approval of any course of study required by subdivision (a)(4) of this section. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Except as provided in subsection (e) of this section, prelicensing education may be offered only in a classroom or classroom equivalent setting, as approved by the Nationwide Mortgage Licensing System and Registry.

(e) An individual having successfully completed the prelicensing educational requirements in any other state, if the requirements have been approved by the Nationwide Mortgage Licensing System and Registry, shall be given credit for those hours toward the completion of the prelicensing requirements in this State, other than the hours required under subdivision (a)(4) of this section.

(f) An individual previously licensed under this Article whose license expires and who requests a late renewal of license pursuant to G.S. 53-244.101 must prove that the individual has completed all of the continuing education requirements for the preceding year.

"**§ 53-244.080. Testing requirements for mortgage loan originators.**

(a) An individual must pass a qualified written test, as defined by subsection (b) of this section, developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry. In addition, prior to licensure in this State, an individual must take a qualified written test that tests the individual's knowledge and comprehension of North Carolina law and regulation.

(b) A written test shall not be treated as a qualified written test unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) North Carolina law and regulation pertaining to mortgage origination; and

(4) Federal and North Carolina law and regulations relating to fraud, consumer protection, nontraditional mortgage products, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity which is licensed by North Carolina to engage in the mortgage lending business.

(d) An applicant shall be considered to have passed a qualified written test provided the applicant achieves a test score of at least seventy-five percent (75%) correct answers to questions. In addition, an applicant shall not be considered to have passed a qualified written test if the individual did not achieve a test score of at least seventy-five percent (75%) correct answers to questions related to North Carolina law and regulation.

(e) An applicant may retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an applicant must wait at least six months before retaking the test. A licensed mortgage loan originator who fails to maintain a valid license for a period of three years or longer must retake the test.

"**§ 53-244.090. License application fees.**

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars ($1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars ($300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars ($125.00) for licensure as a mortgage loan originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

(b) Each principal and each branch office of a mortgage broker or mortgage lender licensed under the provisions of this Article shall be issued a separate license for which the Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars ($125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and its designated branch manager. Payment of the license fee under subsection (a) of this section shall be deemed to cover the location license fee for the principal office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an additional one hundred twenty-five dollars ($125.00) under this subsection.

"**§ 53-244.100. Active license requirements and assignability.**

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

(b) The license of a mortgage loan originator is not effective during any period when that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article. When a mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall include a statement of the specific reason for the termination of the mortgage loan originator's

employment. A mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

(c) Each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall maintain on file with the Commissioner a list of all mortgage loan originators who are employed with the mortgage lender, mortgage broker, or mortgage servicer.

(d) No person, other than an exempt person, shall hold himself or herself out as a mortgage lender, a mortgage broker, a mortgage servicer, or a mortgage loan originator unless the person is licensed in accordance with this Article.

(e) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase, merger, or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license are applicable to the acquiring person.

"**§ 53-244.101. License renewal.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks and of processing fees of the nationwide system as the Commissioner shall require, nonrefundable renewal fees as follows:

(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars ($625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars ($300.00), and licensed mortgage lenders and mortgage brokers shall pay one hundred twenty-five dollars ($125.00) for each licensed branch office.

(2) Licensed mortgage loan originators shall pay an annual renewal fee of sixty-seven dollars and fifty cents ($67.50).

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

(1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and

(3) The licensee has paid all required fees for renewal of the license.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars ($250.00) as a nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars ($100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and

Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager.

"**§ 53-244.102. Continuing education for mortgage loan originators.**

(a) A licensed mortgage loan originator shall annually complete at least eight hours of continuing education approved in accordance with subsection (b) of this section, including:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for nontraditional mortgage products; and

(4) One hour of North Carolina law and regulations.

(b) Continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Approval of a continuing education course shall include approval of the course provider.

(c) Nothing in this section shall preclude any continuing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(d) A licensed mortgage loan originator:

(1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(e) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(f) A licensee having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (a)(2), and (a)(3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in North Carolina.

"**§ 53-244.103. Surety bond requirements.**

(a) Each mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

(1) A mortgage broker shall post a minimum surety bond of seventy-five thousand dollars ($75,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars ($10,000,000) but less than fifty million dollars ($50,000,000), then the mortgage broker's minimum bond amount shall be one hundred twenty-five thousand dollars ($125,000),

and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars ($50,000,000) or more, the mortgage broker's minimum bond shall be two hundred fifty thousand dollars ($250,000).

(2) A mortgage lender or mortgage servicer shall post a minimum surety bond of one hundred fifty thousand dollars ($150,000). Provided, however, if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars ($10,000,000) but less than fifty million dollars ($50,000,000), then the mortgage lender's minimum bond amount shall be two hundred fifty thousand dollars ($250,000), and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars ($50,000,000) or more, then the mortgage lender's minimum bond shall be five hundred thousand dollars ($500,000).

(3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

(1) The licensee has been licensed by the Commissioner for at least three years;

(2) The licensee can demonstrate a net worth, according to the most recent audited financial statement, at least four times the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;

(3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and

(4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension.

"**§ 53-244.104. Minimum net worth requirements.**

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can

be used in lieu of the mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

(1) If the licensee is a mortgage lender, it shall maintain a net worth of at least one hundred thousand dollars ($100,000), including evidence of liquidity of one million dollars ($1,000,000), which may include a warehouse line of credit of one million dollars ($1,000,000) or other evidence of funding capacity to conduct mortgage originations as documented by an unqualified audited statement of financial condition.

(2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least one hundred thousand dollars ($100,000), not including monies in any escrow accounts held for others.

(3) If the licensee is a mortgage broker, it shall maintain a net worth of at least twenty-five thousand dollars ($25,000), including evidence of liquidity of ten thousand dollars ($10,000), as certified by the licensee in a certified statement of financial condition.

(b) The Commissioner may adopt rules to require additional minimum net worth or otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate financial responsibility and accomplish the purposes of this Article.

"**§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

(a) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records.

(b) No person shall make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and Registry or in connection with any oral or written communication with the Commissioner or another governmental agency. If the information contained in any document filed with the Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30 days file a correcting amendment to the information contained in the document.

(c) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. The Commissioner may, by rule, impose terms and conditions under which the records and files of a mortgage lender or mortgage servicer may be maintained outside of this State. A principal place of business shall not be located at an individual's home or residence. A mortgage lender, mortgage broker, or mortgage servicer licensee shall maintain a record of the principal place of business with the Commissioner and report any change of address of the principal place of business or any branch office within 15 days after the change.

(d) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the common fund can be individually tracked and accounted for and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds.

"**§ 53-244.106. Display of license.**

Each mortgage broker or mortgage lender licensed under this Article shall display, in plain public view, the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each mortgage loan originator licensed under this Article shall display, in plain public view, in each branch office in which the individual acts as a mortgage loan originator the certificate of licensure issued by the Commissioner.

"**§ 53-244.107. Unique identifier shown.**

The unique identifier of any mortgage loan originator or other person engaged in the mortgage business as defined in G.S. 53-244.030(10) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner.

"**§ 53-244.108. Reports.**

Each mortgage lender, mortgage broker, or mortgage servicer licensee shall submit to the Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the form and shall contain any information that the Commissioner or Nationwide Mortgage Licensing System and Registry may require.

"**§ 53-244.109. Mortgage broker duties.**

Any mortgage broker engaged in the mortgage business as defined by G.S. 53-244.030(10)a., in addition to duties imposed by other statutes or at common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower.

(2) Follow reasonable and lawful instructions from the borrower.

(3) Act with reasonable skill, care, and diligence.

(4) Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.

(5) Timely and clearly disclose to the borrower material information that may be expected to influence the borrower's decision and is reasonably accessible to the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.

(6) Notify before closing each lender of the particulars of each of the other lender's loans if the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower.

(7) Ensure that any services offered to any applicant shall be available and offered to all similarly situated applicants on an equal basis.

(8) In transactions where the mortgage broker has the ability to make credit decisions, use reasonable means to provide the borrower with prompt credit decisions on its loan applications and, where the credit is denied, to comply fully with the notification requirements of applicable State and federal law.

(9) Ensure that advertising materials are designed to make customers and potential customers aware that the mortgage broker does not discriminate on any prohibited basis.

(10) Represent the borrower's best interest in the course of brokering a mortgage loan.

(11) Have a duty of loyalty to the borrower, which shall include a duty not to compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker.

"**§ 53-244.110. Mortgage servicer duties.**

Any mortgage servicer engaged in the mortgage business as defined by G.S. 53-244.030(10)c., in addition to duties imposed by other statutes or at common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower.

(2) Follow reasonable and lawful instructions from the borrower.

(3) Act with reasonable skill, care, and diligence.

(4) File with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities with its application and renewal and with its supplemental filings made from time to time.

(5) File with the Commissioner upon request a report in a form and format acceptable to the Commissioner detailing the servicer's activities in this State, including:

a. The number of mortgage loans the servicer is servicing.

b. The type and characteristics of the loans in this State.

c. The number of serviced loans in default, along with a breakdown of 30-, 60-, and 90-day delinquencies.

d. Information on loss mitigation activities, including details on workout arrangements undertaken.

e. Information on foreclosures commenced in this State.

(6) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:

a. Any notice required by RESPA or by regulations promulgated thereunder.

b. A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with North Carolina law and which shall not exceed those reported to the Commissioner.

c. A notice in a form and content acceptable to the Commissioner that the servicer is licensed by the Commissioner and that complaints about the servicer may be submitted to the Commissioner.

d. Any notice required by Article 2A, 4, or 10 of Chapter 45 of the General Statutes.

(7) In the event of a delinquency or other act of default on the part of the borrower, the mortgage servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, to negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout to the delinquency.

"**§ 53-244.111. Prohibited acts.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any residential mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To improperly refuse to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances.

(4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering or servicing a mortgage loan in violation of this Article, including a mortgage loan brokered or serviced by any unlicensed person other than an exempt person.

(5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24, 45, or 54 of the General Statutes.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.

(9) To fail to pay promptly when due reasonable fees to a licensed appraiser for appraisal services that are:

a. Requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of the mortgage broker or mortgage lender; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage lender.

(10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars ($150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.

(11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be construed to prohibit a mortgage lender, mortgage broker, or mortgage servicer from asking the appraiser to do one or more of the following:

a. Consider additional appropriate property information.

b. Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

c. Correct errors in the appraisal report.

(12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of RESPA and regulations adopted thereunder.

(13) To broker a rate spread adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest annual percentage rate for which the borrower qualifies.

(14) To fail to comply with applicable State and federal laws and regulations related to mortgage lending or mortgage servicing.

(15) To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.

(16) In connection with the brokering or making of a rate spread home loan as defined under G.S. 24-1.1F, no lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan. This subdivision shall not prohibit compensation based on the principal balance of the loan.

(17) For a mortgage servicer to fail to comply with the mortgage servicer's obligations under Article 10 of Chapter 45 of the General Statutes.

(18) For a mortgage servicer to fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place such insurance when the mortgage servicer knows or has reason to know that the insurance is in effect.

(19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance.

(20) For a mortgage servicer to fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by the borrower, to pay all past due amounts, outstanding or overdue charges, and restore the loan to a nondelinquent status, but this reinstatement shall be available to a borrower no more than twice in any 24-month period.

(22) For a person acting as a mortgage servicer to fail to mail, at least 45 days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last known address with the following information:

a. An itemization of all past due amounts causing the loan to be in default.

b. An itemization of any other charges that must be paid in order to bring the loan current.

c. A statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development (HUD).

d. The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

e. The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

f. The address, telephone number, and other contact information for the consumer complaint section of the Office of the Commissioner of Banks.

(23) To fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent, unless there are not sufficient funds in the account to cover the payments and

the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

"**§ 53-244.112. Criminal penalties for unlicensed activity.**

Engaging in the mortgage business as defined by G.S. 53-244.030(10) or acting as a mortgage loan originator without a license as required by the provisions of G.S. 53-244.040 is a Class 3 misdemeanor. Each transaction involving unlicensed activity is a separate offense.

"**§ 53-244.113. Regulatory authority.**

(a) Unless otherwise provided, all actions, hearings, and procedures under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(b) For purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this Article, postage prepaid and addressed to the last known address of the licensee on file with the Commissioner pursuant to G.S. 53-244.105(c).

(c) Upon the issuance of any summary order permitted under this Article, including summary suspensions and cease and desist orders, the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

"**§ 53-244.114. Licensure authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

(1) That the order is in the public interest; and

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for licensure, report, or other document to the Commissioner that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact;

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner;

c. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business;

d. Is the subject of an order of the Commissioner denying or suspending that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

e. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage, mortgage lending, or mortgage servicing industry denying that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

f. Fails at any time to meet the requirements of G.S. 53-244.060, 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or 53-244.104;

g. Controls or has controlled any mortgage broker, mortgage lender, or mortgage servicer who has been subject to an order or injunction described in sub-subdivision c., d., or e. of this subdivision;

h. Has been the qualifying individual, branch manager, or mortgage loan originator of a licensee who had knowledge of or reasonably should have had knowledge of, or participated in, any activity that resulted in the entry of an order under this Article suspending or withdrawing the license of a licensee;

i. Has failed to respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee which allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business; or

j. Has failed to respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article.

(b) In the event the Commissioner has reason to believe that a licensee, individual, or person subject to this Article may have violated or failed to comply with any provision of this Article, the Commissioner may:

(1) Summarily order the licensee, individual, or person to cease and desist from any harmful activities or violations of this Article; or

(2) Summarily suspend the license of the licensee under this Article.

These summary powers are in addition to the summary suspension procedures authorized by G.S. 150B-3(c).

"**§ 53-244.115. Investigation and examination authority.**

(a) For purposes of initial licensing, license renewal, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner may, at the expense of the applicant or licensee, access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

(1) Criminal, civil, and administrative history information, including nonconviction data;

(2) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the

person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be charged against the licensee, individual, or person subject to this Article.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee, individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the Commissioner;

(3) Periodic reports, including:

a. Annual Report Questionnaire,

b. Servicer Activity Report,

c. Servicer Schedule of the Ranges of Costs and Fees,

d. Lender/Servicer Audited Statements of Financial Condition,

e. Broker Certified Statements of Financial Condition, and

f. Quarterly Loan Origination Reports.

(4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

(1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;

(2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or

(3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:

a. By whom or by which the applicant is employed,

b. Over which the applicant has control, or

c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority.

"**§ 53-244.116. Disciplinary authority.**

(a) The Commissioner may, by order:

(1) Take any action authorized under G.S. 53-244.113.

(2) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with this Article. The civil penalty shall not exceed twenty-five thousand dollars ($25,000) for each violation of or failure to comply with this Article. Each violation of or failure to comply with this Article shall be a separate and distinct violation.

(3) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with any directive or order of the Commissioner. The civil penalty shall not exceed twenty-five thousand dollars ($25,000) for each violation of or failure to comply with any directive or order of the Commissioner. Each violation of or failure to comply with any directive or order of the Commissioner shall be a separate and distinct violation.

(4) Require a licensee, individual, or person subject to this Article to disgorge and pay to a borrower or other individual any amounts received by the licensee, individual, or person subject to the Article, including any employee

of the person, to the extent that the amounts were collected in violation of Chapter 24 of the General Statutes or in excess of those allowed by law.

(5) Prohibit licensees under this Article from engaging in acts and practices in connection with residential mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public.

(b) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article.

(c) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a manner to avoid classification of the loan as a residential mortgage loan.

"**§ 53-244.117. Foreclosure suspension.**

In the event the Commissioner shall have evidence that a material violation of law has occurred in the origination or servicing of a loan then being foreclosed or then delinquent and in threat of foreclosure, and that the putative violation would be sufficient in law or equity to base a claim or affirmative defense that would affect the validity or enforceability of the underlying contract or the right to foreclose, then the Commissioner may notify the clerk of superior court, and the clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the event that the Commissioner notifies the clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the clerk so that the foreclosure proceeding may be resumed. The authority granted to the Commissioner in this section is in addition to any powers or authority granted to the Commissioner under Chapter 45 of the General Statutes.

"**§ 53-244.118. Rule-making authority; records.**

(a) The Commissioner may adopt any rules that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, to prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage servicers, or mortgage loan originators in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article.

(b) The Commissioner shall keep a list of all applicants for licensure under this Article or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application, name, place of residence, and whether the license or claim of exempt status was granted or denied.

(c) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective mortgage loan originators and a roster of exempt persons required to file a notice under G.S. 53-244.050(g). The roster shall:

(1) Be kept on file in the office of the Commissioner;

(2) Contain information regarding all orders or other actions taken against the licensees and other persons; and

(3) Be open to public inspection.

"**§ 53-244.119. Commissioner's participation in nationwide registry.**

(a) The Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage

Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

(1) Background checks for:

a. Criminal history through fingerprint or other databases;

b. Civil or administrative records;

c. Credit history; or

d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for, renew, or amend licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

"**§ 53-244.120. Confidentiality of information.**

(a) Notwithstanding any State law to the contrary, the Commissioner shall report enforcement actions under this Article and may report other relevant information to the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies and may share otherwise confidential information pursuant to these written agreements.

(c) The requirements of G.S. 53-99(b) regarding the privacy or confidentiality of any information or material provided under subsections (a) and (b) of this section, and any privilege arising under any other federal or State law with respect to such information or material, shall continue to apply to the information or material after it has been disclosed to an entity described in subsection (a) or (b) of this section. Information or material held by such an entity shall not be subject to disclosure under any State law governing the disclosure to the public of information held by an officer or agency of the State. The entities described in subsections (a) and (b) of this section may share information and material with all State and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by State or federal law.

(d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of confidential supervisory information or of any information or material described in subsection (a) of this section that is inconsistent with this section shall be superseded by the requirements of this section.

(e) The confidentiality provisions contained in subsection (c) of this section shall not apply with respect to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage

brokers, mortgage servicers, or mortgage loan originators that are included in the Nationwide Mortgage Licensing System and Registry for access by the public.

"**§ 53-244.121. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or act of the Commissioner made pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or act may, pursuant to G.S. 53-92(d), appeal to the Banking Commission for review upon giving 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the Banking Commission. Failure to specify the assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92(d)."

SECTION 3. Severability. – If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. Any provision of this act deemed by HUD to conflict with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted, applied, or amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD. The Commissioner shall adopt rules or take such other actions as necessary to ensure the continued jurisdiction over and supervision of the mortgage business in this State to the fullest extent possible.

SECTION 4. Rules. – Unless inconsistent with the provisions of Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act, the rules adopted pursuant to former Article 19A of Chapter 53 of the General Statutes governing mortgage bankers and brokers and loan officers shall remain in effect until superseded by rules adopted under Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act.

SECTION 5. Transition. – All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the effective date of this act, shall maintain their status as licensees and shall be subject to the provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following transitional rules:

(1) All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes as of the effective date of this act shall have the following licensed status:

a. Any person licensed as a loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act.

b. Any person licensed as a mortgage banker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage lender as defined in G.S. 53-244.030(20), as enacted by Section 2 of this act.

c. Any person licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage broker as defined in G.S. 53-244.030(19).

d. Any person licensed as a mortgage servicer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage servicer as defined in G.S. 53-244.030(22).

e. Any person licensed as an exclusive mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as an exclusive mortgage broker as defined in G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010, and if such license has not been obtained by that date, the license of the exclusive mortgage broker shall be subject to summary suspension.

f. Any person licensed as a limited loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be permitted to act as a licensed mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act; provided that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009, and if such license has not been obtained by that date, the license of the limited loan officer will expire.

(2) For the renewal period ending December 31, 2009, any person deemed a mortgage loan originator pursuant to sub-subdivision (1)a. of this section must have met the requirements of this act for renewal, including the initial license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and G.S. 53-244.060(6), provided that the mortgage loan originator would have met the requirements for continuing education under G.S. 53-243.07(b), as repealed by Section 1 of this act. After December 31, 2009, applicants for renewal must meet all requirements for renewal under G.S. 53-244.101.

(3) Persons who maintain a bond posted and accepted by the Commissioner as satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be deemed to comply with the requirements of G.S. 53-244.103, as enacted by Section 2 of this act, through December 31, 2009.

(4) To the extent that loss mitigation specialists are included in the definition of a mortgage loan originator through an action by the U.S. Department of Housing and Urban Development, the Commissioner shall take necessary steps to license these individuals as mortgage loan originators in a timely fashion in a manner that ensures this act fulfills the requirements of the S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage business to the fullest extent possible.

(5) Any person who has been enjoined by the Commissioner of Banks or a court of competent jurisdiction from serving in any capacity defined under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, shall not be allowed to apply for or act in any similar capacity as defined by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose license under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, was subject to any terms, conditions, or affirmative duties imposed by the Commissioner of Banks or a court of competent jurisdiction shall be subject to the same terms, conditions, or affirmative duties for any similar license issued under G.S. 53-244.060 or renewed under G.S. 53-244.101, as enacted by Section 2 of this act.

SECTION 6. Except as otherwise provided by Section 5 of this act, this act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ARB-14 [v.2]

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

Date _____,2009

Senator Blue

moves to amend the bill on page 5, lines 26 and 27, by inserting a new subpart between those lines to read:

"5. An individual who is a salesperson for a licensed manufactured housing retailer that performs the purely administrative and clerical tasks of physically handling or transmitting to a licensed mortgage loan originator on behalf of a prospective borrower an application and other forms completed by the prospective borrower. Nothing in this subpart prohibits a salesperson, upon the written request of a mortgage loan originator and after a prospective borrower completes an application, from pulling and transmitting a credit report with the application.";

And on page 9, lines 42 through 46, by rewriting the lines to read:

"d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products for that lender.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

H1523-ARB-14-V-2

HOUSE BILL 1523:
S.A.F.E. Mortgage Licensing Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2009
Introduced by:	Sen. Blue	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1523 repeals the North Carolina Mortgage Lending Act and replaces it with the Secure and Fair Enforcement Mortgage Licensing (S.A.F.E.) Act in order to conform to the requirements of Title V, of the federal Housing and Economic Recovery Act of 2008.***

There is an amendment to be offered on the bill that would do the following:

- ***Exempt manufactured housing retailers from the licensure requirements under the SAFE Act so long as they are performing administrative and clerical tasks and not acting as a mortgage loan originator.***
- ***Clarify that a limited loan officer may not originate loans with pre-payment penalties.***

CURRENT LAW: The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class 3 misdemeanor.

The federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008 requires that any residential mortgage loan originator must be either State licensed or federally registered. States have until August 1, 2009, to conform their statutes to the federal standards. After that date, loan originators in states that do not have conforming licensing statute will be subject to the federal registration system.

BILL ANALYSIS: House Bill 1523 establishes a new Article 19B of Chapter 53 of the General Statutes, to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act. The bill includes the following provisions as required by the federal law:

- Provides for licensing of loan originators, as well as mortgage brokers, mortgage lenders and mortgage servicers through registration with the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.040)
- Provides effective supervision and enforcement of the law, including the suspension, termination, or nonrenewal of a license for a violation of the State or federal law. (G.S. 53-244.114)
- Provides for the regular reporting of violations as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.108)
- Provides a process for challenging information contained in the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.113)

- Provides a mechanism to assess civil penalties for individuals acting as mortgage originators without a valid license or registration. (G.S. 53-244.116)
- Provides for minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator. (G.S. 53-244.103, 104)

Section 1 repeals Article 19A of Chapter 53 of the General Statutes, the Mortgage Lending Act.

Section 2 establishes a new Article 19B to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act, which includes:

- License and registration requirements for mortgage loan originators as well as mortgage brokers, mortgage lender, and mortgage servicers. Applications for licensure must be made through the Nationwide Mortgage Licensing System and Registry. Each individual applicant must be at least 18 years of age, have completed within 3 years, the mortgage lending prelicensing education, and have passed, within 3 years, a test developed and administered by the Nationwide Mortgage Licensing System and Registry. Each applicant for licensure as a mortgage broker, mortgage lender, or mortgage servicer must have at least three years of experience in residential mortgage lending or other experience required by the Commissioner. Applicants must submit to a criminal history background check, review of credit reports, and information related to administrative, civil or criminal findings by any governmental jurisdiction.
- License application fees of $1,250.00 for mortgage brokers, mortgage lenders, and mortgage servicers, and $125.00 for mortgage loan originators. Each additional branch office must pay a $125.00 filing fee. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.
- Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $125.00 fee for each branch office. The renewal fee for mortgage loan originators is $67.50. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.
- Licensees must complete at least 8 hours of continuing education including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products/
- Loan originators must be covered by a surety bond through employment with a licensee. A mortgage broker must post a bond of $75,000.00, but if the broker originates between $10 million and $50 million dollars in loans per year, the bond must be for $125,000.00, and if the broker originates $50 million or more per year, the bond must be for $250,000.00. A mortgage lender or servicer must post a minimum surety bond of $150,000.00. If the mortgage lender originates between $10 million and $50 million in loans per year, the bond shall be for $250,000.00, and if the mortgage lender originates $50 million or more in loans per year, the bond shall be for $500,000.00. The bill also contains minimum net worth requirements.
- Imposes specific duties on mortgage brokers which are intended to protect the public. The Commissioner of Banks is given specific regulatory authority including authority to discipline licensees and impose civil penalties.
- The Commissioner also retains the authority contained in the repealed law to suspend a foreclosure proceeding when the Commissioner has evidence that a material violation of the law has occurred.

- The Banking Commission has authority to review any action taken by the Commissioner.
- The bill contains instructions for the transition of current licensees into the new system over a period of time.

EFFECTIVE DATE: Except for the provisions relating to transition, the act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

Karen Cochrane-Brown, counsel to the Senate Commerce Committee, contributed substantially to this summary.

H1523-SMRB-30(e3) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 9, 2009

TO: Senator Blue

FROM: Marjorie Rutherford
Fiscal Research Division

RE: House Bill 1523 (Third Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
NC Commissioner of Banks Office	**($80,000)**	**($103,000)**	**($103,000)**	**($103,000)**	**($103,000)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Commissioner of Banks Office

EFFECTIVE DATE: July 31, 2009

BILL SUMMARY:
House Bill 1523 establishes a new Article 19B of Chapter 53 of the General Statutes, to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act. The bill includes the following provisions as required by the federal law:

- Provides for licensing of loan originators, as well as mortgage brokers, mortgage lenders and mortgage servicers through registration with the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.040)

- Provides effective supervision and enforcement of the law, including the suspension, termination, or nonrenewal of a license for a violation of the State or federal law. (G.S. 53-244.114)
- Provides for the regular reporting of violations as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.108)
- Provides a process for challenging information contained in the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.113)
- Provides a mechanism to assess civil penalties for individuals acting as mortgage originators without a valid license or registration. (G.S. 53-244.116)
- Provides for minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator. (G.S. 53-244.103, 104)

Section 1 repeals Article 19A of Chapter 53 of the General Statutes, the Mortgage Lending Act.

Section 2 establishes a new Article 19B to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act, which includes:

- License and registration requirements for mortgage loan originators as well as mortgage brokers, mortgage lender, and mortgage servicers. Applications for licensure must be made through the Nationwide Mortgage Licensing System and Registry. Each individual applicant must be at least 18 years of age, have completed within 3 years, the mortgage lending prelicensing education, and have passed, within 3 years, a test developed and administered by the Nationwide Mortgage Licensing System and Registry. Each applicant for licensure as a mortgage broker, mortgage lender, or mortgage servicer must have at least three years of experience in residential mortgage lending or other experience required by the Commissioner. Applicants must submit to a criminal history background check, review of credit reports, and information related to administrative, civil or criminal findings by any governmental jurisdiction.
- License application fees of $1,250.00 for mortgage brokers, mortgage lenders, and mortgage servicers, and $125.00 for mortgage loan originators. Each additional branch office must pay a $125.00 filing fee. The license application fee for exclusive mortgage brokers is $300.00. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.
- Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $125.00 fee for each branch office. The renewal fee for mortgage loan originators is $67.50. The renewal fee for exclusive mortgage loan originators is 300.00. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.
- Licensees must complete at least 8 hours of continuing education including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products/
- Loan originators must be covered by a surety bond through employment with a licensee. A mortgage broker must post a bond of $75,000.00, but if the broker

originates between $10 million and $50 million dollars in loans per year, the bond must be for $125,000.00, and if the broker originates $50 million or more per year, the bond must be for $250,000.00. A mortgage lender or servicer must post a minimum surety bond of $150,000.00. If the mortgage lender originates between $10 million and $50 million in loans per year, the bond shall be for $250,000.00, and if the mortgage lender originates $50 million or more in loans per year, the bond shall be for $500,000.00. The bill also contains minimum net worth requirements.

- Imposes specific duties on mortgage brokers which are intended to protect the public. The Commissioner of Banks is given specific regulatory authority including authority to discipline licensees and impose civil penalties.
- The Commissioner also retains the authority contained in the repealed law to suspend a foreclosure proceeding when the Commissioner has evidence that a material violation of the law has occurred.
- The Banking Commission has authority to review any action taken by the Commissioner.
- The bill contains instructions for the transition of current licensees into the new system over a period of time.

Source: Adopted from the bill analysis done by the Committee Counsel to Senate Commerce on June 1, 2009.

ASSUMPTIONS AND METHODOLOGY:
House Bill 1523 repeals the North Carolina Mortgage Lending Act and replaces it with the Secure and Fair Enforcement Mortgage Licensing Act in order to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. The Act requires that any residential mortgage loan originator must be either State or federally registered. States have until August 1, 2009 to conform their statutes to the federal standards. If they do not conform by that deadline, the loan originators in the states not conforming will be subject to the federal registration system.

House Bill 1523 establishes several licensing fees for different classes of lenders in the state. Many of these fees are established at the same level as previously under the North Carolina Mortgage Lending Act. The bill does, however, create a subcategory of mortgage brokers known as "exclusive mortgage brokers." Under current law, these individuals pay a $1250 new license fee and a $625 license renewal fee. The bill would only require them to pay $300 both for new licensure and license renewal. In addition, however, they would have to perform the continuing education and the pay new license fee and renewal fees for the mortgage loan originators license.

According to the NC Commissioner of Banks Office, there are approximately 400 individuals in North Carolina who qualify as exclusive mortgage brokers. This number is not expected to change significantly in the next five years. These individuals are currently licensed with the Commissioner of Banks Office, and, therefore, under current law, would only be required to pay the $625 mortgage broker license renewal fee. The bill would lower the license renewal fee for these 400 individuals by $325. It would also require them to pay an additional $125 new license fee for mortgage loan originators in FY 2009-10 and a $67.50 annual fee to renew this license starting in FY 2010-11. Altogether, this would be a $200 decrease in fees in FY 2009-10 and a

$257.50 decrease in fees starting in FY 2010-11. The fee decrease multiplied by the 400 exclusive mortgage brokers results in the revenue loss generated by this bill. This results in an $80,000 revenue loss in FY 2009-10 and a $103,000 revenue loss starting in FY 2010-11. While the bill makes many conforming changes, the fee changes are the only ones expected to have a fiscal impact.

SOURCES OF DATA: NC Commissioner of Banks Office

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ARB-14 [v.2]

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

Date June 10 ,2009

Senator Blue

moves to amend the bill on page 5, lines 26 and 27, by inserting a new subpart between those lines to read:

"5. An individual who is a salesperson for a licensed manufactured housing retailer that performs the purely administrative and clerical tasks of physically handling or transmitting to a licensed mortgage loan originator on behalf of a prospective borrower an application and other forms completed by the prospective borrower. Nothing in this subpart prohibits a salesperson, upon the written request of a mortgage loan originator and after a prospective borrower completes an application, from pulling and transmitting a credit report with the application.";

And on page 9, lines 42 through 46, by rewriting the lines to read:

"d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products for that lender.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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H1523-ARB-14 [v.2]

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 935
Commerce Committee Substitute Adopted 6/1/09
PROPOSED COMMITTEE SUBSTITUTE S935-CSTDf-52 [v.2]

6/9/2009 4:54:24 PM

Short Title: Amend Marriage & Family Licensure Laws/Fees. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE MARRIAGE AND FAMILY THERAPY LICENSURE LAWS AND AUTHORIZING THE NORTH CAROLINA MARRIAGE AND FAMILY THERAPY LICENSURE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.47 reads as rewritten:

"**§ 90-270.47. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) ~~"Allied mental health field" and "degree" mean:~~"Related degree" means:
  a. Master's or doctoral degree in clinical social work;
  b. Master's or doctoral degree in psychiatric nursing;
  c. Master's or doctoral degree in counseling or clinical or counseling psychology;
  d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
  e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy.

(2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.

(2a) "Clinical experience" means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.

(2b) "Larger systems" means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.

(3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.

(3a) "Licensed marriage and family therapy associate" means an individual to whom a license has been issued pursuant to this Article whose license is in force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the supervision of an American Association for Marriage and Family Therapy (AAMFT) approved supervisor in accordance with rules adopted by the Board.

~~(3a)~~(3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with ~~other~~ health care and other professionals when appropriate.

(4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

(5) "Recognized educational institution" means any ~~educational institution that grants a bachelor's, master's, or doctoral degree and is recognized by the Board and by a nationally or regionally recognized educational or professional accrediting body.~~university, college, professional school, or other institution of higher learning that:

a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.

b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.

c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board."

SECTION 2. G.S. 90-270.48 reads as rewritten:

"**§ 90-270.48. Prohibited acts.**

Except as specifically provided elsewhere in this Article, it is unlawful for a person not licensed as a marriage and family therapist or as a licensed marriage and family therapy associate under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy."

SECTION 3. G.S. 90-270.48A reads as rewritten:

"**§ 90-270.48A. Exemptions.**

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, licensed or certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title "Licensed Marriage and Family ~~Therapist,~~"Therapist" or "Licensed Marriage and Family Therapy Associate," use the letters ~~"LMFT,"~~"LMFT" or "LMFTA," or in any way

imply that the person is a licensed marriage and family therapist or a licensed marriage and family therapy associate unless the person is licensed as such under this Article.

(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

(1) The person is (i) ~~preparing for the practice of marriage and family therapy in a manner prescribed by rules of the Board,~~enrolled in a master's level program or higher in a recognized educational institution, (ii) under ~~qualified~~ supervision as approved by the Board in a training institution ~~or facility or supervisory arrangement recognized and~~ approved by the Board, and (iii) designated by a title such as "marriage and family therapy ~~intern," or "marriage and family therapy supervisee," or another similar title approved by the Board.~~intern."

(2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.

~~(3) The person is practicing marriage and family therapy as an employee of a nonprofit organization which the Board has determined meets community needs and the practice is included in the duties for which the person was employed by the nonprofit organization.~~

(4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes.

(c) No such person practicing marriage and family therapy under the exemptions provided by this section shall hold himself or herself out as a licensed marriage and family therapist or licensed marriage and family therapy associate."

SECTION 4. G.S. 90-270.49(a) reads as rewritten:

"(a) Establishment. – There is established as an agency of the State of North Carolina the North Carolina Marriage and Family Therapy Licensure Board, which shall be composed of seven Board members to be appointed as provided in G.S. 90-270.50. Board members shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Board member whom ~~he~~ the appointee shall succeed. Upon the expiration of a Board member's term of office, the Board member shall continue to serve until a successor has qualified. No person may be appointed more than once to fill an unexpired term or for more than two consecutive full terms. ~~The Governor shall designate one Board member to serve as chairperson of the Board.~~The Board shall elect a chair and vice-chair from its membership to serve a term of four years. No person may serve as chairperson for more than four years.

The Governor may remove any member from the Board or remove the chairperson from the position of chairperson only for neglect of duty, malfeasance, or conviction of a felony or crime of moral turpitude while in office.

No Board member shall participate in any matter before the Board in which the member has a pecuniary interest, personal bias, or other similar conflict of interest."

SECTION 5. G.S. 90-270.51(e) reads as rewritten:

"(e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year."

SECTION 5.1. G.S. 90-270.51 is amended by adding a new subsection to read:

"(h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the

Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board."

SECTION 6. G.S. 90-270.54 reads as rewritten:

"**§ 90-270.54. Requirements for ~~license.~~licensure as a marriage and family therapist.**

(a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Meets educational and experience qualifications as follows:

a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and family therapy, or a related ~~degree in an allied mental health field,~~degree, which degree is evidenced by the applicant's official ~~transcripts which establish that the applicant has completed an appropriate course of study in an allied mental health field.~~transcripts. An applicant with a related degree ~~in an allied mental health field~~ may meet the educational requirements if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or ~~an allied mental health field~~a related degree (with ongoing supervision consistent with standards approved by the Board); and

(2) Passes an examination ~~administered~~ approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58."

SECTION 7. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.54A. Requirements for licensure as a marriage and family therapy associate.**

(a) Each applicant shall be issued a license by the Board to engage in practice as a marriage and family therapy associate if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Has completed a marriage and therapy degree or related degree in accordance with G.S. 90-270.54(a)(1)a.

(2) Has shown evidence of intent to accrue the required supervised clinical experience for licensure under G.S. 90-270.54(a)(1)b.

(3) Has filed with the Board an application for licensure as a marriage and family therapy associate, which application includes evidence of the appropriate coursework and an agreement by at least one supervisor approved by the American Association of Marriage and Family Therapy to provide supervision to the applicant.

(4) Has passed the examination approved by the Board pursuant to G.S. 90-270.54(a)(2).

(b) Upon approval by the Board, a license designating the applicant as a licensed marriage and family therapy associate shall be issued. Notwithstanding G.S. 90-270.58, a license issued under this section shall be valid for three years from the date of issuance.

(c) A marriage and family therapy associate license shall not be renewed. However, if upon written petition to the Board a person licensed pursuant to this section demonstrates special circumstances and steady progress towards licensure as a marriage and family therapist, the Board may grant a one-year extension of the marriage and family therapy associate license upon receipt and approval of an application for extension and payment of the fee authorized by G.S. 90-270.57(a)(9).

(d) Nothing in this Article shall be construed to require direct third-party reimbursement under private insurance policies to a person licensed as a marriage and family therapy associate under this Article."

SECTION 8. G.S. 90-270.55 reads as rewritten:

"**§ 90-270.55. Examinations.**

~~The Board shall conduct an examination at least once a year at a time and place designated by the Board. Examinations may be written, oral, or both~~Each applicant for licensure as a licensed marriage and family therapist shall pass an examination as determined by the Board. ~~Examinations shall include questions in theoretical and applied fields to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy.~~ The Board shall set the passing score for examinations. ~~Any person who fails an examination conducted by the Board shall not be admitted to a subsequent examination for a period of at least six months.~~Any request by an applicant for reasonable accommodations in taking the examination shall be submitted in writing to the Board and shall be supported by documentation as may be required by the Board in assessing the request."

SECTION 9. G.S. 90-270.55A is repealed.

SECTION 10. G.S. 90-270.56 reads as rewritten:

"**§ 90-270.56. Reciprocal licenses.**

The Board ~~shall~~ may issue a license as a marriage and family therapist or a marriage and family therapy associate by reciprocity to any person who applies for the license as prescribed by the Board and who ~~is licensed or certified as a marriage and family therapist in another state whose requirements for the license or certificate are equivalent to or exceed the requirements of this State.~~at all times during the application process:

(1) Has been licensed for five continuous years and is currently licensed as a marriage and family therapist or marriage and family therapy associate in another state.

(2) Has an unrestricted license in good standing in the other state.

(3) Has no unresolved complaints in any jurisdiction.

(4) Has passed the National Marriage and Family Therapy examination."

SECTION 11. G.S. 90-270.57 reads as rewritten:

"**§ 90-270.57. Fees.**

(a) In order to fund the Board's activities under this Article, the Board may charge and collect fees not exceeding the following:

(1)	Each license examination	$50.00
(2)	Each license application as a marriage and family therapist	~~150.00~~200.00
(2a)	Each license application as a marriage and family therapy associate	200.00
(3)	Each renewal of license	~~100.00~~200.00
(4)	Each reciprocal license application	~~150.00~~200.00
(5)	Each reinstatement of an expired license	~~125.00~~200.00
(6)	Each application to return to active status	~~125.00~~.200.00
(7)	Each duplicate license	25.00
(8)	Each annual maintenance of inactive status	50.00
(9)	Each application to extend associate license	50.00.

In addition to the examination fee provided in subdivision (1) of this section, the Board may charge and collect from each applicant for license examination the cost of processing test results and the cost of test materials.

~~The Board is authorized to return all or a portion of fees paid in cases where the applicant is ineligible or in cases of undue hardship.~~

(b) The Board may establish fees for the actual cost of (i) document duplication services, (ii) materials, and (iii) returned bank items as allowed by law. All fees listed in subsection (a) of this section shall be nonrefundable."

SECTION 12. G.S. 90-270.58 reads as rewritten:

"**§ 90-270.58. Renewal of license.**

All licenses for marriage and family therapists issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of ~~G.S. 90-270.58B~~ G.S. 90-270.58C and (ii) payment of the renewal fee."

SECTION 13. G.S. 90-270.58B(a) reads as rewritten:

"(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal ~~fees.~~fees, but shall be required to pay an annual inactive status maintenance fee. A person who is on inactive status shall not have to meet continuing education requirements."

SECTION 14. G.S. 90-270.58C reads as rewritten:

"**§ 90-270.58C. Continuing education requirements.**

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship. The Board may waive, upon request, continuing education requirements for licensees who are on active military duty and serving overseas."

SECTION 15. G.S. 90-270.59 reads as rewritten:

"**§ 90-270.59. Disposition of funds.**

All ~~moneys~~ monies received by the Board shall be used to implement this Article."

SECTION 16. G.S. 90-270.60 reads as rewritten:

"**§ 90-270.60. Denial, revocation, or suspension of ~~license.~~license; other disciplinary or remedial actions.**

(a) ~~Grounds for Denial, Revocation, or Suspension.~~ The Board may deny, revoke, or suspend ~~a license granted pursuant to this Article on any of the following grounds:~~licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation, or any combination of the disciplinary actions described in this subsection, of any applicant or person licensed under this Article on one or more of the following grounds:

(1) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) ~~Conviction of any crime, an essential element of which is dishonesty, deceit, or fraud.~~Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice marriage and family therapy, or a misdemeanor charge reflecting the inability to practice marriage and family therapy with due regard to the health and safety of clients.

(3) ~~Fraud or deceit in obtaining a license as a marriage and family therapist.~~Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) ~~Dishonesty, fraud or gross negligence in the practice of marriage and family therapy.~~Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of marriage and family therapy, the offer of professional marriage and family therapy services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of marriage and family therapy.

(5) ~~Violation of any rule of professional ethics and professional conduct adopted by the Board.~~Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of marriage and family therapy to the public, any individual, the Board, or any other organization.

(6) Has had a license or certification for the practice of marriage and family therapy in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.

(7) Has violated any provision of this Article or any rules adopted by the Board.

(8) Has aided or abetted the unlawful practice of marriage and family therapy by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Association for Marriage and Family Therapy. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced marriage and family therapy in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice marriage and family therapy with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced marriage and family therapy outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, student, supervisee, or trainee for the financial or other personal advantage or gratification of the marriage and family therapist or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(b) ~~Any disciplinary action taken shall be in accordance with Chapter 150B of the General Statutes.~~ The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of marriage and family therapy deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the marriage and family therapy services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of marriage and family therapy provided by the applicant or licensee with respect to the extent, nature, or location of the marriage and family therapy services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this subsection.

In addition, the Board may impose conditions of probation or restrictions on the continued practice of marriage and family therapy at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing marriage and family therapy with reasonable skill and safety

with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be redacted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of marriage and family therapy services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 17. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.63. Criminal history record checks of applicants for licensure as a marriage and family therapist and a marriage and family therapy associate.**

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

(1) Applicant. – A person applying for licensure as a licensed marriage and family therapy associate pursuant to G.S. 90-270.54A or licensed marriage and family therapist pursuant to G.S. 90-270.54.

(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the

applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the duties and responsibilities of a licensee.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant or licensee's criminal history record check."

SECTION 18. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-26. Criminal history record checks of applicants for licensure as marriage and family therapists and marriage and family therapy associates.**

The Department of Justice may provide to the North Carolina Marriage and Family Therapy Licensure Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 18C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to

conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 19. This act becomes effective October 1, 2009.

SENATE BILL 935:
Amend Marriage & Family Licensure Laws/Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 10, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S935-CSTDf-52		

SUMMARY: ***Senate Bill 935 makes various amendments to the Marriage and Family Therapy Licensure Act, including authorizing the licensure of marriage and family therapy associates and increasing fees. The proposed committee substitute to Senate Bill 935 clarifies that all fees charged by the Board are nonrefundable.***

[As introduced, this bill was identical to H938, as introduced by Rep. England, which is currently in House Health, if favorable, Finance.]

BILL ANALYSIS:

Section 1. Amends the definitions section of the act to include several new definitions such as 'licensed marriage and family therapy associate'. A licensed marriage and family therapy associate is an individual whose license permits them to engage in practice under the supervision of an approved supervisor. It also amends the definitions of the terms 'related degree' and 'recognized educational institution'.

Section 2. Amends the section that prohibits practice without a license to include a licensed marriage and family therapy associate.

Section 3. Amends the section on exemptions from the act. The amendments clarify that a marriage and family therapy intern must be enrolled in a master's level program or higher in a recognized educational institution and under the supervision of a Board approved training institution in order to be exempt from the act. It also eliminates the exemption for people practicing as an employee of a nonprofit organization. Finally, this section clarifies that no exempt person may hold himself out as being licensed.

Section 4. Amends the section that establishes the Board. Currently, the Governor appoints the chairperson of the Board. This is changed to allow the Board to elect a chair and vice-chair from its membership for a four year term.

Section 5. Provides that Board expenditures may not exceed the reserves, as well as the revenues of the Board in any fiscal year.

Section 5.1. Adds to the Board's powers and duties the authority to order records relating to a licensee's practice in the course of investigating a complaint. Any such records are not subject to the public records law. This section also requires a licensee or an employer of a licensee to retain records for at least 5 years from the termination of client services for an adult client. In the case of a minor client, the records must be retained until the later of the date the client is 22 or 5 years from the termination of services.

Section 6. Amends the section relating to requirements for licensure as a marriage and family therapist to clarify the educational and experience requirements. It also changes the examination requirement from an exam *administered* by the Board to one *approved* by the Board.

Section 7. Adds a new section which sets out the requirements for licensure as a marriage and family therapy associate. An applicant must submit the same application information, have the same educational and experience qualifications, and have passed the same examination as are required of marriage and family therapist applicants. In addition the associate applicant must show evidence of appropriate coursework and have an agreement by an approved supervisor to provide supervision to the applicant. An associate license is only valid for three years from the date of issuance and cannot be renewed. However, under certain circumstances, the Board can grant a one-year extension of the license.

Section 8. Amends the section relating to the examination to give the Board more flexibility. In addition, the section adds a requirement that an applicant must request reasonable accommodations to take the exam in writing.

Section 9. Repeals the section that authorizes the Board to grant temporary licenses.

Section 10. Amends the provision relating to reciprocal licenses to add more specific requirements for issuing a license to a therapist or associate who is licensed in another state and seeks to be licensed in this State.

Section 11. Amends the fees which the Board is authorized to charge by increasing all of the fees except the examination fee. This section also adds new fees for a duplicate license, annual maintenance of inactive status, and an application to extend an associate license. The Board is also given authority to establish fees for the actual cost of duplication services, materials, and returned bank items, and makes all fees charged by the Board nonrefundable. The current and new fees:

Fee	Current Amount	New Amount
License Exam	$50	Same
License Application – Marriage and Family Therapist	$150	$200
License Application - Marriage and Family Therapist Associate	New	$200
Renewal of License	$100	$200
Reciprocal License Application	$150	$200
Reinstatement of Expired License	$125	$200
Application to Return to Active Status	$125	$200
Duplicate License	New	$50
Annual Maintenance of Inactive Status	New	$50
Application to Extend Associate License	New	$50

Section 12. Makes a clarifying change to the section relating to renewal of therapists' licenses.

Section 13. Adds a requirement that a licensee who requests to be placed on inactive status must pay an annual inactive status maintenance fee. Section 11 establishes the amount of the fee at $50.00. A person on inactive status is not required to complete continuing education requirements.

Section 14. Authorizes the Board to waive continuing education requirements for licensees on active military duty who are serving overseas.

Section 15. Corrects a spelling error.

Section 16. Clarifies and expands the Boards authority to take disciplinary or remedial actions. The section adds a number of new grounds for discipline including:

- Having been disciplined in another jurisdiction.
- Violating the act or a rule adopted by the Board.
- Aiding and abetting an unlicensed person.
- Being guilty of immoral, dishonorable, unprofessional, or unethical conduct.
- Endangering the welfare of a client.
- Practicing while under the influence of drugs, narcotics, alcohol, chemicals, or other controlled substances.
- Demonstrated incompetence.
- Exploiting a client, student, supervisee, or trainee for financial or personal gain.
- Harassing or abusing, sexually or otherwise, a client, student, supervisee, or trainee.
- Failing to cooperate with the Board or other appropriate entities.
- Refusing to appear before the Board upon an order by the chair.

The Board is also authorized to take additional disciplinary actions, including requiring examination, remediation, or rehabilitation of an applicant or licensee; requiring additional supervision at the licensee's expense; limiting or circumscribing the licensee's practice; or using a combination of disciplinary actions. The Board may assess costs against the applicant or licensee for the disciplinary action. The Board may petition the court to order the applicant or licensee to submit to psychological or physical evaluations. The Board must provide a hearing to any applicant or licensee who is subject to discipline. The records and other documents used by the Board in the course of an investigation are not subject to the Public Records law. However, if the record is admitted in evidence in a hearing, it becomes a public record. A person whose license has been denied or revoked may reapply after one calendar year.

Section 17. Adds a new section authorizing the Board to request that the applicant or licensee undergo a criminal history record check to reveal a conviction of a State or federal crime. The applicant or licensee must consent to the criminal history check and must provide fingerprints. Refusal to consent to the check may constitute grounds for denial or revocation of a license. If the criminal history check reveals a conviction, the Board is not required to bar licensure, but may consider a number of mitigating factors to determine whether the applicant should be disqualified.

Section 18. Adds a corresponding provision to the law allowing the Department of Justice to conduct criminal history record checks for applicants for licensure as a marriage and family therapist or associate.

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

Karen Cochrane-Brown, counsel to Senate Commerce, substantially contributed to this summary.

S935-SMTD-88(CSTDf-52) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 9, 2009

TO: Senator Goss

FROM: Marjorie Rutherford, Fiscal Research Division

RE: PCS to Senate Bill 935 (Second Edition)

FISCAL IMPACT ($)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
NC Marriage and Family Therapy Licensure Board	$ 23,775	$ 25,600	$ 26,650	$ 28,550	$ 30,100
Department of Justice	$ 2,528	$ 2,688	$ 2,768	$ 2,944	$ 3,088

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Marriage and Family Therapy Licensure Board, Department of Justice

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

The PCS to Senate Bill 935 makes the following changes:

Section 1. Amends the definitions section of the act to include several new definitions such as 'licensed marriage and family therapy associate'. A licensed marriage and family therapy associate is an individual whose license permits them to engage in practice under the supervision of an

approved supervisor. It also amends the definitions of the terms 'related degree' and 'recognized educational institution'.

Section 2. Amends the section that prohibits practice without a license to include a licensed marriage and family therapy associate.

Section 3. Amends the section on exemptions from the act. The amendments clarify that a marriage and family therapy intern must be enrolled in a master's level program or higher in a recognized educational institution and under the supervision of a Board approved training institution in order to be exempt from the act. It also eliminates the exemption for people practicing as an employee of a nonprofit organization. Finally, this section clarifies that no exempt person may hold himself out as being licensed.

Section 4. Amends the section that establishes the Board. Currently, the Governor appoints the chairperson of the Board. This is changed to allow the Board to elect a chair and vice-chair from its membership for a four year term.

Section 5. Provides that Board expenditures may not exceed the reserves, as well as the revenues of the Board in any fiscal year.

Section 5.1. Adds to the Board's powers and duties the authority to order records relating to a licensee's practice in the course of investigating a complaint. Any such records are not subject to the public records law. This section also requires a licensee or an employer of a licensee to retain records for at least 5 years from the termination of client services for an adult client. In the case of a minor client, the records must be retained until the later of the date the client is 22 or 5 years from the termination of services.

Section 6. Amends the section relating to requirements for licensure as a marriage and family therapist to clarify the educational and experience requirements. It also changes the examination requirement from an exam *administered* by the Board to one *approved* by the Board.

Section 7. Adds a new section which sets out the requirements for licensure as a marriage and family therapy associate. An applicant must submit the same application information, have the same educational and experience qualifications, and have passed the same examination as are required of marriage and family therapist applicants. In addition the associate applicant must show evidence of appropriate coursework and have an agreement by an approved supervisor to provide supervision to the applicant. An associate license is only valid for three years from the date of issuance and cannot be renewed. However, under certain circumstances, the Board can grant a one-year extension of the license.

Section 8. Amends the section relating to the examination to give the Board more flexibility. In addition, the section adds a requirement that an applicant must request reasonable accommodations to take the exam in writing.

Section 9. Repeals the section that authorizes the Board to grant temporary licenses.

Section 10. Amends the provision relating to reciprocal licenses to add more specific requirements for issuing a license to a therapist or associate who is licensed in another state and seeks to be licensed in this State.

Section 11. Amends the fees which the Board is authorized to charge by increasing all of the fees except the examination fee. This section also adds new fees for a duplicate license, annual maintenance of inactive status, and an application to extend an associate license. The Board is also

given authority to establish fees for the actual cost of duplication services, materials, and returned bank items, and makes all fees charged by the Board nonrefundable.

Section 12. Makes a clarifying change to the section relating to renewal of therapists' licenses.

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Section 14. Authorizes the Board to waive continuing education requirements for licensees on active military duty who are serving overseas.

Section 15. Corrects a spelling error.

Section 16. Clarifies and expands the Boards authority to take disciplinary or remedial actions. The section adds a number of new grounds for discipline including:

- Having been disciplined in another jurisdiction.
- Violating the act or a rule adopted by the Board.
- Aiding and abetting an unlicensed person.
- Being guilty of immoral, dishonorable, unprofessional, or unethical conduct.
- Endangering the welfare of a client.
- Practicing while under the influence of drugs, narcotics, alcohol, chemicals, or other controlled substances.
- Demonstrated incompetence.
- Exploiting a client, student, supervisee, or trainee for financial or personal gain.
- Harassing or abusing, sexually or otherwise, a client, student, supervisee, or trainee.
- Failing to cooperate with the Board or other appropriate entities.
- Refusing to appear before the Board upon an order by the chair.

The Board is also authorized to take additional disciplinary actions, including requiring examination, remediation, or rehabilitation of an applicant or licensee; requiring additional supervision at the licensee's expense; limiting or circumscribing the licensee's practice; or using a combination of disciplinary actions. The Board may assess costs against the applicant or licensee for the disciplinary action. The Board may petition the court to order the applicant or licensee to submit to psychological or physical evaluations. The Board must provide a hearing to any applicant or licensee who is subject to discipline. The records and other documents used by the Board in the course of an investigation are not subject to the Public Records law. However, if the record is admitted in evidence in a hearing, it becomes a public record. A person whose license has been denied or revoked may reapply after one calendar year.

Section 17. Adds a new section authorizing the Board to request that the applicant or licensee undergo a criminal history record check to reveal a conviction of a State or federal crime. The applicant or licensee must consent to the criminal history check and must provide fingerprints. Refusal to consent to the check may constitute grounds for denial or revocation of a license. If the

criminal history check reveals a conviction, the Board is not required to bar licensure, but may consider a number of mitigating factors to determine whether the applicant should be disqualified.

Section 18. Adds a corresponding provision to the law allowing the Department of Justice to conduct criminal history record checks for applicants for licensure as a marriage and family therapist or associate.

Source: Adopted from the bill analysis done by the Committee Counsel to Senate Finance on June 5, 2009.

ASSUMPTIONS AND METHODOLOGY:

The PCS to Senate Bill 935 authorizes the Marriage and Family Therapy Licensure Board to raise certain application and licensing fees as well as to institute new fees. The PCS increases the caps for all fees with the exception of the license examination fee. It also adds fees for duplicate license, annual maintenance of inactive status, and an application to extend an associate license. The Board is also given authority to establish fees for the actual cost of duplication services, materials, and returned bank items. The PCS makes all fees charged by the Board nonrefundable. In practice, the Board does not currently refund fees, so this change will have no fiscal impact. The chart below summarizes the expected fee changes.

Senate Bill 935: Fee Change Summary

Fee	Current Amount	Proposed Amount	Projected Board Fee	Fee Change
License Examination	$ 50	$ 50	$ 50	$ -
Application as Marriage and Family Therapist (LMFT)	$ 150	$ 200	$ 200	$ 50
Application as Licensed Marriage and Family Therapist Associate (LMFTA)	$ -	$ 200	$ 200	$ 200
License Renewal	$ 100	$ 200	$ 100	$ -
Reciprocal License Application	$ 150	$ 200	$ 200	$ 50
Reinstatement of an Expired License	$ 125	$ 200	$ 200	$ 75
Application to Return to Active Status	$ 200	$ 200	$ 100	$ (100)
Duplicate License	$ -	$ 25	$ 25	$ 25
Maintenance of Inactive Status	$ -	$ 50	$ 50	$ 50
Application to Extend Associate License	$ -	$ 50	$ 50	$ 50

The fee changes will each have a fiscal impact equal to the change in the fee multiplied by the number of individuals who pay the fee. The Board of Marriage and Family Therapy Licensure has provided estimates of the number of individuals the fee changes will impact each year. The following chart summarizes these estimates.

Senate Bill 935: Number of Individuals Projected by Fee Type

Fee Category	Individuals Projected FY 2009-10	Individuals Projected FY 2010-11	Individuals Projected FY 2011-12	Individuals Projected FY 2012-13	Individuals Projected FY 2013-14
LMFT Application	30	35	38	42	45
LMFTA Application	66	70	70	75	78
Reciprocal Application	40	50	60	65	70
Renewal of License	625	635	659	675	700
Reinstatement of Expired License	62	63	65	67	70
Return to Active Status Application	5	5	5	5	5
Duplicate License Request	3	5	5	7	10
Maintenance of Inactive Status	52	55	60	65	70
Extend Associate License	5	5	5	5	5

Given the projected number of individuals impacted, the following chart summarizes the fiscal impact due to the Senate Bill 935 fee changes.

Senate Bill 935: Fee Change Fiscal Impact Summary

Fee Category	Change in Revenues FY 2009-10	Change in Revenues FY 2010-11	Change in Revenues FY 2011-12	Change in Revenues FY 2012-13	Change in Revenues FY 2013-14
LMFT Application	$ 1,500	$ 1,750	$ 1,900	$ 2,100	$ 2,250
LMFTA Application	$ 13,200	$ 14,000	$ 14,000	$ 15,000	$ 15,600
Reciprocal Application	$ 2,000	$ 2,500	$ 3,000	$ 3,250	$ 3,500
Renewal of License	$ -	$ -	$ -	$ -	$ -
Reinstatement of Expired License	$ 4,650	$ 4,725	$ 4,875	$ 5,025	$ 5,250
Return to Active Status Application	$ (500)	$ (500)	$ (500)	$ (500)	$ (500)
Duplicate License Request	$ 75	$ 125	$ 125	$ 175	$ 250
Maintenance of Inactive Status	$ 2,600	$ 2,750	$ 3,000	$ 3,250	$ 3,500
Extend Associate License	$ 250	$ 250	$ 250	$ 250	$ 250
Net Impact	**$ 23,775**	**$ 25,600**	**$ 26,650**	**$ 28,550**	**$ 30,100**

Department of Justice

The Department of Justice (DOJ) charges a fee of $38 to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of NC databases and $2 is used for the processing cost associated with the request. All individuals applying for a new license or for reinstatement of a license would be subject to this background check. The following table shows the information provided by the NC Marriage and Family Therapy Licensure Board on the projected number of applications for which this background check requirement would apply and the amount retained by DOJ as receipts for each year covered by this fiscal note:

Types of Applicability:	Individuals Projected FY 2009-10	Individuals Projected FY 2010-11	Individuals Projected FY 2011-12	Individuals Projected FY 2012-13	Individuals Projected FY 2013-14
Application as Marriage and Family Therapist (LMFT)	30	35	38	42	45
Application as Licensed Marriage and Family Therapist Associate (LMFTA)	66	70	70	75	75
Reinstatement of an Expired License	62	63	65	67	70
Total number of projected applicable background checks:	158	168	173	184	193
Total amount retained by DOJ as receipts ($16 each background check):	**$2,528**	**$2,688**	**$2,768**	**$2,944**	**$3,088**

The proposed bill gives the NC Marriage and Family Therapy Licensure Board the authorization to request background checks on licensees under investigation by the Board. The number of requests cannot be determined with the information provided, however, these additional background checks will result in an increase in receipts for DOJ. It is unclear if applicants seeking reciprocal licenses will be required to submit to background checks; any background check requested for this purpose will also result in an increase in DOJ receipts.

SOURCES OF DATA: NC Marriage and Family Therapy Licensure Board, Department of Justice

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 700
Commerce Committee Substitute Adopted 6/1/09
PROPOSED COMMITTEE SUBSTITUTE S700-CSRBx-36 [v.1]

6/9/2009 5:29:20 PM

Short Title: Dry-Cleaning Solvent Act Amends. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) EXTEND SUNSET DATES APPLICABLE TO THE DRY-CLEANING SOLVENT CLEANUP ACT, THE DRY-CLEANING SOLVENT CLEANUP FUND, AND THE DRY-CLEANING SOLVENT TAX; (2) ALLOW THE USE OF STATE AND LOCAL LAND-USE CONTROLS AND DEED NOTICES IN LIEU OF LAND-USE RESTRICTIONS FOR PROPERTIES IN THE AREA OF CONTAMINATED DRY-CLEANING SITES, NOT INCLUDING PROPERTIES ON WHICH A DRY-CLEANING FACILITY IS OR WAS LOCATED WHICH IS THE SOURCE OF A SITE'S CONTAMINATION; (3) MODIFY NOTICE AND COMMENT REQUIREMENTS ASSOCIATED WITH A NOTICE OF INTENT TO REMEDIATE; AND (4) REMOVE THE LIMITATION ON DISBURSEMENT OF MONIES FROM THE DRY-CLEANING SOLVENT CLEANUP FUND FOR COSTS INCURRED TO ADDRESS DRY-CLEANING SOLVENT CONTAMINATION ON STATE-OWNED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104I reads as rewritten:

"**§ 143-215.104I. Dry-Cleaning solvent remediation agreements.**

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

(1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent

contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(b1) For properties in the area of a contamination site, other State or local land-use controls and notifications may be used in lieu of land-use restrictions. Any land-use controls used shall adequately protect human health and the environment, both currently and in the future, from exposure to dry-cleaning solvent contamination. If controls are used in lieu of land-use restrictions, then a Notice of Dry-Cleaning Solvent Remediation shall be prepared in accordance with the provision set forth in subdivisions (1) through (4) of G.S. 143-215.104M(b) and filed in accordance with subsections (c) through (g) of G.S. 143-215.104M. In the event that the owner of the property fails to submit and file the required Notice within the time specified, the Commission may prepare and file the Notice. This subsection shall not apply to properties on which a dry-cleaning facility is or was located which is the source of the contamination.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

d. A schedule of remediation activities.

e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the

requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use ~~restrictions~~ restrictions and State and local land-use controls and notifications that will apply to the contamination site or other property.

(3) The desired results of any ~~remediation or~~ remediation, land-use ~~restrictions~~ restrictions, or State or local land-use controls or notifications with respect to the contamination site.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(6) The priority ranking of the facility or abandoned site.

(7) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if the petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the basis set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with an owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement authorities and limitations set out in this Part. A remediation agreement shall provide that the Commission's private contractor conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner."

SECTION 2. G.S. 143-215.104K reads as rewritten:

"**§ 143-215.104K. Liability protection.**

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as any activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

(1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.
(2) Any future owner of the contamination site.
(3) A person who occupies the contamination site.
(4) A successor or assign of any person to whom the liability protection provided under this Part applies.
(5) Any lender or fiduciary that provides financing to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to unrestricted use standards. A petitioner who completes the remediation ~~or redevelopment~~ required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

(1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.
(2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to unrestricted use standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.
(3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination ~~site or~~ site; (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation ~~agreement.~~agreement; or (iii) removal of a State or local land-use control.
(4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility

or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.

(5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.

(6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.

(7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization."

SECTION 3. G.S. 143-215.104L reads as rewritten:

"**§ 143-215.104L. Public notice and community involvement.**

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, or on the use of State or local land-use controls and notifications, the Commission or the Commission's private contractor on behalf of the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation ~~and redevelopment~~ activities. On behalf of the petitioner, the Commission or the Commission's private contractor shall prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a ~~proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M.~~description of any land-use restrictions and State and local land-use controls and notifications that will be used. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed dry-cleaning solvent remediation agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, the Commission or the Commission's private contractor shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The Commission or Commission's private contractor shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall mail a copy of the summary to each owner of property located within the contamination site and to each owner of property that is contiguous to the contamination site. ~~shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register.~~ The Commission or the Commission's private contractor shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina Register and publication~~ in a newspaper of general circulation shall begin a public comment period of at least ~~60~~ 30 days from the ~~later~~ date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within ~~30~~ 21 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least ~~30~~ 15 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also publish, at least ~~30~~ 15 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written ~~dry-cleaning solvent remediation agreement.~~comments received during the public meeting. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis."

SECTION 4. G.S. 143-215.104N(b) reads as rewritten:

"(b) Limitations. – Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

...

~~(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.~~"

SECTION 5. Section 8 of S.L. 1997-392 reads as rewritten:

"Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the provisions of that section.~~Section 4 of this act is repealed effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012. However:~~

~~(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.~~

~~(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be~~

~~governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.~~

~~(3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose.~~"

SECTION 6. Section 23 of S.L. 2000-19 reads as rewritten:

"Section 23. Section 1.1 of this act becomes effective ~~April 1, 2003, and expires June 30, 2010.~~ April 1, 2003. Section 1.2 of this act becomes effective ~~October 1, 2001, and expires January 1, 2010.~~ October 1, 2001. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002. Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective when this act becomes law."

SECTION 7. G.S. 143-215.104A reads as rewritten:

"**§ 143-215.104A. ~~Title.~~Title; sunset.**

This part is the "Dry-Cleaning Solvent Cleanup Act of 1997" and may be cited by that name. Except as otherwise provided in this section, this part expires 1 January 2022. "

(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.

(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.

(3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose."

SECTION 8. G.S. 105-164.44E reads as rewritten:

"**§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

(a) Transfer. -- At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data.

(b) Sunset. – This section is repealed effective July 1, 2020."

SECTION 9. Article 5D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-187.35. Sunset.**

This Article is repealed effective January 1, 2020."

SECTION 10. G.S. 105-259(b)(20) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(20) To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a

dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter. This subdivision is repealed when Part 6 of Article 21A of Chapter 143 expires.

...."

SECTION 11. This act becomes effective July1, 2009.

SENATE BILL 700:
Dry-Cleaning Solvent Act Amends

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S700-CSRBx-36		

SUMMARY: ***Senate Bill 700 would: (i) extend sunset dates applicable to the Dry-Cleaning Solvent Cleanup Act (DSCA); (ii) allow the use of State and local land-use controls and deed notices in lieu of land-use restrictions for properties in the area of contaminated dry-cleaning sites; (iii) modify notice and comment requirements associated with a notice of intent to remediate a dry-cleaning site; and (iv) remove the limitation on disbursement of monies from the Fund for costs incurred to address dry-cleaning solvent contamination on State-owned property.***

The PCS places the sunsets contained in the Session Laws into the statutes.

[As introduced, this bill was identical to H761, as introduced by Rep. Gibson, which is currently in House Environment and Natural Resources, if favorable, Judiciary III, if favorable, Finance.]

CURRENT LAW and BACKGROUND: In 1997, the General Assembly enacted the DSCA to provide a fund, administered by the Department of Environment and Natural Resources, to assess and cleanup contaminated dry-cleaning sites using state-lead contractors. The source for the cleanup fund is a tax on dry-cleaning and dry-cleaning solvents (both perchloroethylene and petroleum-based solvents). The programmatic elements of the DSCA are currently slated to be repealed on January 1, 2012. The transfer of a portion of the sales and use taxes collected from dry-cleaning services to the Dry-Cleaning Solvent Cleanup Act Fund (Fund) is scheduled to end on June 30, 2010. Collection of the Dry-Cleaning Solvent Tax (Solvent Tax) which is deposited into the Fund is scheduled to be repealed on January 1, 2010.

To date, 202 contaminated dry-cleaning sites have been accepted into the DSCA Program for cleanup. As of the end of calendar year 2008, three sites will be closed. At least eight more sites are on schedule to be closed by June of 2009. The future cost to complete clean up and close the remaining 199 sites is estimated to be approximately $34 million. The Division of Waste Management (DWM) in the Department of Environment and Natural Resources estimates there are approximately 1,300 additional contaminated sites across the State with 550 of those predicted to be brought into the DSCA Program. The cost to clean up these additional 550 sites is projected to be approximately $138 million. As of the end of 2008, the program will be spending more ($10.5 million) than it is receiving in revenues ($10.1 million). This trend of expenditures exceeding revenues is expected to increase as more sites enter the remedial phase of the program bringing the current balance to a level that will require addressing sites in order of priority. [1]

BILL ANALYSIS: Senate Bill 700 would do the following:

- Extend the sunset dates applicable to: (1) implementation of DSCA from January 1, 2012 to January 1, 2022; (2) collection of the Solvent Taxes from January 1, 2010 to January 1, 2020; and (3) transfer of the dry-cleaning sales and use tax to the Fund from June 30, 2010 to June 30, 2020.

[1] Information provided by DWM.

- Allow the use of State and local land-use controls (e.g., groundwater use restrictions, ordinances) and deed notices in lieu of land-use restrictions on property ***in the area*** of a contaminated dry-cleaning site ***(land use controls would not be available for properties on which a dry-cleaning facility is or was located)***. Land-use controls must adequately protect human health and the environment, be included in a Notice of Dry-Cleaning Solvent Remediation, and filed in the office of the register of deeds of the county or counties in which the property in question is located.
- Amend public notice requirements applicable to a proposed cleanup of a contaminated dry-cleaning site by: 1) adding a requirement that a summary of the Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site be mailed to each owner of property within the contamination site or contiguous to it; (2) removing the requirement to publish the summary of the Notice of Intent in the North Carolina Register; (3) reducing the minimum public comment period from 60 days to 30 days; and (4) requiring minutes of any public meeting held on a proposed dry-cleaning solvent remediation agreement to include written comments received during the meeting.
- Allow DSCA to pay for cleanups of dry-cleaning contamination discovered on properties owned by the State. Current law prohibits disbursement of monies from the Fund for this purpose.

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

Jennifer McGinnis, Counsel to the Senate Commerce Committee, contributed substantially to this summary.

S700-SMRB-29(CSRBx-36) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 700 (Second Edition)

SHORT TITLE: Dry-Cleaning Solvent Act Amends.

SPONSOR(S): Senator Rand

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

Money in Millions

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
General Fund		($7.5)	($7.4)	($7.2)	($7.1)
Dry Cleaning Solvent Cleanup Fund	$0.3	$8.1	$7.9	$7.7	$7.6
EXPENDITURES					
Department of Revenue		up to $125,000 annually			
Dry Cleaning Solvent Cleanup Fund Administrative Expenses for Attorney General & DENR		up to $1.8 million annually			

POSITIONS (cumulative): no new positions anticipated

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources; all state-owned property with dry-cleaning solvent contamination; Department of Revenue; Department of Justice

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:

S.B. 700 amends GS 143-215.104I to add a new subsection (b1) that (1) provides that other state and local land-use controls and notifications may be used in lieu of land use restrictions for properties in the area of a dry-cleaning solvent contamination site; (2) requires that, if such controls are used, a Notice of Dry-Cleaning Solvent Remediation must be prepared and filed in accordance with GS 143-215.104M by the owner or the North Carolina Environmental Management Commission (Commission); and (3) provides that state and land-use controls and

notifications may not be used on properties on which a dry-cleaning facility is or was located which was the source of the contamination. The bill amends GS 143-215.104L to (1) require the Commission or its private contractor to mail a copy of the summary of a Notice of Intent to enter into a dry-cleaning solvent remediation agreement to each owner of property located within the contamination site and to each owner of property that is contiguous to the site (rather than filing a copy of the summary with the Codifier of Rules, as is currently required), (2) require publication of the summary of Notice of Intent in a newspaper of general circulation only (rather than the newspaper and in the North Carolina Register), (3) reduce from 60 days to 30 days the public comment period that begins from the date of publication of the summary of the Notice of Intent, (4) reduce from 30 days to 21 days the deadline (after the public comment period begins) for a request for a public meeting on a proposed dry-cleaning solvent remediation agreement, (5) reduce from 30 days to 15 days before the date of the meeting the time in which the Commission must mail notice of the meeting and in which the Commission shall publish notice of the meeting in the newspaper; and (6) requiring the minutes from the meeting to include any written comments received during the meeting.

Section 4 of the bill amends GS 143-215.104N(b) by deleting subsection (9), removing the limitation on disbursement of monies from the Dry-Cleaning Solvent Cleanup Fund for costs incurred in connection with dry-cleaning solvent contamination from a facility or site owned by the state or a state agency.

Section 5 of the bill amends section 8 of SL 1997-392 by extending the sunset dates of Sections 1 (Part 6 to Article 21A of Chapter 143) and 4.1 [GS 105-259(b)(20)] of that law from January 1, 2012, to January 1, 2022, and extending the sunset date of Section 4 (Article 5D of Chapter 143) of that law from January 1, 2010, to January 1, 2020. Section 6 mends Section 23 of SL 2000-19 by extending the sunset dates of Sections 1.1 (GS 105-164.44E) and 1.2 (amending GS 105-187.31) of that law from January 1, 2010, to January 1, 2020. These amendments effectively extend the sunset for the dry-cleaning solvent tax and the transfer of 15% of the sales tax on dry cleaning to the Dry Cleaning Solvent Cleanup Fund.

ASSUMPTIONS AND METHODOLOGY:

Revenues

Sales Tax Transfer

S.B. 700 extends the sunset on the transfer of 15% of the next sales and use tax collected on dry cleaning. In the absence of GS 105-164.44E, this revenue would be credited to the General Fund. The 15% dry-cleaning sales tax transfer was originally set to sunset on June 30, 2010 and would sunset June 30, 2020 under S.B. 700. Using a growth trend projection, an estimate of revenue from the 15% sales tax transfer for the next five years is as follows:

2009-10	2010-11	2011-12	2012-13	2013-14
$7,643,854	$7,495,510	$7,350,044	$7,207,402	$7,067,527

Under current law, the transfer will not expire until the end of the FY 2009-10 fiscal year, on June 30, 2010. Thus, this note does not reflect revenue for FY 2009-10 on the first page.

Dry Cleaning Solvent Tax
S.B. 700 extends the sunset on the dry cleaning solvent taxes. These taxes were originally set to expire January 1, 2010 and under S.B. 700 would sunset January 1, 2020. Using a growth trend projection, an estimate of revenue from the dry cleaning solvent tax transfer for the next five years is as follows:

2009-10	2010-11	2011-12	2012-13	2013-14
$614,419	$565,035	$519,620	$477,855	$532,894

Under current law, the tax expires mid-way through FY 2009-10. Thus, new revenue for FY 2009-10 from this bill will be half the amount shown, or $307,209.

Expenditures

Administrative Expenses
GS 105-187.34 allows the Department of Revenue to retain up to $125,000 to cover its costs of collection of the tax. S.B. 700 extends the sunset from January 1, 2010 to January 1, 2020 for this statute.

GS 143-215.104C allows the Department of Environment and Natural Resources and the Attorney General's Office to use up to 20% of the revenue credited to the fund each year for administrative costs. S.B. 700 extends the sunset for this statute from January 1, 2012 to January 1, 2022. The only revenue into the fund after 2020 will come from interest earned on the fund balance and any gifts or donations; it is estimated that revenue after 2020 will be minimal.

Additional Uses of Fund
Section 4 of the bill removes the limitation that the Fund cannot be used for State-owned sites. DENR currently knows of two State-owned sites with dry cleaning solvent contamination – one in Charlotte at UNC-Charlotte and one owned by DOT in Winston-Salem. However, DENR estimates there are over 900 abandoned dry cleaning sites in the State and some of these may potentially be on State property. The average estimate to clean up each abandoned dry cleaning site is $330,000.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristin Walker

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 9, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 359
PROPOSED COMMITTEE SUBSTITUTE S359-PCS85243-RBx-34

Short Title: Incorporate Sneads Ferry. (Local)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF SNEADS FERRY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Village of Sneads Ferry is enacted to read:

"CHARTER OF THE VILLAGE OF SNEADS FERRY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Sneads Ferry are a body corporate and politic under the name 'Village of Sneads Ferry.' The Village of Sneads Ferry has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Sneads Ferry are as follows:

BEGINNING at a point where the centerline of Turkey Creek intersects the centerline of the Intracoastal Waterway right-of-way and being the same as shown on a plat recorded in Map Book 10 Page 73 of the Onslow County Registry; thence along the centerline of Turkey Creek in a general Northerly direction to the centerline of NCSR 1529 (commonly known as Turkey Point Road – 60 foot right-of-way); and running thence along the centerline of Turkey Point Road in a general Northwesterly direction where it intersects the centerline of NCSR 1518 (commonly known as Old Folkstone Road – 60 foot right-of-way); thence along the centerline of NCSR 1518 in a general Westerly direction to the centerline of NCSR 1528 (commonly known as Winery Road – 60 foot right-of-way); thence along the centerline of NCSR 1528 in a generally Northerly direction to the centerline of N.C. Highway 172 (100 foot right-of-way); thence along the centerline of N.C. Highway 172 in a general Westerly direction to the centerline of a road (commonly know as Pilchers Branch Road) and recorded as Stone Creek

947 Page 31 and referenced in Map Book 35 Page 81 & Map Book 43 Page 172 of the Onslow County Registry; thence leaving N.C. Highway 172 and running along the most Western line of the property shown in Map Book 43 Page 172 and the Eastern edge of Stone Creek Road in a general Northwesterly direction to a point in the centerline of Indian Grave Branch; thence along the centerline of said branch in a general Southeasterly direction to the centerline of N.C. Highway 210 (100 foot right-of-way) as shown in Map Book 43 Page 172 of the Onslow County Registry; thence along the centerline of N.C. Highway 210 as measured in a general Southeasterly direction to the projected property line of the U.S. Marine Corps property as

shown in Map Book 41 Page 151 of the Onslow County Registry; thence leaving the centerline of N.C. Highway 210 and running along the Southeastern line of the U.S. Marine Corps property as shown in Map Book 45 Page 151 of the Onslow County Registry in a general Northeasterly direction to the run of Everett Creek; thence along the centerline of the run of Everett Creek as measured in a Southeasterly and Northeasterly direction to the centerline of the run of New River; thence along the centerline of the run of New River as measured in a general Southeasterly direction to the centerline of the Intracoastal Waterway; thence along the centerline of the Intracoastal Waterway as measured in a general Southwestern direction to the point and place of beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Village of Sneads Ferry is the Mayor and the Village Council, which shall have six members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2011 provided for by Section 4.2 of this Charter, Scotty J. Everett is appointed Mayor and Robert D. Bryant, Angela B. Edens, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard are appointed council members of the Village of Sneads Ferry, and they shall possess and exercise the powers granted to the Mayor and governing body until their successors are elected or appointed and qualified pursuant to this Charter. Robert D. Bryan shall serve as Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in 2011.

"Section 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council and, except as provided in this section, they shall serve four-year terms. In 2011, the three candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013 and quadrennially thereafter, three members shall be elected to four-year terms. In 2015 and quadrennially thereafter, three members shall be elected to four-year terms. To be eligible for election to the Village Council, an individual must reside in the Village of Sneads Ferry. Vacancies on the Village Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Village shall elect the Mayor. In 2011 and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Village Council, shall advise the Village Council from time to time as to matters involving the Village of Sneads Ferry, and shall have the right to vote as a member of the Village Council on all matters before the Council but shall have no right to break a tie vote in which the Mayor has participated. In the case of a vacancy in the office of Mayor, the remaining members of the Village Council shall choose from their own number a successor for the unexpired term.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Village Council at the [illegible] election in 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Village Council, the members of the Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Village Council and shall be considered a member of the Village Council for all purposes.

"Section 3.6. **Compensation of Mayor and Village Council.** The Mayor and members of the Village Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Village who vote on the question in a special referendum.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Village Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held in November, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Village shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Village Attorney.** The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties as required by law or as directed by the Village Council. The Village Attorney shall serve at the pleasure of the Village Council.

"Section 5.3. **Village Clerk.** The Village Council shall appoint a Village Clerk who shall perform duties as required by law or as directed by the Village Council. The Village Clerk shall serve at the pleasure of the Village Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Commencement of Tax Collection.** From and after July 1, 2010, the citizens and property in the Village of Sneads Ferry shall be subject to municipal taxes levied for the year beginning July 1, 2010, and for that purpose the Village shall obtain from Onslow County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2010.

"Section 6.2. **Budget.** The Village may adopt a budget ordinance for fiscal year 2010-2011 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2010-2011, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2010.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Village of Sneads Ferry is authorized to adopt such ordinances as the Village Council deems necessary for the governance of the Village."

SECTION 2. The Onslow County Board of Elections shall conduct an election on May 4, 2010, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Village of Sneads Ferry the question of whether or not the area shall be incorporated as the Village of Sneads Ferry. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The referendum shall be held only if the referendum and the Charter have been approved under section 5 of the Voting Rights Act of 1965. If by March 1, 2010, the conduct of the election and the Charter have not been approved, then the election shall be held on a date set by the Onslow County Board of Elections no later than 120 days after both have been approved.

SECTION 3. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Village of Sneads Ferry."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Village of Sneads Ferry," Section 1 of this act shall become effective on the date that the Onslow County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. Until Section 1 of this act becomes effective and a Village Attorney is appointed, the members of the Sneads Ferry Incorporation Committee, being Robert D. Bryant, Angela B. Edens, Scotty J. Everett, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard shall be responsible for submitting any information required by G.S. 120-30.9F to the Attorney General of the United States. The committee shall simultaneously submit both the issue of the incorporation referendum and the Charter itself.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 359:
Incorporate Sneads Ferry

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 6, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S359-CSRBx-34		Committee Counsel

SUMMARY: Senate Bill 359 would incorporate the Village of Sneads Ferry[1]. SB 359 would become effective when it becomes law, subject to a voter referendum and pre-clearance by the U.S. Department of Justice prior to implementation. The Proposed Committee Substitute removes the property tax rate restrictions. The original bill set the property tax rate for the Village at $0.10/$100.00 valuation until June 30, 2012, and prohibited the Village Council from increasing the tax rate above $0.20/$100.00 valuation without a vote of the Village.

CURRENT LAW: Article VII of the North Carolina Constitution provides that the General Assembly may create cities and towns. The General Assembly created the Joint Legislative Commission on Municipal Incorporations in 1986 to conduct an independent review and evaluation of proposed municipal incorporations. The evaluation is conducted in accordance with a statutory set of objective criteria found in Article 20 of Chapter 120 of the General Statutes. The statutory criteria include a review of community support, population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable rate. Chapter 160A of the General Statutes provides the general laws applicable to the administration, powers, and duties of municipalities. Municipalities may share in the following revenue sources: local sales tax distributions, Powell Bill allocations, franchise tax revenues on electricity, beer and wine excise taxes, piped natural gas excise tax revenues, and telecommunications sales tax revenues.[2]

BILL ANALYSIS: Senate Bill 359 would incorporate the Village of Sneads Ferry, to be governed by a six-member town council and a mayor. The Joint Legislative Commission on Municipal Incorporations found that the proposed incorporation met the standards required for incorporation under Article 20 of Chapter 120 of the General Statutes.

- The Village of Sneads Ferry would be located in Onslow County. The municipalities of Holly Ridge and North Topsail Beach are within a distance of one mile of the proposed Village boundaries; the population of these two municipalities does not exceed 5,000. Camp Lejeune also borders this area.
- The estimated permanent population of the Village would be 5,799 residents. The estimated seasonal population density for the Village would be 276 people per square mile. The estimated assessed property tax valuation would be $1,060,000,000.
- The Village plans to offer the following services: fire protection provided by the Sneads Ferry and Turkey Creek Volunteer Fire Departments; planning and zoning service provided

[1] In its Report to the General Assembly dated February 9, 2009, the Joint Legislative Commission on Municipal Corporations found that the proposed Village of Sneads Ferry meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Village of Sneads Ferry.

[2] A municipality must have a property tax rate greater than $0.05/$100 valuation and provide at least four services to receive the following shared revenues: local sales and use tax, beer and wine excise taxes, sales tax on telecommunications, and Powell Bill allocations.

by Onslow County; solid waste collection provided by a private contractor; and street lighting.

- The Village would be entitled to the following estimated amounts of revenue from shared tax revenue sources: $1.8 million of local sales tax; $213,000 of franchise tax; $32,000 of beer and wine excise taxes if the Village holds a referendum in which the sales of beer and wines are approved; $97,000 of sales tax on telecommunications; and $2,560,000 of Powell Bill allocations. The Village is proposing a property tax rate of $0.10/$100 valuation for estimated property tax revenue of a little more than $1 million.

EFFECTIVE DATE: SB 359 would become effective when it becomes law, and is subject to voter referendum and pre-clearance by the U.S. Department of Justice prior to implementation.

S359-SMRB-27(CSRBx-34) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 509*
PROPOSED COMMITTEE SUBSTITUTE S509-PCS35343-RBx-33

Short Title: Rev Laws Tech, Clarifying, & Admin. Changes. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

PRIVILEGE LICENSE, INCOME, EXCISE, AND INSURANCE TAX CHANGES

SECTION 1. G.S. 105-41(a) reads as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

...

(12) ~~A home inspector~~ An individual licensed under Article 9F of Chapter 143 of the General ~~Statutes.~~Statutes, the Home Inspector Licensure Act."

SECTION 2. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

(1) Definite and accrued legal liabilities.

(2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets as permitted for income tax purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for

air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation, may deduct from the debt included a proportionate part determined on the basis of the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If the creditor corporation is also taxable under the provisions of this section, the

creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that the debt has been included in the tax base of the parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

(b1) Definitions. – The following definitions apply in ~~this subsection:~~subsection (b) of this section:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 3.(a) G.S. 105-129.27(f) reads as rewritten:

"(f) No Double Credit. – A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in ~~G.S. 105-129.9.~~G.S. 105-129.9 or G.S. 105-129.88."

SECTION 3.(b) This section is effective for taxable years beginning on or after January 1, 2007.

SECTION 4. G.S. 105-130.4(h) reads as rewritten:

"(h) The income less related expenses from any other ~~nonbusiness~~ activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments ~~are~~ is located in this State."

SECTION 5. G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method unless it receives a written decision from the Secretary authorizing it to do so."

SECTION 6. Section 4(b) of S.L. 2008-134 reads as rewritten:

"**SECTION 4.(b)** This section is effective for taxable years beginning on or after January 1, ~~2009.~~2008."

SECTION 7. G.S. 105-130.18 and G.S. 105-156 are repealed.

SECTION 8.(a) G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was ~~claimed.~~taken.

(2) The qualifying expenses for which a credit was ~~claimed,~~ taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits ~~claimed.~~taken.

(4) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 8.(b) G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was ~~claimed.~~taken.

(2) The qualifying expenses for which a credit was ~~claimed,~~ taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits ~~claimed.~~taken.

(4) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 9. G.S. 105-228.5B reads as rewritten:

"**§ 105-228.5B. Proceeds credited to High Risk Pool.**

~~Within 75 days after the end of each fiscal year,~~ By November 1 of each year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to the growth in net revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less $475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision."

SALES AND USE TAX AND HIGHWAY USE TAX CHANGES

SECTION 10. G.S. 105-164.3(45a) reads as rewritten:

"(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~June 23, 2007.~~May 12, 2009."

SECTION 11. G.S. 105-164.4B(d) reads as rewritten:

"(d) Exceptions. – This section does not apply to the following:

(1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.

(2) Direct mail. – Direct mail that meets one of the ~~conditions of this subdivision~~ following descriptions is sourced to the location where the property is ~~delivered. In all other cases, direct mail is sourced in accordance with the principles principle set out in subdivision (a)(3) of this section.~~delivered, and direct mail that does not meet one of these descriptions is sourced to the location from which the direct mail was shipped:

a. Direct mail purchased pursuant to a direct pay permit.

b. When the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

(3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A 'florist wire sale' is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered."

SECTION 12. G.S. 105-164.13(40) is repealed.

SECTION 13.(a) G.S. 105-164.14(j)(2)n. reads as rewritten:

"n. Solar electricity generating materials manufacturing. Solar ~~energy~~ electricity generating materials manufacturing means the development and production of one or more of the following:

1. Photovoltaic materials or modules used in producing electricity.
2. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity."

SECTION 13.(b) This section is effective July 1, 2008, and applies to purchases made on or after that date.

SECTION 14.(a) G.S. 105-164.44G reads as rewritten:

"**§ 105-164.44G. Distribution of part of tax on modular homes.**

The Secretary must distribute to counties twenty percent (20%) of the taxes collected under G.S. 105-164.4(a)(8) on modular homes. The Secretary must make the distribution on a monthly basis in accordance with the distribution formula in ~~G.S. 105-520 by including the taxes on modular homes with local tax revenue that is not attributable to a particular county.~~G.S. 105-486."

SECTION 14.(b) This section becomes effective October 1, 2009, and applies to distributions made on or after that date.

SECTION 15. G.S. 105-187.6(a)(7) is repealed.

SECTION 16. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this ~~subdivision~~ section is forfeited. A taxpayer that forfeits a rate under this ~~subdivision~~ section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the combined general rate from the date the taxes would otherwise have been due, plus interest at the rate established under ~~G.S. 105-241.1(i).~~ G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at the combined general rate from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under ~~G.S. 105-266 shall not be~~ G.S. 105-241.6 is not considered. ~~Interest shall not be computed against the amount of taxes offset by this credit.~~ The credit reduces the amount forfeited and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 17. G.S. 105-538 reads as rewritten:

"**§ 105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to ~~G.S. 105-164.13B.~~ G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. ~~Notwithstanding the provisions of G.S. 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy.~~"

PROPERTY TAX CHANGES

SECTION 18. G.S. 105-273(6) reads as rewritten:

"(6) Corporation. – An organization having capital stock represented by shares or an incorporated, nonprofit organization."

SECTION 19. G.S. 105-275 reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are ~~hereby~~ designated special classes under ~~authority of~~ Article V, Sec. 2(2), of the North Carolina Constitution and ~~shall not be listed, appraised, assessed, or taxed~~are excluded from tax:".

SECTION 20.(a) G.S. 105-277.1(d) reads as rewritten:

"(d) Ownership by Spouses. – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section."

SECTION 20.(b) G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned ~~and occupied~~ the property as a permanent residence for at least five ~~years.~~consecutive years and has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the ~~occupation requirement~~ length of occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes ~~for the three fiscal years preceding the current tax year shall~~ must be carried forward in the records of ~~the~~ each taxing unit ~~or units~~ as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral ~~because of the occurrence~~ as a result of a disqualifying event ~~as provided~~ described in subsection (i) of this section. On or before September 1 of each year, the collector ~~shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.~~ must send to the mailing address of a residence on which taxes have been deferred a notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. – Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse ~~residence~~ and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes ~~deferred from the prior tax years~~ are carried forward and are not due and payable ~~but are carried forward~~ until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for ~~deferral,~~ deferral and a disqualifying event occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are ~~carried forward.~~ due and payable.

(k) Repealed by Session Laws 2008-35, s. 1.2, effective July 1, 2008.

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or

regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 20.(c) G.S. 105-277.1C reads as rewritten:

"**§ 105-277.1C. Disabled veteran property tax homestead exclusion.**

(a) ~~Exclusion.~~Classification. – A permanent residence owned and occupied by ~~an~~ a qualifying owner ~~who is a North Carolina resident and who is an honorably discharged disabled veteran or the unmarried surviving spouse of an honorably discharged disabled veteran~~ is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars ($45,000) of appraised value of the residence is excluded from taxation. ~~An~~ A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

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

(1) Disabled veteran. – A veteran ~~who, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, receives benefits under 38 U.S.C. § 2101 or has a veteran's disability certification.~~of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability. If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was the result of a service-connected condition.

~~(2) Owner. – Defined in G.S. 105-277.1.~~

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

~~(5) Veteran. – A veteran of any branch of the Armed Forces of the United States.~~

~~(6) Veteran's disability certification. – A certification by the United States Department of Veterans Affairs or another federal agency that a veteran has a permanent total disability that is service-connected.~~

(c) Temporary Absence. – An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of

an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses – A permanent residence owned and occupied by husband and wife ~~as tenants by the entirety~~ is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. – An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101."

SECTION 20.(d) This section is effective for taxes imposed for taxable years beginning on or after January 1, 2009.

SECTION 21.(a) Section 3 of S.L. 2008-171 is repealed.

SECTION 21.(b) G.S. 105-277.14(d) is repealed.

SECTION 21.(c) G.S. 105-282.1(a) reads as rewritten:

"(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period.

(1) No application required. – Owners of the following exempt or excluded property do not need to file an application for the exemption or exclusion to be entitled to receive it:

a. Property exempt from taxation under G.S. 105-278.1 or G.S. 105-278.2.

b. Special classes of property excluded from taxation under G.S. 105-275(15), (16), (26), (31), (32a), (33), (34), (37), (40), ~~or~~ ~~(42).~~(42), or (44).

c. Property classified for taxation at a reduced valuation under G.S. 105-277(g) or G.S. 105-277.9.

(2) Single application required. – An owner of one or more of the following properties eligible to be exempted or excluded from taxation must file an application for exemption or exclusion to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion:

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105- 278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), ~~or (41)~~(41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.10, 105-277.13, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8."

SECTION 21.(d) G.S. 105-282.1(a)(2), as amended by subsection (c) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 21.(e) G.S. 105-282.1(a)(2), as amended by subsections (c) and (d) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the

benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, or 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 21.(f) Subsection (c) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Subsection (d) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Subsection (e) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2010. The remainder of this section is effective when it becomes law.

SECTION 22.(a) Article 22A of Chapter 105 of the General Statutes, as rewritten by S.L. 2005-294, S.L. 2006-30, S.L. 2007-471, Section 22 of S.L. 2007-527, and Sections 61 through 66 of S.L. 2008-134, reads as rewritten:

"Article 22A.

"Motor Vehicles.

"§ 105-330. Definitions.

The following definitions apply in this Article:

(1) Classified motor vehicle. – A motor vehicle classified under this Article.

(1a) Collecting authority. – The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.

(2) Motor vehicle. – Defined in G.S. 20-4.01(23).

(2a) Municipal corporation. – Defined in G.S. 105-273(11).

(3) Public service company. – Defined in G.S. 105-333(14).

(4) Registered classified motor vehicle. – Any of the following:

a. A classified motor vehicle that has a registration plate issued under Article 3 of Chapter 20 of the General Statutes and whose registration is current.

b. A classified motor vehicle transferred to an owner who has applied for a registration plate for the motor vehicle.

(5) Registration fees. – Fees set out in G.S. 20-87 and G.S. 20-88.

(6) Unregistered classified motor vehicle. – A classified motor vehicle that is not a registered classified motor vehicle.

"§ 105-330.1. Classification of motor vehicles.

(a) Classification. – All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under ~~authority of~~ Article V, Sec. 2(2) of the North Carolina ~~Constitution.~~ Constitution and are considered classified motor vehicles. Classified motor vehicles ~~shall~~ must be listed and assessed as

provided in this Article and taxes on classified motor vehicles ~~shall~~ must be collected as provided in this Article.

(b) Exceptions. – The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.
(2) Manufactured homes, mobile classrooms, and mobile offices.
(3) Semitrailers or trailers registered on a multiyear basis.
(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.
(5) Repealed by Session Laws 2000, c. 140, s. 75(a), effective July 1, 2000.
(6) Motor vehicles registered under the International Registration Plan.
(7) Motor vehicles issued permanent registration plates under G.S. 20-84.
(8) Self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate under G.S. 20-88.

"§ 105-330.2. Appraisal, ownership, and situs.

(a) ~~Date Determined.~~ Determination Date for Registered Vehicle. – The ownership, situs, and taxability of a registered classified motor vehicle is determined annually as of the date on which the vehicle's current registration is renewed, regardless of whether the registration is renewed after it has expired, or on the date an application for a new registration is submitted. The situs of a registered classified motor vehicle may not be changed until the next registration date. The value of a registered classified motor vehicle ~~listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be~~ is determined as ~~of January 1 of the year the taxes are due.~~follows:

(1) For a registration expiring or an application for a new registration during the period January 1 through August 31, the value is determined as of January 1 of the current year.
(2) For a registration expiring or an application for a new registration during the period September 1 through December 31, the value is determined as of January 1 of the following year.
(3) For a new motor vehicle whose value cannot be determined as of January 1 of the year specified in subdivision (1) or (2) of this subsection, the value is determined as of the date that model of motor~~If the value of a new motor vehicle cannot be determined as of that date, the value of that vehicle shall be determined for that year as of the date that model~~ vehicle is first offered for sale at retail in this State.
(4) For a motor vehicle whose value cannot be determined as of the date set under any other subdivision in this subsection, the value is determined using the most currently available January 1 retail value of the vehicle.

~~The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.~~

(a1) Determination Date for Unregistered Vehicle. – ~~The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2).~~ The ownership, situs, and taxability of ~~a~~ an unregistered classified motor vehicle ~~listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be~~ is determined as of January 1 of the year in which the registration of the motor vehicle ~~is required to be listed.~~ expires and is not renewed or the motor vehicle is acquired and the owner does not submit an application for registration. The value of an unregistered classified motor vehicle is determined as of January 1 of the year the vehicle is required to be listed.

(b) ~~Value; Appeal.~~Value. – ~~A~~An assessor must appraise a classified motor vehicle ~~shall be appraised by the assessor~~ at its true value in money as prescribed by G.S. 105-283. The sales price of a classified motor vehicle purchased from a dealer, including all accessories attached to the vehicle when it is delivered to the purchaser, is considered the true value of the vehicle, and the assessor must appraise the vehicle at this value. The sales price excludes the tax imposed under Article 5A of this Chapter. ~~If the assessor considers the sales price of the motor vehicle in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter.~~ The Property Tax Division of the Department of Revenue ~~shall~~ must annually adopt a schedule of values, standards, and rules to be used in the valuation of all other classified motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles.

(b1) Appeal. – The owner of a classified motor vehicle may appeal the appraised value or taxability of the vehicle ~~in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value~~ by filing a request for appeal with the assessor ~~before the taxes become delinquent pursuant to G.S. 105-330.4.~~ within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. ~~Notwithstanding G.S. 105-312(d), an~~An owner who appeals the appraised value or taxability of a classified motor vehicle ~~shall~~ must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value and taxability of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection.

(c) Repealed by Session Laws 2008-134, s. 61, effective July 28, 2008.

"§ 105-330.3. ~~Assessor's duty to list~~ Listing requirements for classified motor vehicles; application for exempt status.

(a)~~(1)~~ Registered Vehicles. – The assessor ~~shall list, appraise, and assess all taxable classified motor vehicles for county, municipal, and special district taxes~~ must list a registered classified motor vehicle each year for each taxing unit in the name of the record owner as of the day on which the current vehicle registration is renewed or the day on which an owner to whom the vehicle is transferred applies for a new ~~registration is applied for.~~ registration. The owner of a classified motor vehicle listed pursuant to this ~~subdivision~~ subsection need not list the vehicle as provided in G.S. ~~105-306;~~ 105-306. G.S. 105-312 does not apply to a classified motor ~~vehicles~~ vehicle listed pursuant to this ~~subdivision.~~ subsection.

(a1)~~(2)~~ Unregistered Vehicles. – The owner of ~~a~~ an unregistered classified motor vehicle ~~who does not register the vehicle or does not renew the registration of the vehicle on or before the expiration date of the current registration shall~~ must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle ~~is acquired~~ or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle listed pursuant to this ~~section~~ subsection is registered during the calendar year in which it was listed, ~~it shall be~~ the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle. A vehicle required to be listed pursuant to this ~~subdivision~~subsection that is not listed by January 31 ~~shall be~~ is subject to discovery pursuant to G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.

(b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie

entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the assessor. When an approved application is on file, the assessor ~~shall~~ must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105-282.1(a)(1). The remaining provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

(c) Duty to Report Changes. – The owner of a classified motor vehicle that has been omitted from the tax records as provided in subsection (b) ~~shall~~ of this section must report to the assessor any classified motor vehicle registered in the owner's name or owned by ~~him~~ that person but not registered in the person's name that does not qualify for exemption or exclusion for the current year. This report ~~shall~~ must be made within 30 days after the renewal of registration or initial registration of the vehicle or, for an unregistered vehicle, on or before January 31 of the year in which the vehicle is required to be listed by ~~subdivision (a)(2).~~ subsection (a1) of this section. A classified motor vehicle that does not qualify for exemption or exclusion but has been omitted from the tax records as provided in subsection (b) is subject to discovery under the provisions of G.S. 105-312, except that in lieu of the penalties prescribed by G.S. 105-312(h) ~~there shall be assessed~~ a penalty of one hundred dollars ($100.00) is assessed for each registration period that elapsed before the disqualification was discovered.

(d) ~~The provisions of G.S. 105-282.1 do not apply to classified motor vehicles.~~ Criminal Sanction. – A person who willfully attempts, or who willfully aids or abets another person to attempt, in any manner to evade or defeat the taxes subject to this Article, whether by removal or concealment of property or otherwise, is guilty of a Class 2 misdemeanor.

"§ 105-330.4. Due date, interest, and enforcement remedies.

(a) Due Date. – The registration of a classified motor vehicle may not be renewed unless the taxes that are due have been paid. Taxes on a classified motor vehicle are due as follows:

(1) For an unregistered classified motor ~~vehicle listed pursuant to G.S. 105-330.3(a)(2)~~ vehicle, the taxes are due on September 1 following the date by which the vehicle was required to be listed. ~~Taxes on a~~

(2) For a registered classified motor vehicle ~~listed pursuant to G.S. 105-330.3(a)(1)~~ that is registered under the staggered system, the taxes are due each year on the date the owner applies for a new registration ~~is applied for~~ or the fifteenth day of the month following the month in which the registration renewal sticker ~~expired~~ expires pursuant to G.S. 20-66(g).

(3) For a registered classified motor vehicle that is registered under the annual system, taxes are due on the date the owner applies for a new registration or 45 days after the registration expires.

(4) For a registered classified motor vehicle that has a temporary registration plate issued under G.S. 20-79.1 or a limited registration plate issued under G.S. 20-79.1A, the taxes are due on the last day of the second month following the date the owner applied for the plate.

~~(a1) Notwithstanding subsection (a) of this section, taxes on a classified motor vehicle for which the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, are due on the last day of the second month following the date on which the limited registration is applied for.~~

(b) Interest. – ~~Subject to the provisions of G.S. 105-395.1, interest~~Interest accrues on unpaid taxes and unpaid registration fees ~~on~~ for registered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(1) accrues~~ at the rate of five percent (5%) for the remainder of the month following the ~~month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).~~ month the taxes are due under subsection (a) of this section. Interest accrues at the rate of three-fourths percent (¾ %) for each following month ~~thereafter~~ until the taxes and

fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest accrues on delinquent taxes on unregistered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(2) accrues~~ as provided in G.S. 105-360(a) and the discounts ~~shall be allowed as provided in G.S. 105-360(c).~~ allowed in G.S. 105-360(a) apply to the payment of the taxes.

(c) Remedies. – ~~Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer.~~ The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor vehicle.

"**§ 105-330.5. ~~Listing and collecting procedures.~~Notice required; distribution and collection fees.**

(a) Notice for Registered Vehicle. – ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the~~ The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division ~~shall~~ must prepare a combined tax and registration notice for each registered classified motor vehicle. The combined tax and registration notice ~~shall~~ must contain all county and municipal corporation taxes and fees due on the motor vehicle as computed by the assessor in the county of registration. If the motor vehicle has a temporary or limited registration plate issued under G.S. 20-79.1 or G.S. 20-79.1A, the combined tax and registration notice must state that the vehicle registration fees for the plate have been paid and that the vehicle's registration becomes valid for the remainder of the year upon payment of the county and municipal corporation taxes and fees that are due. A combined tax and registration notice that sets out the required information on a vehicle issued a limited registration plate constitutes the registration certificate for that vehicle. ~~In~~

In computing the taxes, the assessor ~~shall~~ must appraise the motor vehicle in accordance with G.S. 105-330.2 and ~~shall~~ must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect ~~on the first day of the month in which the current vehicle registration expires or the new registration is applied for.~~ on the date the taxes are computed. The tax on the motor vehicle is the product of a fraction and the number of months in the motor vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12. This procedure ~~shall constitute~~ constitutes the listing and assessment of each classified motor vehicle for taxation. ~~The~~

The combined tax and registration notice ~~shall contain~~ must contain the following:

(1) ~~The date of the combined tax and registration notice.~~

~~(2)~~ The appraised value of the motor vehicle.

~~(3)~~(2) The tax rate of ~~the taxing units.~~ each taxing unit.

~~(4)~~(3) A statement that the appraised value and the taxability of the motor vehicle may be appealed to the assessor ~~before the taxes and fees become delinquent.~~ in writing within 30 days of the due date.

~~(5)~~(4) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(5) Instructions for payment.

(a1) Proration. – When a new registration is obtained for a registered classified motor vehicle that is registered under the annual ~~system in a month other than December,~~system. the taxes ~~shall be~~ are prorated for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection ~~(a).~~ (a) of this section. The numerator of the proration fraction is the number of full months remaining in the calendar year following the registration application date ~~the registration is applied for~~ and the denominator of the fraction is 12.

~~(a2) For classified motor vehicles where the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, the Property Tax notice shall contain a statement that registration fees have been paid pursuant to G.S. 20-79.1 or G.S. 20-79.1A and that the registration becomes valid for the remainder of the year upon payment of county and municipal taxes and fees due in the current year.~~

(b) Distribution and Collection Fees. – ~~When the combined tax and registration notice required by subsection (a) or (a2) of this section is prepared, the~~ The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division ~~shall mail~~ must send a copy of the ~~notice, with appropriate instructions for payment,~~ combined tax and registration notice for a registered classified motor vehicle to the motor vehicle ~~owner.~~owner, as defined in G.S. 20-4.01. The Department ~~shall~~ must establish a fee equal to the actual cost of ~~printing~~ preparing, printing, and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may ~~retain~~ receive a fee for collecting these taxes and fees. The amount of this fee ~~retained by the collecting authority shall be an amount~~ must equal ~~to~~ at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The Property Tax Division ~~shall~~ must establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month. ~~Each collecting authority shall provide a weekly financial report containing information required by the Property Tax Division to the taxing units and Division of Motor Vehicles to enable them to account for payments received.~~

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) Notice for Unregistered Vehicle. – ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2.~~ The assessor ~~shall~~ must prepare and send a tax notice for each unregistered classified motor vehicle before September 1 following the January 31 listing ~~date; the tax notice shall~~ date. The notice must include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor ~~shall~~ must use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities ~~shall~~ must list, assess, and tax unregistered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(2)~~ as provided in G.S. 105-326, 105-327, and ~~105-328 and shall send tax notices as provided in this section.~~ 105-328.

(d) Scope of Levy. – ~~The~~ A county ~~shall~~ must include taxes on registered classified motor vehicles ~~listed pursuant to G.S. 105-330.3(a)(1)~~ in the tax levy for the fiscal year in which the taxes ~~become due and shall charge the taxes to the tax collector for that year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due. If that~~

~~occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year.~~are collected.

(e) Small Underpayment or Overpayment. – Notwithstanding G.S. 105-357(c), the collecting authority must treat a small underpayment of taxes and fees as fully paid and not refund a small overpayment of taxes and fees unless the vehicle owner requests a refund before the end of the fiscal year in which the small overpayment is made. A "small underpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) less than the taxes and fees due on the vehicle. A "small overpayment" is a payment made, other than in person, that is no more than four dollars and ninety-nine cents ($4.99) greater than the taxes and fees due on the vehicle.

....

"§ 105-330.8. Deadlines not extended.

Except as otherwise provided in this Article, the following ~~provisions~~sections of ~~G.S. 105-395.1 and G.S. 103-5 do not apply to deadlines established in this Article.~~ the General Statutes do not apply:

(1) G.S. 105-395.1 and G.S. 103-5.
(2) G.S. 105-321(f).
(3) G.S. 105-360.

"§ 105-330.9. Antique automobiles.

(a) Definition. – For the purpose of this section, the term "antique automobile" means a motor vehicle that meets all of the following conditions:

(1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.
(2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.
(3) It is used only occasionally for other purposes.
(4) It is owned by an individual.
(5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Classification. – Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and ~~shall~~ must be assessed for taxation in accordance with this section. An antique automobile ~~shall~~ must be assessed at the lower of its true value or five hundred dollars ($500.00).

....

"§ 105-330.11. Memorandum of understanding.

The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles are directed to enter into a memorandum of understanding concerning the administration of this Article. The memorandum of understanding must include the following:

(1) A procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles.
(2) Information concerning vehicle identification, ~~identification of a vehicle owner by~~the name and address of a vehicle's owner, and other information that will be required on a motor vehicle registration form to implement the tax listing and collection provisions of this Article.
(3) A procedure for the business practices, accounting, and costs of carrying out the integrated computer system for registration renewal and property tax collection for motor vehicles once the system has been certified to be in operation by the Department of Revenue and the Department of Transportation. The Departments must consult with the North Carolina Association of County Commissioners, acting on behalf of the counties, and

the North Carolina League of Municipalities, acting on behalf of the municipalities, in developing the procedures under this subdivision and obtain their signed endorsements before any part of this procedure is implemented."

SECTION 22.(b) G.S. 20-79.1A reads as rewritten:

"**§ 20-79.1A. ~~Use of limited~~Limited registration ~~plates on motor vehicles.~~plates.**

~~(a)~~ ~~The Division or its authorized agent shall must limited registration plate upon receipt of an application for title and registration fees from a dealer, who is authorized to issue temporary registration plates or markers to owners of vehicles pursuant to G.S. 20-79.1, or from any other person.~~ A limited registration plate is issuable to a person who applies, either directly or through a dealer licensed under Article 12 of this Chapter, for a title to a motor vehicle and a registration plate for the vehicle and who submits payment for the applicable title and registration fees but does not submit payment for any municipal corporation property taxes on the vehicle. A person who submits payment for municipal corporation property taxes receives an annual registration plate. ~~The~~

A limited registration plate must be clearly and visibly designated as ~~"temporary"and shall expire~~ "temporary." The plate expires on the last day of the second month following the date of application of the limited registration plate. The plate may be used only on the vehicle for which it is issued and may not be transferred, loaned, or assigned to another. If the plate is lost or stolen, the vehicle for which the plate was issued may not be operated on a highway until a replacement limited registration plate or a regular license plate is received and attached to the vehicle.

The Division is not required to issue a registration certificate for a limited registration plate. A combined tax and registration notice issued under G.S. 105-330.5 serves as the registration certificate for the plate.

~~(b)~~ ~~Notwithstanding subsection (a) of this section, the Division or its authorized agent shall issue an annual registration plate upon receipt of an application for title, registration fees, and property taxes from the dealer or any other person.~~"

SECTION 22.(c) G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when this act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective July 1, 2011, and apply to combined tax and registration notices issued on or after July 1, 2011. The remainder of this section is effective when it becomes law.

SECTION 23.(a) Section 8 of S.L. 2007-471 reads as rewritten:

"**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2010,~~ July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

SECTION 23.(b) Section 79 of S.L. 2008-134 reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. Section 63 of this act is repealed July 1, 2011."

SECTION 24. G.S. 105-361(a) reads as rewritten:

"(a) Duty to Furnish a Certificate. – On the request of ~~any of the persons prescribed~~ a person who is listed in subdivision ~~(a)(1), below,~~ (1) of this subsection and ~~upon the condition prescribed by subdivision (a)(2), below,~~ who complies with subdivision (2) of this subsection, the tax collector ~~shall furnish~~ must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior ~~years in his hands for collection (together with any penalties, interest, and costs accrued thereon) including the amount due under G.S. 105-277.4(c) if the property should lose its eligibility for the benefit of~~

~~classification under G.S. 105-277.2 et seq. that are a lien on a parcel of real property in the taxing unit.~~year and the amount of any deferred taxes and interest that would become due if a disqualifying event occurred.

(1) Who ~~May Make Request.~~ may make request. – Any of the following persons ~~shall be entitled to~~ may request the certificate:

a. An owner of the real ~~property;~~property.

b. An occupant of the real ~~property;~~property.

c. A person having a lien on the real ~~property;~~property.

d. A person having a legal interest or estate in the real ~~property;~~property.

e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the ~~property;~~property.

f. The authorized agent or attorney of any person described in ~~subdivisions (a)(1)a through e above.~~this subdivision.

(2) ~~Duty of Person Making Request.~~ Identification of property. – A person requesting a certificate ~~With~~ with respect to ~~taxes, the tax collector shall not be required to furnish a certificate unless the person making the request specifies in whose~~ taxes must specify the name of the person who listed the real property ~~was listed~~ for taxation for each year for which the information is sought. A person requesting a certificate ~~With~~ with respect to ~~assessments, the tax collector shall not be required to furnish a certificate unless the person making the request furnishes such identification of~~ assessments must identify the real estate ~~as may be reasonably~~ in the manner required by the tax collector."

SECTION 25.(a) G.S. 160A-215.2 reads as rewritten:

"**§ 160A-215.2. Heavy equipment gross receipts tax in lieu of property tax.**

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

(1) Heavy equipment. – Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A city may, by ~~resolution,~~ ordinance. impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the ~~city finance officer.~~ city. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax

imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the ~~resolution~~ ordinance imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution~~ ordinance is adopted.

(f) Repeal. – A city may, by ~~resolution,~~ ordinance, repeal a tax imposed under this section. The repeal is effective on the date set in the ~~resolution.~~ ordinance. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution~~ ordinance is adopted."

SECTION 25.(b) A heavy equipment gross receipts tax levied by a city ordinance or a city resolution on or before the effective date of this act is valid and remains in effect until amended or repealed.

OCCUPANCY TAX CHANGES

SECTION 26. Section 1 of S.L. 2008-33 reads as rewritten:

"**SECTION 1.** Chapter 1055 of the 1983 Session ~~Laws~~ Laws, as amended by Section 21(e) of S.L. 2007-527, reads as rewritten:

'Section 1. ~~Levy of Tax.~~ Occupancy Tax. –

(a) Authorization and Scope. – The Cherokee County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development ~~tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Cherokee County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~'Sec. 2. Occupancy Tax.~~

~~(a) The county room occupancy and tourism development tax that may be levied under this act shall be a percentage~~ tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county ~~now~~ that is subject to ~~the three percent (3%)~~ sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). ~~During the first year in which a tax levied under this act is in effect, the tax shall be three percent (3%) of the gross receipts derived from the rental of taxable accommodations in the county. Thereafter, the rate of tax shall continue to be three percent (3%) unless the Cherokee County Board of Commissioners, by resolution, adopts a rate of less than three percent (3%). A change in the occupancy tax rate adopted by the board of commissioners becomes effective the first day of the second succeeding calendar month following the date of adoption of the resolution. The Cherokee County Board of Commissioners may not change the occupancy tax rate more than once a year.~~

~~(b)~~ The occupancy tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, ~~benevolent,~~ or religious organizations.

(b) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Cherokee County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this act. Cherokee County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

'Sec. 3. Administration of Tax. – A tax levied under this act shall be levied, collected, administered, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

~~(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~'Sec. 4. Collection of Tax. Every operator of a business subject to the tax levied pursuant to this act shall collect the tax on and after the effective date of the levy of the tax.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Cherokee County. The room occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

'Sec. 5. ~~Disposition of Taxes Collected.~~Distribution and Use of Tax Revenue. – Cherokee County ~~shall~~ shall, on a quarterly basis, remit the net proceeds of ~~all revenues received from~~ the room occupancy tax to the Cherokee County Tourism Development Authority.~~Authority appointed pursuant to this act.~~ The Authority shall use at least two-thirds of the funds remitted to it under this act to promote travel and tourism in Cherokee County and shall use the remainder for tourism-related expenditures.~~"Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax. The Authority may expend these funds only to further the development of travel, tourism, and conventions in the county through advertising and promotion.~~

The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

'Sec. 6. ~~Appointment, Duties of~~ Cherokee County Tourism Development Authority. –

(a) Appointment and Membership. – When the Cherokee County Board of Commissioners adopts a resolution levying a room occupancy ~~tax,~~ tax under this act, it shall also adopt a resolution creating a County Tourism Development ~~Authority composed of the director of the Cherokee County Chamber of Commerce and the following four members appointed by the Cherokee County Board of Commissioners:~~

~~(1) an owner of a hotel, motel, or other accommodations subject to the tax levied by this act;~~

~~(2) a member of the board of county commissioners;~~

~~(3) a town commissioner or the mayor of the Town of Murphy; and~~

~~(4) a town alderman or the mayor of the Town of Andrews.~~

~~The director of the Cherokee County Chamber of Commerce shall serve as an ex officio member of the Authority. The members appointed by the board of county commissioners shall serve three-year terms, except the initial appointees. Of the initial appointees, the board of commissioners shall designate one to serve a one-year term, two a two-year term, and one a three-year term. Vacancies created by an appointed member shall be filled by the board of commissioners. Members appointed to fill vacancies shall serve the remainder of the unexpired term for which they are appointed to fill.~~ Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Cherokee County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. ~~The members of the Tourism Development Authority shall elect from its membership a chairman. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer of Cherokee County shall serve ex officio as accountant for the Authority.~~

(c) Reports. – The ~~Tourism Development~~ Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and disbursements for the preceding quarter and for the year in such detail as the board may require.

~~'Sec. 7. Repeal of Levy.~~

~~(a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Cherokee County, but no repeal of taxes levied under this act is effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~

'Sec. 8. This act is effective upon ratification."

SECTION 27. The catch line for Section 21(j) of S.L. 2007-527 reads as rewritten:

"**SECTION 21.(j)** Subsection (a) of Section 4 of Chapter 929 of the 1985 Session ~~Laws as amended by S.L.1985-929~~ Laws, as amended by Chapter 319 of the 1987 Session Laws, reads as rewritten:".

SECTION 28. Section 1(b) of S.L. 2005-68 reads as rewritten:

"**SECTION 1.(b)** Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session ~~Laws and S.L. 2001-402.~~ Laws, S.L. 2001-402, and Section 21(cc) of S.L. 2007-527. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section."

MOTOR FUEL TAX CHANGES

SECTION 29.(a) G.S. 105-449.45(a) reads as rewritten:

"(a) Report. – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January. A report must be filed in the form required by the Secretary."

SECTION 29.(b) This section becomes effective January 1, 2010.

SECTION 30. G.S. 105-449.47A reads as rewritten:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.**

The Secretary may refuse to register and issue a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 31. G.S. 105-449.72 is amended by adding a new subsection to read:

"(f) Exemption. – The requirement to obtain a bond or an irrevocable letter of credit does not apply to a distributor, an importer, or a motor fuel transporter who supplies motor fuel when the market for motor fuel is disrupted and emergency supplies are needed, as identified by an executive order of the Governor."

SECTION 32.(a) G.S. 105-449.81 reads as rewritten:

"**§ 105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(3b) Fuel grade ethanol that meets any of the following descriptions:

a. Is produced in this ~~State,~~ State and is removed from the storage facility at the production ~~location, and is not delivered to a terminal in this State.~~location.

b. Is imported to this State outside the terminal transfer ~~system and is not delivered to a terminal.~~system.

~~c. Is removed from a terminal.~~

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and is subject, upon transfer, to the federal excise tax imposed by section 4081 of the Code or is transferred to a person who is not licensed under this Article as a supplier."

SECTION 32.(b) G.S. 105-449.83A reads as rewritten:

"**§ 105-449.83A. Liability for tax on fuel grade ethanol.**

The excise tax imposed by G.S. 105-449.81(3b) on fuel grade ethanol is payable by the refiner or fuel alcohol provider."

SECTION 32.(c) Subsection (a) of this section becomes effective January 1, 2010. The remainder of this section is effective when it becomes law.

SECTION 33.(a) G.S. 105-449.95 is recodified as G.S. 105-449.105B. G.S. 105-449.105B, as recodified by this section, reads as rewritten:

"**§ 105-449.105B. ~~Quarterly~~ Monthly hold harmless refunds for licensed distributors and some licensed importers.**

~~(a) Calculation. At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor or licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the is less than~~ If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier ~~during each month of the quarter under the following schedule:~~ under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

~~(b) Refund. If the amount the licensed distributor or licensed importer received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor or importer would have received on the distributor's or importer's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor or importer a refund check for the difference.~~ In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for ~~gasoline~~ motor fuel purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because

the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State."

SECTION 33.(b) This section becomes effective January 1, 2010, and applies to motor fuel purchased on or after that date.

SECTION 34.(a) G.S. 105-449.115 reads as rewritten:

"(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A refiner, a terminal ~~operator and~~ operator, a fuel alcohol provider, and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document ~~a terminal operator or the operator of a bulk plant~~ must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons ~~loaded.~~loaded if the motor fuel is loaded onto a transport truck, and the gross pounds loaded if the motor fuel is loaded onto a railroad tank car.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a refiner or a terminal operator, the document must be machine ~~printed and it~~ printed. If the motor fuel is loaded onto a transport truck, the document must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A ~~terminal operator or bulk plant operator~~ person who issues a shipping document may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. – The ~~following~~ acts listed in this subsection are grounds for a civil ~~penalty:~~penalty. The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. The grounds for a civil penalty are:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

~~The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.~~

(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion and received a confirmation number for the diversion before the imposition of the penalty.

(2) Tax was timely paid on the diverted fuel, unless the person is a motor fuel transporter.

(h) ~~Sanctions Against Terminal Operator.~~ Sanctions. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a ~~terminal operator~~ person who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 34.(b) This section becomes effective January 1, 2010.

SECTION 35. G.S. 105-449.121(b)(2) reads as rewritten:

"(2) Audit a distributor, a retailer, a ~~bulk end user,~~ bulk end-user, or a motor fuel user that is not licensed under this Article."

SECTION 36. G.S. 105-449.136 reads as rewritten:

"§ 105-449.136. Tax on alternative fuel.

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in ~~G.S. 105-449.88(2), (3), and (4)~~ G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax

allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

OTHER CHANGES

SECTION 37. G.S. 143B-437.63 reads as rewritten:

"**§ 143B-437.63. JDIG Program cash flow requirements.**

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve ~~Fund~~ established pursuant to ~~G.S. 143-15.3E~~ G.S. 143C-9-6 to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year."

SECTION 38.(a) Section 12.8 of S.L. 2006-66 is repealed.

SECTION 38.(b) G.S. 150B-1(d)(15) is repealed.

SECTION 39. The prefatory language of Section 28.19(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.19.(a)** G.S. 105-164.13B(a) ~~is amended by adding a new subdivision to read:~~reads as rewritten:".

SECTION 40. The prefatory language of Section 28.25(c) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.25.(c)** ~~G.S. 105-134(c)(5b)~~ G.S. 105-134.6(c)(5b) reads as rewritten:".

SECTION 41. The prefatory language of Section 67(a) of S.L. 2008-134 reads as rewritten:

"**SECTION 67.(a)** ~~G.S. 58-5-25(a)(2)~~G.S. 58-6-25(a)(2) is repealed."

SECTION 42.(a) Section 1.4 of S.L. 2008-146 reads as rewritten:

"**SECTION 1.4.** This ~~section~~ Part becomes effective July 1, 2009, and mandatory advancements in G.S. 105-286(a)(2), as amended by ~~this section~~ Section 1.1 of this Part, apply to notices sent under G.S. 105-284(c) on or after that date."

SECTION 42.(b) Section 2.3 of S.L. 2008-146 reads as rewritten:

"**SECTION 2.3.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 42.(c) Section 3.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 3.2.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2009."

SECTION 42.(d) Section 4.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 4.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

SECTION 42.(e) Section 5.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 5.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

EFFECTIVE DATE

SECTION 43. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 509:
Rev Laws Tech, Clarifying, & Admin. Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 2, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S509-CSRBx-33		Committee Counsel

SUMMARY: ***Senate Bill 509[1] makes several technical, clarifying, and administrative changes to the revenue laws and related statutes. The proposed committee substitute adds the provisions highlighted in the chart.***

BILL ANALYSIS: Senate Bill 509 makes the following technical, clarifying, and administrative changes:

Section	Explanation
Privilege License, Income, Excise, and Insurance Tax Changes	
1	Clarifies the privilege license tax on home inspectors applies to an individual licensed under the Home Inspector Licensure Act so that associate home inspectors will be taxed similarly. S.L. 2008-206 imposed an annual State privilege license tax of $50 on a licensed home inspector but it failed to mention associate home inspectors. Without this change, an associate home inspector would be subject to local privilege license tax in each city that levies the tax.
2	Moves the definitions from subsection (b) to a newly created subsection (b1). The current subsection (b) contains two different subdivision lists within the same subsection. This change puts the defined terms, listed by subdivisions, into a new subsection.
3	Clarifies that a recycling facility[2] that is eligible for the tax credit for investing in large or major recycling facility is not also eligible for the Article 3J tax credit for investing in business property. This section becomes for taxable years beginning on or after January 1, 2007, the year the Article 3J tax credits became effective.
4	Changes the term 'nonbusiness activities' to 'activities producing nonapportionable income', which is a defined term in the statute that sets out the manner in which corporations must allocate and apportion their income to North Carolina for income tax purposes. In 2002, the terms 'business income' and 'nonbusiness income' were replaced by apportionable and nonapportionable. This subsection was missed when those changes were made.
5	Clarifies that a corporate taxpayer may not use an alternative apportionment method unless it receives a written decision from the Secretary authorizing it to do so.
6	Corrects an effective date relating to changes made to the statute designating who may sign an income tax return. These changes were originally part of the major rewrite of the tax appeals procedure in 2007 (SB 242).
7	Repeals an unnecessary statute in the corporate and personal income tax laws. The

[1] H553, as introduced by Rep. Wainwright, is the House companion bill. H553 is currently in House Finance

[2] The General Assembly enacted the credit as a tax incentive for Nucor in 1985.

	Department of Revenue does not ask taxpayers to file a 'supplemental' return. A taxpayer files either an original return or an amended return. If the Department determines additional tax is due, it proposes an assessment.
8	Clarifies the reporting requirements for the film industry credit. The term 'claimed' may have several different meanings. The Department of Revenue requested clarity as to the meaning of the term.
9	Changes the date by which the State Treasurer must make a transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund. The current statute provides that ***within 75 days after the end of each fiscal year***, the Treasurer must transfer to the Fund an amount equal to the growth in net revenue from the gross premiums tax on insurance companies. Insurance tax returns are due by March 15. Insurance companies are also required to prepay their tax in installments. The first installment of the fiscal year is due by October 15. Therefore, until those installments are remitted, little or no funds are available for transfer. This section changes the date from within 75 days after the end of the fiscal year, or September 14, to November 1, as recommended by the Department of Revenue.
Sales and Use Tax and Highway Use Tax Changes	
10	Updates the reference to the Streamlined Agreement from June 23, 2007 to May 12, 2009. North Carolina does not need to amend its sales and use tax laws to conform to the changes made in the Agreement since June 23, 2007. A copy of the Agreement, as well as a document summarizing the changes made to the Agreement since June 23, 2007, may be found on the Streamlined Sales Tax Project's website: www.streamlinedsalestax.org
11	Makes two conforming changes to the general sales tax sourcing principles. It provides that direct mail is sourced to the location where the property is delivered, and if that is unknown, it is sourced to the location from which the direct mail was shipped. This change ensures compliance with the Streamlined Agreement. This section also codifies the long-standing sourcing method used for florist wire sales: the sale is sourced to the business location of the florist that takes the order for the sale.
12	Repeals an unnecessary sales tax exemption. GS 105-164.13(40) exempts sales to the Department of Transportation from sales tax; however, subdivision (52) exempts all sales to State agencies from sales tax. S.L. 2003-431 allowed a sale and use tax exemption, instead of a sales and use tax refund, for purchases by State agencies. The exemption for DOT predated this exemption. It is no longer necessary.
13	Replaces the word 'energy' with the word 'electricity' for consistency. This term appears in the statute enacted last year authorizing a sales tax refund for materials used to build a facility that manufactures solar electricity generating materials. This section is effective July 1, 2008, the effective date of the original provision.
14	Provides a new distribution methodology for the allocation of sales tax collected o modular homes to local governments. The methodology currently references the distribution under the third ½ cent local sales and use tax; but this tax is repealed effective October 1, 2009. A 2.5% State sales tax applies to the sale of a modular home. Twenty percent of the tax collected is distributed to the counties. This amounts to approximately $1 million annually. This section provides that 20% of the sales tax collected on modular homes will be allocated to the counties on a per capita basis, and

	distributed to the county and its municipalities as provided in the first ½ cent local sales tax.
15	Repeals an unnecessary highway use tax exemption. A transfer of a motor vehicle to a handicapped person from the Department of Health and Human Services after the vehicle is equipped by the Department for use by the handicapped is exempt from highway use tax. The exemption is not needed because the Department never takes title to the vehicle.
16	Corrects two incorrect statutory references.
17	Clarifies how a bundled transaction that includes food is taxed under the local option ¼ cent county sales tax article. *See GS 105-164.4D.*
Property Tax Changes	
18	Reinserts the word 'shares', which was inadvertently deleted when changes were made in 2008 to the circuit breaker statute.
19	Modernizes language..
20(a)	Clarifies that the homestead exclusion applies uniformly to a husband and wife, regardless of how they hold title to the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
20(b)	Makes the following clarifying and technical changes to the homestead circuit breaker: • Clarifies that the property owned by a qualifying owner must have been the owner's permanent residence for at least five consecutive years but that the owner's five-year occupancy does not have to be consecutive. • Clarifies that the occupancy and ownership requirement refers to "length" of occupancy and ownership. • Clarifies that law applies uniformly to a husband and wife, regardless of how they hold title to the property. • Removes an unnecessary word. • Clarifies that only the deferred taxes for the last three years prior to the disqualifying event become due and payable. • Clarifies that notice of the sum of deferred taxes and interest that are due and payable must be sent annually to the mailing address of the residence subject to the circuit breaker benefit as opposed to mailing notice to each owner of the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
20(c)	Makes the following clarifying changes to the disabled veteran homestead exclusion: • Adds a definition for "qualifying owner" • Provides that a disabled veteran must have "separated" instead of "been discharged" from a branch of the Armed Forces. This change more clearly reflects the language used by the Armed Forces. • Provides that the term 'disabled veteran' includes a veteran whose separation was

	under honorable conditions. The Division of Veterans Affairs would like to expand the definition to include both veterans honorably discharged and discharged under honorable conditions. The Department of Revenue would like clarification. An honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. Separation under honorable conditions is warranted when the positive aspects of the service member's conduct or performance of duty outweigh negative aspects of the service member's conduct or performance of duty as documented in the member's service record. • Clarifies that the surviving spouse of a disabled veteran is eligible for the exclusion as long as the spouse does not remarry and the disabled veteran had the service connected, permanent, and total disability prior to the date of death. • Expands eligibility to a surviving spouse of a disabled veteran when the veteran's death was the result of a service-connected condition. • Clarifies that the exclusion is available to a disabled veteran who "received" instead of "receives" federal benefits to adapt his or her housing, since these benefits are generally a one-time payment. • Clarifies that the exclusion applies uniformly to a husband and wife, regardless of how they hold title to the property. This subsection becomes effective for taxes imposed for taxable years beginning on or after January 1, 2009.
21	Makes the following conforming changes to the statute that sets out the application procedure for property tax exemptions: • Adds drug samples to the list of exempt property not requiring an application, effective for taxes imposed for taxable years beginning on or after July 1, 2008. (subsections b and c) • Adds solar energy electric systems to the list of property excluded from taxation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2008. (subsection c) • Adds working waterfront property to the list of property classified for taxation at reduced valuation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2009. (subsection d) • Adds wildlife conservation to the list of property classified for taxation at reduced valuation that must file a single application, effective for taxes imposed for taxable years beginning on or after July 1, 2010. (subsection e)
22	Makes technical, clarifying, and administrative changes to the combined motor vehicle property tax system. Subsection (a) does the following: • **G.S. 105-330** – Adds a definition defining registration fees collected under the Act as passenger vehicle registration fees (G.S. 20-87) and registration fees for property-hauling vehicles (G.S. 20-88). • **G.S. 105-330.1** – Exempts the following motor vehicles from classification

under the combined system: motor vehicles issued permanent registration plates and self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate.

- **G.S. 105-330.2** – Subsection (a) adds language clarifying the period in which the value of a classified motor vehicle is determined so that the date of valuation will continue to be January 1. Adds language that if the value cannot be determined on January 1, then the value will be the most currently available January 1 retail value of the vehicle. Subsection (b) adds language that the initial appraised value of a vehicle purchased from a dealer is the sales price, including all accessories attached to the vehicle. Subsection (c) clarifies the right to appeal the appraised value or taxability of a vehicle by requiring that this right must be set out in the combined tax and registration notice or the tax receipt and by giving the lessee of a motor vehicle the right to appeal the value if the lessee is required to pay the tax on the vehicle under the terms of the lease. Clarifies that situs of a vehicle is determined on the date registration is applied for or renewed and may not be changed until the next registration date.
- **G.S. 105-330.3** - Add subdivision headings, and adds subsection (d) setting out penalty for willfully attempting or to aid or abet any person to evade or defeat the taxes imposed under Article 22A.
- **G.S. 105-330.4** – Subsection (a) adds language clarifying that taxes on a classified motor vehicle and registered under the annual system are due on the date a new registration is applied for or 45 days after the registration expires and removes unnecessary language. Subsection (b) deletes unnecessary language. Subsection (c) amends the law regarding enforcement remedies for unpaid taxes.
- **G.S. 105-330.5** – Subsection (a) gives the Department the authority to select a third party contractor to prepare and mail combined tax and registration notice; clarifies that if there is a pre-payment of taxes, the tax rate used will be the rate in effect on the date the taxes are computed; and adds clarifying language to the combined tax and registration notice regarding the time to appeal and instructions for payment. It provides that the combined tax and registration notice will serve as the registration certificate for a vehicle issued a limited registration plate. Subsection (b) clarifies that the definition of "owner" is the same definition of "owner" in Chapter 20, which include the lessee of the vehicle, so the lessee will receive the combined notice; clarifies that the fee for sending the combined notice also includes the actual cost of preparing the notice; clarifies that the collecting authority "receives" not "retains" a fee for collecting the taxes and fees; and deletes unnecessary language. Subsection (d) clarifies that that taxes on motor vehicles be included in the tax levy for the fiscal year in which the taxes are collected, since owners are able to renew their tags six months early or late; and adds a new subsection (e) stating how small underpayments and overpayments will be handled.
- **G.S. 105-330.6** no changes.
- **G.S. 105-330.7** no change
- **G.S. 105-330.8** clarifies that G.S. 105-321(f) (Minimal Taxes) and G.S. 105-360 (Due date; interest for nonpayment of taxes; discounts for prepayment) do not apply to Article 22A when the integrated computer system is in operation
- **G.S. 105-330.9** – Adds subdivision headings.

	• **G.S. 105-330.10** no change • **G.S. 105-330.11** adds clarifying language. Subsection (b) amends **G.S 20-79.1A** to add clarifying language that a limited registration plate may be used only on the vehicle for which issued, and that if lost or stolen, a replacement limited registration plate or regular plate must be received and attached to the vehicle before it can be driven. This is identical to language governing temporary registration plates.
23	This section corrects effective date errors and provides that the changes made by the section become effective July 1, 2011. It removes the provision that would hasten the effective date upon certification by the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation. This contingency is not likely to happen before July 1, 2011. The provision specifically provides that nothing in this section will require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2011.
24	Clarifies that the amount of taxes that a tax collector must report on a tax certificate includes any deferred taxes that would become due if a disqualifying event occurs.
25	Changes the word 'resolution' to 'ordinance' to reflect that cities adopt ordinances; counties adopt resolutions. The section provides that a tax levied prior to the effective date of this legislation remains valid and in effect until amended or repealed, regardless of what the city called the action: either a resolution or an ordinance. This section also removes the reference to the 'city finance officer' because in some instances, the city contracts with the county to collect this tax.
Occupancy Tax Changes	
26	Adds a Session Law reference that was inadvertently omitted when the Cherokee County local occupancy tax act was amended last year. In 2007, a number of local occupancy tax local acts were amended to change the due date for remitting occupancy tax proceeds and filing returns from the 15th to the 20th of the month to conform to current sales tax statutes. The Cherokee County local occupancy tax act was one of the acts so amended. However, when the rest of the local act was amended in 2008, the 2007 change was not incorporated. To make this technical change, the entire local act must be set out under drafting convention. However, no substantive change is being made.
27	Corrects an incorrect Session Law reference.
28	Adds to S.L. 2005-68, a Session Law reference to the 2007 act referenced above that made changes to a number of local occupancy tax acts related to the due date of the tax and return. S.L. 2005-68 is the act that authorized the additional occupancy tax to finance the NASCAR Hall of Fame Museum.
Motor Fuel Tax Changes	
29	Provides the Secretary with the ability to mandate electronic filing of motor carrier tax returns. The Secretary may currently mandate electronic filing of motor fuel tax returns.

	The Department developed an online filing system for motor carrier returns six years ago. To date, voluntary compliance is around 19%. This section becomes effective January 1, 2010.
30	Inserts a missing word.
31	Provides an exception to the requirement that a distributor, importer, or motor fuel transporter must obtain a bond or irrevocable letter of credit when the person is supplying motor fuel into the State because the market for motor fuel has been disrupted and emergency supplies are needed, as identified by an executive order of the Governor. The bonding requirement became an issue during the recent motor fuel supply shortages in the western part of the State.
32	Specifies that the tax on fuel grade ethanol is payable by the refiner or fuel alcohol provider. The difference between a refiner and a fuel alcohol provider is the amount of fuel the person produces. A refiner is a person who produces an average of more than 500,000 gallons a month; a person who produces less than this amount is a fuel alcohol provider. This section changes the law enacted last year in S.L. 2008-134 that specified when fuel grade ethanol was subject to tax. Effective January 1, 2009, the fuel is taxable when it was removed from a terminal or when it is produced in the State or imported to the State and not delivered to a terminal. However, the Department has had difficulty administering this provision. Ethanol is primarily shipped by railroad tank car and once imported into the State the ethanol may not be off-loaded for weeks. Since the tax is imposed upon importation, this delay in off-loading creates a loop-hole for filers. This section provides that the ethanol produced in this State is taxable when it is removed from the storage facility at the production location; ethanol produced outside the State is taxable when it is imported to the State. Prior to 2009, fuel grade ethanol was first subject to tax when it was blended. This section becomes effective January 1, 2010.
33	Changes the hold harmless refund from a quarterly one the Department calculates and administers to a monthly one the taxpayer requests. This section becomes effective January 1, 2010, and applies to motor fuel purchased on or after that date.
34	Requires a shipping document to transport fuel grade ethanol since the ethanol is now subject to tax before it is blended. This section accomplishes this change by expanding the statute to include refiners and fuel alcohol providers. This section also recognizes that the content of a shipping document issued for motor fuel transported by railroad tank car differs from a one issued for fuel transported by transport trucks. This section becomes effective January 1, 2010.
35	Corrects a misspelled word.
36	Conforms the tax exemptions for alternative fuel to the tax exemptions for motor fuel.
Other Changes	
37	Corrects an incorrect statutory reference. The statute cited was repealed in 2006.
38	Repeals the session law that created the Economic Development Reserve and its exemption from rule-making. The Reserve had a one-time appropriation. The money in the fund has been drawn down. The Reserve has served its intended purpose and is no longer necessary.
39	Corrects the prefatory language of Section 28.19.(a) of S.L. 2008-107.

40	Corrects the prefatory language of Section 28.25.(c) of S.L. 2008-107.
41	Corrects an incorrect statutory reference.
42	Corrects the effective date sections in S.L. 2008-146 to refer to 'Parts' rather than 'sections'.

S509-SMRB-26(CSRBx-33) v3

SENATE FINANCE COMMITTEE
Wednesday, June 17, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 17, 2009, in Room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator Dan Clodfelter presided.

H.B. 206 – Affordable Housing for Local Employees.

Representative Guice was recognized to explain the bill. It authorizes the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to construct and provide affordable housing for city and county employees and for public school teachers. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 943 – Expand Film Credit.

Senator Garrou was recognized to explain the bill, which expands the credit for qualifying expenses of a production company. Wilmington mayor, Bill Saffo, was recognized to speak in favor of the bill. Aaron Syrett, Director of the NC Film Office, was recognized to speak in favor of the bill and to answer questions. Rodney Bizzell, a fiscal analyst with the Fiscal Research Division, and Cindy Avrette, a staff attorney with the Research Division, were recognized to answer questions. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note, a national map of incentives, and a report on the NC impact of the film industry from the NC Department of Commerce is attached.

H.B. 203- Increase Small Estate Amount.

Representative Randleman was recognized to explain the bill, which increases the size of estates that may be administered under the small estates provisions of the General Statutes. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

H.B. 384 – Fuquay-Varina Quick Take.

Representative Stam was recognized to explain the bill. It authorizes the Town of Fuquay-Varina to use the procedure and authority of Chapter 136 of the General Statutes in condemnation proceedings concerning public streets and roads. Senator Berger moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 394 – Raleigh Motor Vehicles.

Rep. Ross was recognized to explain the bill, which authorizes the City of Raleigh to increase its general motor vehicle tax by up to five dollars each year. Cindy Avrette was

recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

H.B. 511 – EMS/Fire Department Sales Tax Refund.

Representative Williams was recognized to explain the bill which reenacts the sales tax refund for certain volunteer emergency response personnel. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the fiscal note and the summary is attached.

H.B. 533 – Modify Hickory and Conover Occupancy Tax.

Representative Warren was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS authorizes the Cities of Hickory and Conover to levy an additional one percent room occupancy and tourism development tax and makes other administrative changes. Senator Apodaca and Senator Purcell moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

H.B. 646 – Bridgeton Satellite Annexations.

Representative Underhill was recognized to explain the bill, which removes the cap on satellite annexations for the Town of Bridgeton. Senator Atwater moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 854 – Forsyth County Occupancy Tax Modifications.

Representative McGee was recognized to explain the bill. It modifies the Forsyth County Room Occupancy and Tourism Development Tax. Senator Hartsell moved for a favorable report and the motion carried. A copy of the bill, the fiscal note and the summary is attached.

H.B. 986 – Spencer/Amend Property Description.

Representative Coates was recognized to explain the bill, which amends the description of a right-of-way that the Town of Spencer was previously authorized to annex by ordinance. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 992 – Landis/Repeal Annexation.

Representative Steen was recognized to explain the bill, which repeals the annexation of certain property by the Town of Landis. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

The meeting adjourned at 1:48 PM.

Senator Dan Clodfelter, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 17, 2009

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

FAVORABLE

S.B.	**943**	Expand Film Credit.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #2)	**203**	Increase Small Estate Amount.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**206**	Affordable Housing for Local Employees.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**384**	Fuquay-Varina Quick Take.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**394**	Raleigh Motor Vehicles.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**511**	EMS/Fire Dept. Sales Tax Refund.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**646**	Bridgeton Satellite Annexations.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**854**	Forsyth County Occupancy Tax Modifications.	
		Sequential Referral:	None
		Recommended Referral:	None

H.B.(CS #1) **986** Spencer/Amend Property Description.
Sequential Referral: None
Recommended Referral: None

H.B. **992** Landis/Repeal Annexation.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 10

Committee Clerk Comments:

H203 – Sen. Hoyle
H206 – Sen. Snow
H384 – Sen. Blue or Hunt
H394 – Sen. Stein
H511 – Sen. Jenkins
H646 – Sen. Preston
H854 – Sen. Garrou
H986 – Sen. Brock
H992 – Sen. Brock

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, June 18, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **533** Modify Hickory and Conover Occupancy Tax.

Draft Number:	11004
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

H533 – Sen. Hoyle

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Costner	Films
Jay Peters	JP Resorts
John Goodman	NC Chamber
Fred Bone	Bone & Assoc.
Brock Davis-Yerman	Intern- Atwater
Rita Harris	Commerce Dept
Gerry Cohen	Bill Drafting
Leigh Williamson	NCAMPHA
Jim Johnson	BSA
Sam Seats	WCJR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Meredith	Megan Wood
Lanier Bean	City of Wilmington
JASON ROSIN	IATSE Local 491
Lynn Mings	NC Commerce
Aaron Syrett	NC Commerce
Shelley Gonzales	John Locke Foundation
Johnny Griffin	Wilmington Film Commission
Bill Vassar	EUE Screen Gems Studios
JACK COGDILL	NCSU
Carey Jones	Premiere Entertainment Services
Dale Williams	Premiere Ent. Servi - Film Industry

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Austin	HSR
Amy Schulder	MWC
Beth Bowen	NC Assn for Medical Equipment
Kim Brummett	ADVANCED HOME CARE
Ed Dressen	Dressen Medical Supply
Joey Hunt	NCAMES
Marcia Lazar	NCAMES Triangle Alliance
Norma Frank	NCAFC
Jack Tolson	Tolson
Thomas Hardaway	PhRMA
Bill Scoggin	VHB

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC HBA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy McConkey	Smith Anderson
Stephanie Fryda	NCAE/UCAE
Linda Davis	NCAE/UCAE
Nolan Davis	NCAE/UCAE (Student)
Leona Brewer	NCAE/UCAE
Rhyne Berry	NCAE/UCAE
PHIL MARION	WILMINGTON
Sarah Main	Wilmington
Ellen Marion	Wilmington
Amy McLemore	NCDOR
Andy Sabol	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kim Hargett	Teacher - Marshville Elementary 515 N. Elm St. Marshville, N.C. 28103
Amy Paschal	Teacher - Marshville Elem. 515 N. Elm St Marshville, NC 28103
Penny Burgin	School of Gov.
[illegible]	EGR
Thomas McCormick	City of Raleigh
Lennie Collins	DOR
AL MILAK	DOR
Will Culpepper	Moore + Van Allen
Michelle Frazier	MFTS
Katya Faston	AB
Chris McLamb	Raleigh

Senate Finance Committee
Wednesday, June 17, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 203	Increase Small Estate Amount.	Rep. Faison Rep. Hurley Rep. Randleman Rep. Spear
HB 206	Affordable Housing for Local Employees.	Rep. Guice
HB 384	Fuquay-Varina Quick Take.	Rep. Stam
HB 394	Raleigh Motor Vehicles.	Rep. Ross Rep. Weiss
HB 511	EMS/Fire Dept. Sales Tax Refund.	Rep. Williams Rep. Goforth Rep. Warren Rep. Lucas
HB 533	Modify Hickory and Conover Occupancy Tax.	Rep. Setzer Rep. Warren
HB 646	Bridgeton Satellite Annexations.	Rep. Underhill
HB 854	Forsyth County Occupancy Tax Modifications.	Rep. McGee
HB 986	Spencer/Amend Property Description.	Rep. Steen Rep. Coates
HB 991	Montgomery County Debt Collection/Water.	Rep. Burr Rep. Goodwin
HB 992	Landis/Repeal Annexation.	Rep. Steen Rep. Coates
SB 943	Expand Film Credit.	Sen. Garrou

Adjournment

HOUSE BILL 206
Second Edition Engrossed 4/14/09

Short Title:	Affordable Housing for Local Employees.	(Local)
Sponsors:	Representatives Guice; E. Floyd and Hughes.	
Referred to:	Education, if favorable, Judiciary III.	

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BREVARD, THE TOWN OF ROSMAN, TRANSYLVANIA COUNTY, AND THE TRANSYLVANIA COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE HOUSING FOR CITY AND COUNTY EMPLOYEES AND FOR PUBLIC SCHOOLTEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, and subject to the restrictions set out in this section, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education may enter into a joint venture, land trust, or similar arrangement to construct and provide affordable housing on property owned by the City of Brevard, the Town of Rosman, Transylvania County, or the Transylvania County Board of Education.

SECTION 1.(b) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, this section authorizes the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to convey property they own to such partnership, joint venture, land trust, or similar entity for the purposes of constructing, providing, and maintaining affordable housing for employees of the City of Brevard, the Town of Rosman, Transylvania County, and Transylvania County schoolteachers, and, if units remain available, to Transylvania County Schools' professional staff. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education shall not transfer to the partnership, joint venture, land trust, or other entity created pursuant to this act, property acquired on or after the effective date of this act through the exercise of eminent domain.

SECTION 1.(c) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may contract with any person, partnership, corporation, or other business entity to finance, construct, or maintain such affordable housing.

SECTION 1.(d) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may rent or sell such housing units for residential use; provided that the rental or sale of such units is exclusively restricted to employees of the City of Brevard, the Town of Rosman, and Transylvania County,

and to Transylvania County schoolteachers, and, if units remain not leased or sold, to Transylvania County Schools' professional staff; provided further that, while the housing units may be rented or sold, the land may only be leased and not sold. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above shall have the authority to establish reasonable rents or sales prices for any such housing units and may in their discretion charge below-market rates and offer below-market financing. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may also place reasonable restrictions and buyback provisions on the resale of the housing units to maintain the purposes set forth in this section.

SECTION 1.(e) This section shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or any other health and safety statutes, rules, or regulations.

SECTION 2. A unit of local government that has implemented its authority under this act must report annually to the Local Government Commission and to the Revenue Laws Study Committee of the General Assembly on the number of housing unit sales and on the median income of the purchasers of the housing units. A unit of local government may designate a local land trust or other nonprofit entity with whom the unit of local government has contracted to manage its affordable housing program under the provisions of this act to fulfill this reporting requirement.

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

HOUSE BILL 206:
Affordable Housing for Local Employees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Rep. Guice	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 206 would authorize the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to construct and provide affordable housing for city and county employees and for Transylvania County school teachers and other school professional staff.***

[As introduced, this bill was identical to S271, as introduced by Sen. Snow, which is currently in Senate Finance.]

CURRENT LAW: Under G.S. 66-58, which is popularly known as the Umstead Act, governmental units are generally prohibited from engaging in the sale of goods and services in competition with citizens of the State. G.S.115C-518 provides for the disposition of school property when a local board of education determines that a building site or other real or personal property is unnecessary or undesirable for public school purposes. Such property is usually offered to the board of county commissioners at a fair market price or sold by advertisement for sealed bids or at public auction under Article 12 of Chapter 160A of the General Statutes.

BILL ANALYSIS: House Bill 206 would authorize the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to (i) enter into a joint venture, land trust, or similar arrangement to construct and provide affordable housing on property they own, (ii) convey property they own to this partnership, joint venture, land trust, or similar entity to construct, provide, and maintain affordable housing for their city and county employees and Transylvania County school teachers, and if units are available, to Transylvania County Schools' professional staff, and (iii) contract with any person, partnership, corporation, or other business entity to finance, construct, or maintain this affordable housing.

The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education would be authorized to (i) rent or sell the housing units exclusively to city and county employees and Transylvania County school teachers for residential use, and (ii) place reasonable restrictions and buyback provisions on the resale of the housing units to maintain the purpose of providing affordable housing. They would have the authority to establish reasonable rents or sales prices for any of the housing units and would have the authority to charge below-market rates and offer below-market financing.

The bill would provide that any affordable housing units constructed under this act would not be exempt from compliance with applicable building codes, zoning ordinances, or other health and safety statutes, rules, or regulations.

Transylvania plans to take a different approach than other local governments with similar authority. First, the Board of Education plans to sell the land to a Community Land Trust, which will manage the project. In Hertford County, the Board of Education currently owns the land and the housing units.[1] In

[1] Initially, the Hertford County Board of Education conveyed the property to a nonprofit organization, but once it was determined that the nonprofit was not eligible for a property tax exemption, the nonprofit deeded the property back to the Board of Education.

Dare County, the Board of Education owns the land but has conveyed a leasehold interest in the rental units to a nonprofit foundation that manages the property. In both of these instances, the property is exempt from property tax. In Transylvania, since the land would no longer be owned by a unit of local government, it would be subject to property tax. Second, the Transylvania Board of Education does not intend, at this time, to seek financing from the SECU Foundation for the purpose of constructing rental units. Rather, the Board of Education has funds that can be used for this purpose. Third, the Board plans to use students in workforce development classes to construct the housing under the supervision of a contractor. Lastly, while school employees may initially rent the property until they qualify for financing, they would be able to purchase a 99-year leasehold interest in the property. There would also be restrictions on reselling the property. Currently, the other affordable housing programs are only offering rental of property.[2] The bill requires a report be given to the Local Government Commission and the Revenue Laws Study Committee on the number of housing unit sales and on the median income of the purchasers of the housing units.

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

BACKGROUND: Similar legislation has been passed in recent years for the City of Asheville and the Asheville Board of Education, the Hertford County Board of Education, the Bertie County Board of Education, and the Dare County Board of Education. These programs are intended to assist with the recruitment and retention of quality teachers in rural areas or areas that suffer from a lack of affordable housing.

In Dare and Hertford Counties, the housing projects have been financed by an interest-free loan from the North Carolina State Employees Credit Union Foundation, a non-profit financial cooperative funded by collecting a $1.00 maintenance fee on member checking accounts. As the funds are repaid through rental income, the Foundation will recycle the funds to build additional units in other counties throughout North Carolina.

Representative Tolson and Representative Farmer-Butterfield introduced House Bill 531 this year. It would provide similar authority to the Edgecombe County Board of Education. House Bill 531 is in the Senate Education Committee.

Trina Griffin, counsel to the House Finance Committee, and Shirley Iorio, counsel to the House Education Subcommittee on Pre-School, Elementary and Secondary Education, substantially contributed to this summary.

H206-SMRB-35(e2) v1

[2] The City of Asheville's legislation authorizes the rental or sale of affordable housing units, but the City has not implemented its authority and, at the present time, has indicated that it does not intend to move forward with the sales of housing units.

SENATE BILL 943

Short Title:	Expand Film Credit.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.47(b) reads as rewritten:

"(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year."

SECTION 2. G.S. 105-151.29(b) reads as rewritten:

"(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2009.

SENATE BILL 943: Expand Film Credit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 943[1] would increase the income tax credit for a production company from 15% to 25% of the company's qualifying expenditures. The bill would become effective for taxable years beginning on or after January 1, 2009.

CURRENT LAW: North Carolina's film credit is a refundable income tax credit equal to 15% of the qualifying expenses spent by a production company in connection with a production. The amount of the credit with respect to a feature film production is capped at $7.5 million. In order to obtain the credit, the taxpayer must have qualifying expenses in excess of $250,000. Qualifying expenses are the total amount spent in North Carolina for the following:

- Goods and services leased or purchased[2] by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense.
- Cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expense incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribution the credit among its owners.

BILL ANALYSIS: Senate Bill 943 would increase the amount of the refundable credit from 15% of the qualifying expenditures to 25% of the qualifying expenditures. The credit percentage has not changed since the General Assembly enacted the credit in 2005. The refundable tax credit replaced the film industry development grant program. The incentive is targeted at feature films, episodic television series, and commercial advertising.[3]

EFFECTIVE DATE: The bill would become effective for taxable years beginning on or after January 1, 2009.

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[1] Senate Bill 943 is substantially the same as Senate Bill 349, introduced by Sen. Boseman, and to House Bill 977, introduced by Representative McComas and Representative Gibson. Senate Bill 349 is in Senate Finance; House Bill 977 is in House Commerce.

[2]

[3] The credit does not apply to the following: political advertising, television production of a news program or live sporting event, material that is obscene, as defined in G.S. 14-190.1, or a radio production.

BACKGROUND: The North Carolina Film Office commissioned two studies funded in partnership with EUE Screen Gems Studios, IATSE Local 491, Premiere Entertainment Services, Charlotte Regional Film Commission, Piedmont Triad Film Commission, Wilmington Regional Film Commission, Cinelease, and Illumination Dynamics:

- *"Economic and Fiscal Impacts of the North Carolina Film Credit Program"*, June 2009, prepared by Ernest & Young. This study presents estimates of the economic and tax impact of three components: film production activities; tourism related to NC films; and capital expenditures in NC film facilities.
- *"Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina"*, Summer 2009, prepared by Dr. William Hall of the Cameron School of Business at the University of North Carolina at Wilmington. This study is a case study that identifies the spending impacts of a film on Brunswick, New Hanover, and Pender Counties.

The studies are available upon request. Both studies recognize the number of jobs generated by film production in the State, the direct and indirect spending stimulus on the region's economy, the capital investments made by production companies, the resulting film generated tourism, and the contribution of these activities to the State and local government's tax collections.

The Ernest & Young study estimates the State's return on investment (ROI) from the refundable income tax credit. In forming the ROI estimate, the study analyzed the impact of the credit at the rate of 15% in 2007 and, using projections from the NC Film Office, estimates the impact of the credit at the rate of 25% for 2010 and 2011.

The study found that film productions qualifying for the credit in 2007 accrued an estimated net present value of $22 million of refundable tax credit cost to the State and $29 million of State and local tax revenue. In considering State tax ROI, the study estimated the State's ROI was $0.98 for each dollar of tax credit expenditure. This estimate assumes that the film productions qualifying for the credit would not have been produced in the State in absence of the credit.

The study estimates that the total State and local tax impacts from film productions, tourism, and capital expenditures related to film production would be $48 million in 2010 and $57 million in 2011 under a 25% tax credit. Under this scenario, the State tax ROI from each dollar of tax credit expenditure would be $0.69 in 2010 and $0.67 in 2011.

S943-SMRB-34(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 17, 2009

TO: Senator Garrou

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 943 (First Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Commerce; NC Department of Revenue

EFFECTIVE DATE: January 1, 2009

BILL SUMMARY:
Senate Bill 943 would increase the income tax credit for a production company from 15% to 25% of the company's qualifying expenditures. The bill would become effective for taxable years beginning on or after January 1, 2009.

BACKGROUND:
The 2005 General Assembly enacted legislation that allows an income tax credit for 15% of the qualifying production expenses of film and television production companies that spend at least

$250,000 on a production in North Carolina. The credit is limited to $7.5 million per feature film and is refundable in cases where the credit exceeds tax liability. Finally, the bill disallowed the credit for expenses incurred for compensation of $1 million or more paid to an individual. In 2008, the General Assembly made changes to the definition of eligible expenses to include amounts paid to a highly compensated individual only to the extent that amount exceeds $1 million, and the cost of production-related insurance.

ASSUMPTIONS AND METHODOLOGY:

To calculate the impact of the bill, Fiscal Research obtained data from the North Carolina Film Office on projected eligible film expenses assuming a 25% credit. The estimates factor in the increased film activity expected to be spurred by the higher credit. The impact to the General Fund is calculated by applying the 25% rate to eligible expenses for each year. The cost of the current 15% credit is subtracted to obtain the net impact of the bill. The estimates assume that three films each year (beginning in 2010) would have eligible expenses that would cause them to exceed the credit cap. The three films are assumed to have eligible expenses of $40 million each year. Since the credit cap is $7.5 million, the credit would apply to only $30 million of expenses ($30 million * 25% = $7.5 million).

Estimated Cost of Film Credit at 25%					
	($millions)				
	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Eligible Expenses at 25%	$85.0	$250.0	$300.0	$350.0	$350.0
Cost of 25% Credit	-19.8	-51.2	-62.8	-74.5	-74.5
Eligible Expenses at 15%	80.0	80.0	80.0	80.0	80.0
Cost of 15% Credit	-11.2	-11.2	-11.2	-11.2	-11.2
Net Impact of S943	**-$8.6**	**-$40.0**	**-$51.7**	**-$63.3**	**-$63.3**

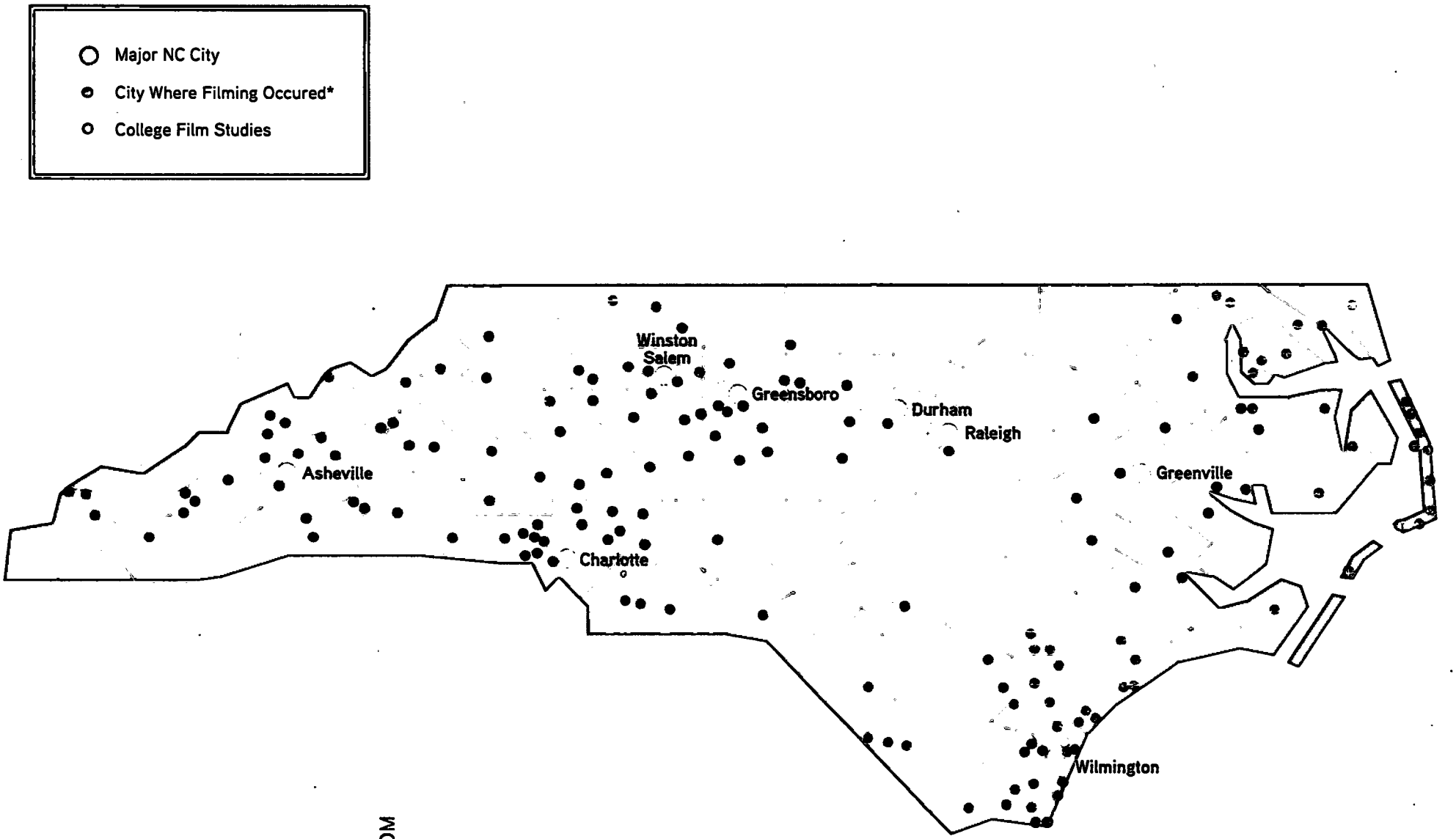
For purposes of this analysis, it is assumed that the tax year impact of the proposed change matches up with the fiscal year ending six months after the end of the tax year. Thus, the full impact of new activity in the 2010 tax year would be in the 2010-11 fiscal year. This rationale assumes that taxpayers take the credit in the form of lower final tax payments rather than reduced estimated payments sent in during the tax year.

In a report studying the economic impact of a 25% credit, Ernst and Young estimated a return on investment (ROI) of 69 cents for each dollar of credit cost. The return represents additional tax revenue related to film activity and its indirect impact on the economy. The current economic recession adds uncertainty to the ROI estimates, particularly as they relate to tourism and other indirect expenditures. Other states have recently estimated lower returns on investment. For example, Louisiana and Connecticut estimated ROIs of 18% and 20% respectively for their film credits. To the extent that additional tax revenues are realized, they will occur beginning in the year of production and, in the case of tourism-related revenues, extend several years beyond completion of the film.

SOURCES OF DATA: NC Film Office, North Carolina Department of Commerce; *Economic and Fiscal Impacts of the North Carolina Film Credit Program*, Ernst and Young, June 2009.

TECHNICAL CONSIDERATIONS: None

Production Incentives in 2009



filmnc NCFILM.COM
NORTH CAROLINA FILM OFFICE

*individual dots may reference up to 100 films and/or television productions

North Carolina Department of Commerce

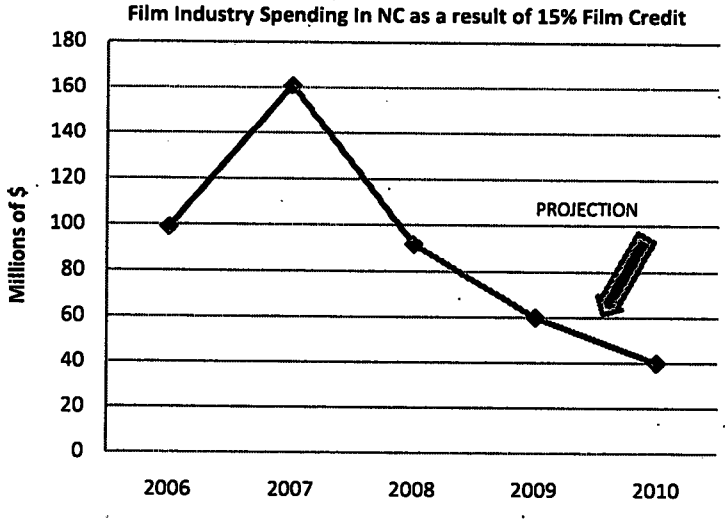
Contact Aaron Syrett, Director North Carolina Film Office

NORTH CAROLINA HAS A VIBRANT FILM INDUSTRY

- Over 2500 people are employed in the industry in North Carolina
- Private infrastructure investment: Studios, Lighting Facilities, Equipment Rental, Lumber, Hotels, Restaurants, etc.
- In 2007, students obtained a total of 5,711 degrees from the 41 film-related degree programs at North Carolina's universities and community colleges statewide.
- To date, North Carolina's 15% film production tax credits have been used by companies in 34 film projects in 28 counties. These productions have spent $162.8 million in North Carolina and have employed 16,271 people. These credits have cost the state $24.4 million; the return on investment to the state and local governments has been $1.30 for every $1 spent.
- North Carolina's existing 15% film credit is a post performance rebate Incentive. North Carolina doesn't give any incentive until the film company spends money in North Carolina.

TO REMAIN COMPETITIVE, NORTH CAROLINA NEEDS AN INCREASE IN THE CREDIT TO 25%

- 42 states have passed incentives to recruit and retain film productions. 28 state have greater incentives than NC, including:
  - Georgia 30%
  - Illinois 30%
  - Louisiana 25%
  - Michigan 42%
  - South Carolina 20% - 30%
  - Massachusetts 25%
- NC has a competitive advantage within the US because of our extensive infrastructure and highly-skilled crew base. However, the state is losing productions to other states because of their increased credits. North Carolina needs an increased incentive to prevent the loss of our highly-skilled workforce to other states.
- An increase to a 25% credit would likely result in $300 million in spending annually in the state by the film industry.
- The industry has begun to migrate to new film economy states. The migration of these creative class jobs could have much more significant and negative long-term effects including the loss of industry specific small business and other small businesses that survive in this challenging economy only because of the motion picture industry.
- North Carolina has the ability to immediately begin to create and retain thousands of knowledge-based, creative class jobs in the film industry if North Carolina increases the film industry tax incentive from 15% to 25%. These creative class jobs support and enhance other industries like commercial advertising production, theater and the fine arts, trade shows, gaming and education.



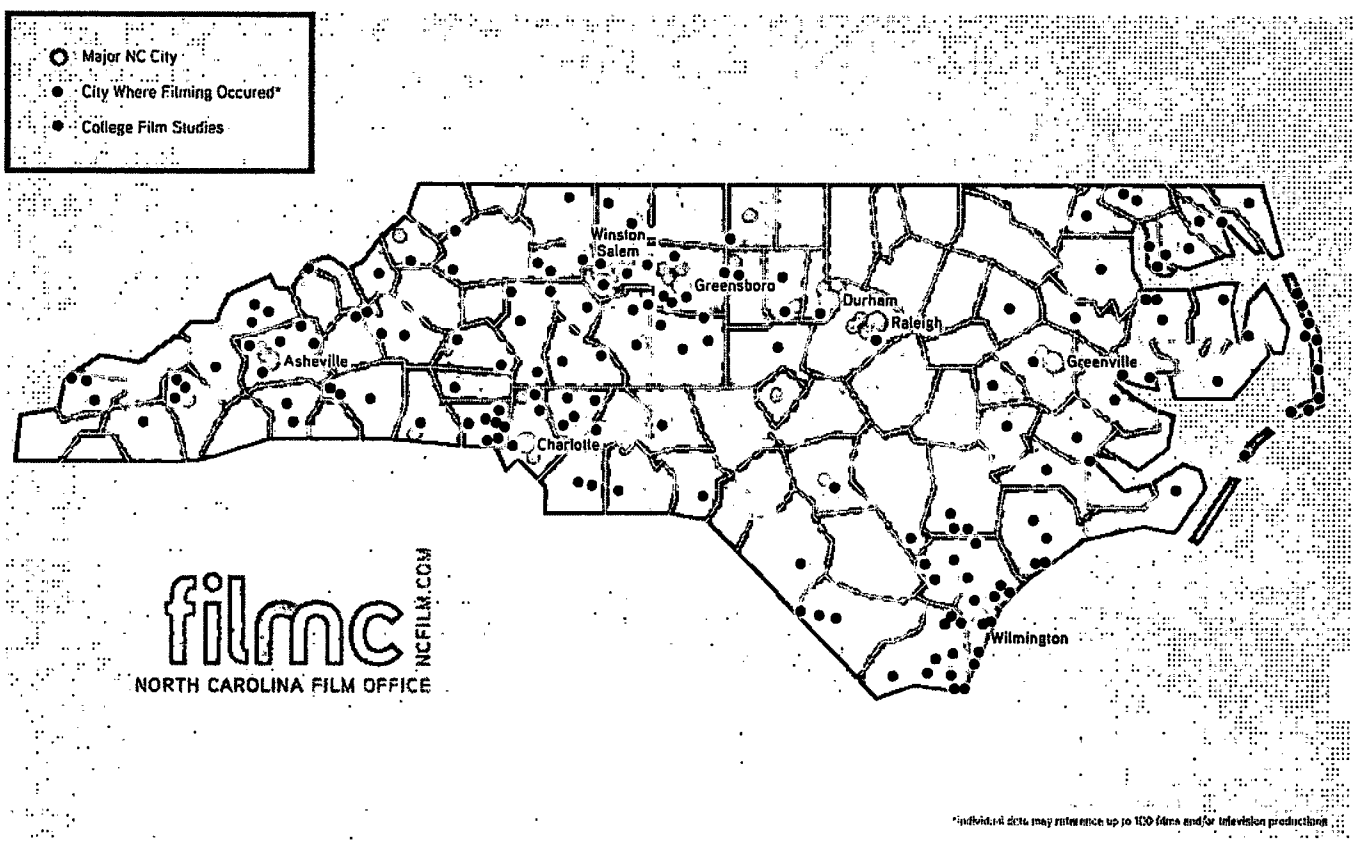
TWO STUDIES DEMONSTRATE IMPORTANCE OF FILM INDUSTRY TO NORTH CAROLINA

The studies taken together paint a picture of a significant industry whose economic activities turn over many times in a community. Unlike other industries, the film industry provides a constant stream of new projects that require certain baseline skills. It is difficult for economic models to fully capture what the industry means to the State and the implications of losing the industry. The econon contributions in the reports are conservatively understated.

- The Ernst and Young study focuses on the economic and fiscal impacts of the North Carolina film credit program for the year 2007
- The University of North Carolina at Wilmington study focuses on the expenditures of a single production in a local North Carolina community.
- The studies offer a conservative methodology in its projections relating to the impact of increasing our incentive to 25%.
- The study is focused on the impact if the tax credit is increased to 25%.
- Projections indicate 4,254 jobs will be created in 2010 and 5,053 in 2011.
- The total economic impact in North Carolina is estimated in excess of $700 million in 2010 and $858 million in 2011.
- The return on investment (ROI) for the state at 25% is $.69 and the combined state and local ROI would increase to $.92. That's ninety-two cents returned to state and local governments for every dollar spent on the tax incentive.
- The bottom line is that the 15% tax credit worked very well and the 25% tax policy has an excellent chance of working if the past is any guide.
- The alternative to remaining competitive is the dissolution of large portions of the industry and the loss of tax revenue based on the out-migration of highly skilled, highly compensated individuals to other "film" states.

CONCLUSION

Other states have 'everything to gain.' North Carolina has 'everything to lose.'



MEMORANDUM

FROM: AARON SYRETT – DIRECTOR; NORTH CAROLINA FILM OFFICE

DATE: JUNE 15TH, 2009

SUBJECT: FILM STUDY

North Carolina has the ability to create and retain thousands of knowledge-based, creative class jobs in the film industry between now and December 2010 if SB 943 becomes law. North Carolina is uniquely positioned to recruit an abundant share of the motion picture industry from other states because of its significant workforce depth and highly developed infrastructure.

These creative class jobs support and enhance other industries in North Carolina that utilize the same disciplines but do not file for film credits. Commercial advertising production, trade shows, theater, gaming, education, and life sciences computer software are poised for growth. These jobs also provide a job market for our college and university graduates preparing for the challenges of our 21st century economy.

Over 2,000 North Carolina residents make their living in the motion picture industry. If North Carolina chooses not to significantly recruit this industry, North Carolina will continue to lose our well paid and highly skilled workforce to other states where the industry has begun to migrate. The migration of these creative class jobs could have much more significant and negative long-term effects including the loss of industry specific small business and other small businesses that survive in this challenging economy only because of the motion picture industry.

Attached to this memo you will find 2 studies that were commissioned by and funded in partnership with the North Carolina Film Office. EUE Screen Gems Studios, IATSE Local 491, Premiere Entertainment Services, Charlotte Regional Film Commission, Piedmont Triad Film Commission, Wilmington Regional Film Commission, Cinelease, and Illumination Dynamics, were our financial partners. They represent a state wide commitment to creating and retaining highly valued motion picture industry jobs.

Also included is a copy of the Motion Picture Association of America (MPAA) Economic Impact Study which provides an excellent analysis of the magnitude of this industry. The MPAA study makes several references to North Carolina and those passages are flagged.

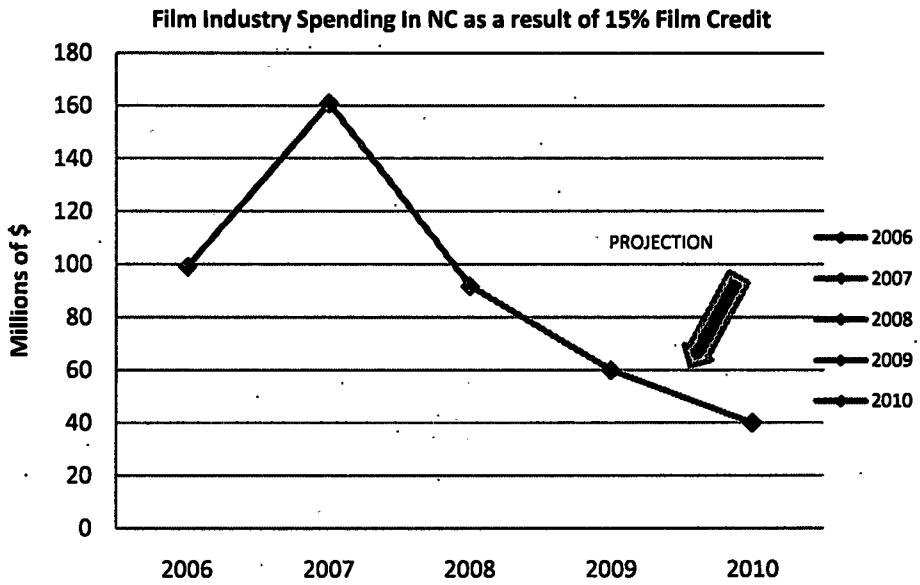
Our primary study prepared by Ernst and Young studies the economic and fiscal impacts of the North Carolina film credit program for the year 2007. This study offers a conservative methodology in its projections relating to the impact of increasing our incentive to 25%.

The second study, prepared by Dr. Woody Hall of the Cameron School of Business at the University of North Carolina at Wilmington, is a case study that identifies the spending impacts losses of one film not shooting in southeastern North Carolina in the summer of 2009.

Both the Ernst & Young and UNCW studies were designed to take a distinctively conservative methodology regarding the effect of the credit and spending impacts.

The 15% film credit passed by the General Assembly in 2006 has had a $.98 return on investment (ROI.) With a combined state and local ROI of $1.30, the film industry has proven to be a solid investment for the entire state.

In 2007, film production spending in North Carolina declined by 44% to $90 million with declining projections of 55% over next two years because other states' incentives have lured a majority of all projects that considered North Carolina.



The second part of the Ernst & Young study is focused on the impact if the tax credit is increased to 25%. Projections indicate 4,254 jobs will be created in 2010 and 5,053 in 2011 with total economic impact in North Carolina in excess of $700 million in 2010 and $858 million in 2011. The ROI for the state and local tax at 25% is $.92 and state tax ROI would increase to $.69. Like the 15% incentive, full realization of the tax credit impact is not apparent until after year 3 of the increase.

Calendar year 2009 is likely to produce a very limited number of new projects, if any, as a result of the new credit, limiting any immediate obligations to North Carolina. The new projects resulting from the 25% credit and the economic stimulus resulting from the increased filming will primarily be realized in calendar year 2010. The majority of films will not file or receive the post performance audit credits until Fiscal Year 2011. There will be very little cost to North Carolina until the second full year of the program or 2011.

Conclusion

Unfortunately these types of economic studies do not cover the overwhelming implications of a policy decision to ignore current industry trends.

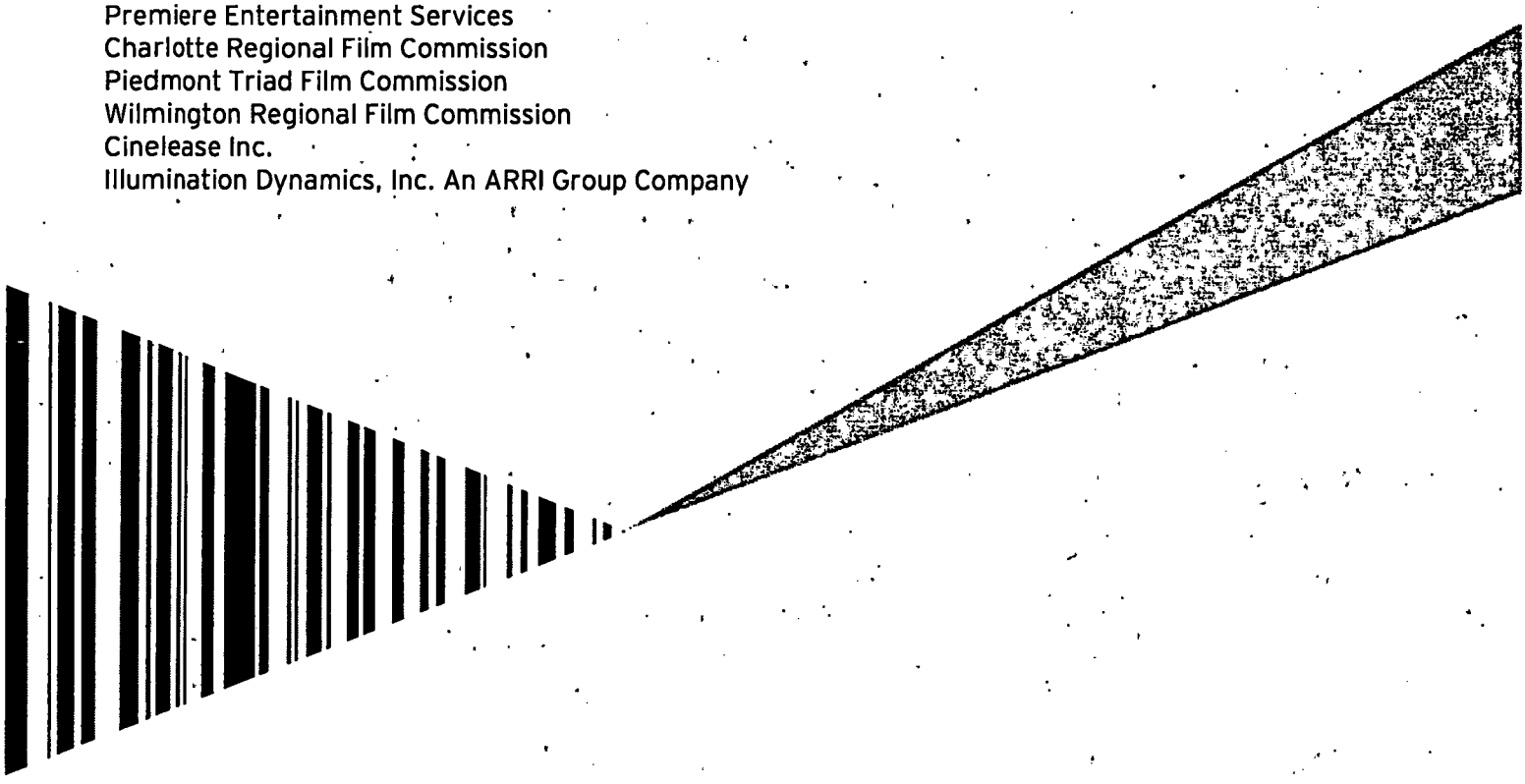
Over 2,000 North Carolina residents are motion picture technicians who depend on the film industry for jobs. Competing states are now employing North Carolina's motion picture industry workforce. Competing states with higher tax incentives are able to entice decision makers to shoot in states with incentives of 25% or better, even if there is no existing crew base or infrastructure, allowing those states to create an infrastructure where one had previously not existed. Other states have 'everything to gain.' North Carolina has 'everything to lose.' less than competitive tax incentive, North Carolina's motion picture industry, film technician community and industry small businesses simply cannot survive. The benefits of this lucrative industry will most certainly disappear and many North Carolina families will be forced to leave a state they call home.

Films will not be made in North Carolina and local economies will not reap the substantial economic stimulus of motion picture production if North Carolina does not take immediate action.

Economic and fiscal impacts of the North Carolina film credit program

June 2009

Prepared for:
North Carolina Film Office
EUE Screen Gems Studios
IATSE Local 491
Premiere Entertainment Services
Charlotte Regional Film Commission
Piedmont Triad Film Commission
Wilmington Regional Film Commission
Cinelease Inc.
Illumination Dynamics, Inc. An ARRI Group Company



Ernst & Young

Executive summary

In August 2006, legislation was enacted in North Carolina that provides for a refundable, 15% film tax credit. Since then, the program has attracted several feature film productions, television series productions, various commercials, music videos, and documentaries. In 2007, 16 feature film and television programs plus many smaller television commercials qualified for the North Carolina credit and spent an estimated $228 million, including $154 million of spending that qualified for the film tax credit.

This analysis presents two estimates of the impact of the North Carolina film tax credit program: the impact of the current credit at a rate of 15% and the potential impact of an enhanced credit, with a rate of 25%.

Key findings of the analysis of the current 15% film tax credit include:

- Film productions in North Carolina spent an estimated $228 million of spending in 2007, of which $154 million qualified for the film tax credit. This direct spending generated additional spending of $162 million in the North Carolina economy, resulting in a total impact on statewide economic activity of $390 million.

- North Carolina film productions generated 801 jobs in 2007. This direct employment created an estimated 1,244 additional, indirect jobs in other industries in North Carolina, resulting in a total employment impact of 2,045 jobs.

- Including the salaries and fringe benefits paid to these employees and capital income earned by North Carolina businesses, the direct statewide income impact from films receiving the credit in 2007 was $120 million. Additional North Carolina economic activity related to film production activities generated an additional $83 million in indirect statewide income, resulting in a total statewide personal income impact of $203 million.

- Total economic impacts resulting from capital investments and film tourism resulted in 427 additional jobs and $17 million in additional personal income.

- The total impact of the film tax credit including film productions, capital investments, and tourism was 2,472 total jobs and $220 million of total statewide personal income.

- State and local tax collections resulting from North Carolina film productions in 2007 totaled an estimated $25 million, including an estimated $19 million in state tax revenue and $6 million in local tax revenue. An additional $4 million in tax revenue attributable to tourism and capital expenditures resulted in a total tax state and local impact of $29 million.

- Film productions qualifying for the credit in North Carolina in 2007 accrued an estimated $23 million of refundable credit cost to the state. Given the time value of money and the average length of time (12 months) before the credit is claimed by production companies and paid by the state, the net present value of this amount is $22 million.

- The present value of $22 million of film tax credit costs accrued during 2007 resulted in total state and local tax revenue of $29 million, equivalent to a combined state and local return on investment of 1.30. In other words, for each $1.00 of credit cost incurred by the state, state and local governments in North Carolina received $1.30 in additional tax revenue. Considering only state taxes, the state return on investment was $0.98 for each dollar of tax credit expenditure.

The analysis also examined the potential impact of increasing the credit rate to 25%:

- At a 25% film tax credit rate, the North Carolina Film Office projects that an estimated $250 million of qualified spending would occur in 2010, increasing to $300 million in 2011. This level of qualified spending is equivalent to more than $370 million in total spending in 2010 and $445 million in 2011.

- This level of film spending in North Carolina would create an estimated 1,301 direct film production jobs in 2010 and 1,561 jobs in 2011. These direct jobs in the film industry are estimated to support an additional 2,019 indirect jobs in 2010, growing to 2,423 in 2011. Combining the impacts of the direct jobs in the film industry with the indirect jobs in other industries that support films, the total employment impact from film production activity is estimated to be 3,320 in 2010 growing to 3,984 jobs in 2011.

- The total direct and indirect state and local tax impacts from film productions occurring under a 25% film tax credit equals an estimated $40 million in 2010 and $48 million in 2011.

- In addition to the economic benefits of films locating in North Carolina, films that depict North Carolina's landscape, attractions, and culture advertise the state to potential visitors. This phenomenon is known as film tourism. As the number of films produced in North Carolina grows, film tourism is expected to increase. Films produced in North Carolina in 2010 are expected to generate $37 million of direct tourism spending while films produced in 2011 are projected to create $45 million of direct tourism spending. The spending impacts for these years are equal to the discounted spending from film-related tourist visits in North Carolina over the 10 years following the actual production and release of the films.

- If the film tax credit rate is increased to 25%, film studios and other film related businesses are expected to make significant capital expenditures in North Carolina to create four new stages, management and production offices, warehouses, and construction shops for future film productions. These capital expenditures are projected to total $44 million over 2010 and 2011 and create 520 total one-year jobs in North Carolina.

- The total number of jobs created from film productions, tourism, and capital expenditures is projected to total an estimated 4,254 in 2010 and 5,053 in 2011. These jobs will create an estimated $370 million of personal income from 2010 productions and capital expenditures and $441 million of personal income from 2011 productions and capital expenditures.

- The total state and local tax impacts from film productions, tourism, and capital expenditures in 2010 will be an estimated $48 million and will increase to $57 million in 2011 under a 25% film tax credit. This tax impact is equivalent to a combined state and local return on

investment of 0.92 in 2010 and 0.89 in 2011. Considering only state tax impacts, the return on investment is equivalent to 0.69 in 2010 and 0.67 in 2011. In other words, for each dollar of state credit cost, the state is projected to collect an estimated $0.69 of additional tax revenue.

1. Introduction

In August 2006, legislation was enacted in North Carolina that provides for a refundable, 15% tax credit. Since then, the program has attracted several feature film productions, television series productions, various commercials, music videos, and documentaries. In 2007, 16 feature film and television programs plus many smaller television commercials qualified for the North Carolina credit and spent an estimated $228 million, including $154 million of spending that qualified for the film tax credit.

In addition to the economic impact of film production activity that qualifies for the credit program, there are also ancillary benefits from increased tourism and capital investments in film studios and related businesses in North Carolina.

This study presents estimates of the economic and tax impact of these three components: 1) film production activities, 2) tourism related to North Carolina films receiving the credit, 3) and capital expenditures in North Carolina film facilities. The cost of credit expenditures is compared to the incremental state and local tax generated by the credit program in 2007 to calculate a public return on investment in the credit program. Finally, the return on investment is projected for a hypothetical increase in the credit rate from 15% to 25%.

2. North Carolina's film industry and tax credit program

North Carolina's film industry has grown significantly due to the film tax credit. As described below, the credit provides a significant incentive for films to locate in North Carolina and has arrested the decline of the industry that has been occurring since 2001.

Description of the North Carolina film tax credit program

The current tax credit program in North Carolina was adopted in 2006 at a rate of 15% of qualifying production expenses incurred during the production and post-production of qualifying films, television series, and commercials produced in North Carolina. Spending qualified for the credit includes goods or services leased or purchased from a North Carolina business; expenditures related to goods or services imported from outside the state are excluded from the amount of qualified expenditures. Employee compensation on which withholding payments are remitted to the North Carolina Department of Revenue qualifies for the film tax credit, while fringe benefits and other non-taxable compensation are excluded from qualified expenditures. Additionally, compensation received by actors in excess of $1 million is excluded from costs qualifying for the credit.

The tax credit is equal to 15% of the qualifying costs described above, although the maximum credit for a feature film is $7.5 million.

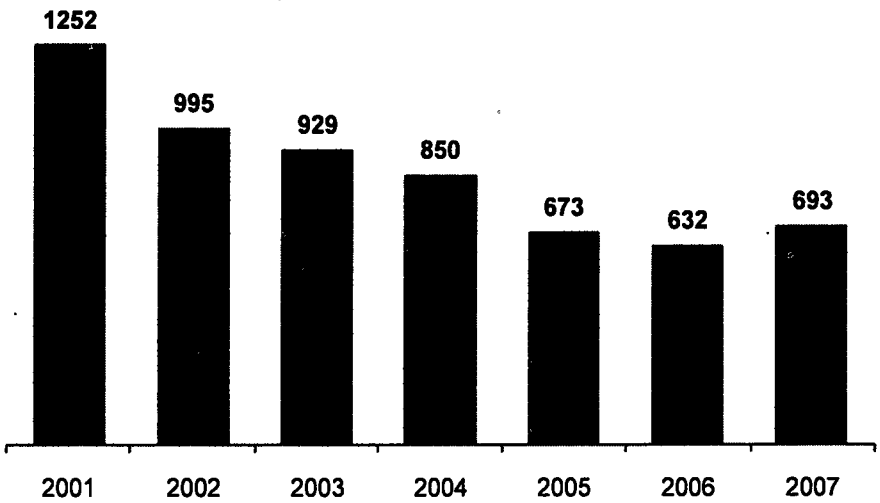
Decline of the North Carolina film industry prior to the adoption of the tax credit

North Carolina has historically had a thriving film industry, including the largest production facility in the United States outside of California and a large, well-trained crew base. However,

since 2001, many states have adopted film credits and North Carolina's employment in the film industry has declined.

Figure 1 illustrates the downward trend in North Carolina film industry employment, using data from the U.S. Bureau of Labor Statistics (BLS), which publishes an estimate of the employment in the North Carolina film and video production industry based on the number of employees and wages covered by the unemployment insurance program. While data published by the BLS does not fully capture the contribution of film production activities on the North Carolina labor force due to the industry's large number of contract employees (not included in the BLS figures), classification of film industry employees in the industry in which payroll companies are classified, and other factors, it provides a useful starting point from which to evaluate trends in the economic contribution of film and video productions in North Carolina. As Figure 1 shows, one year after the tax credit was enacted, employment in North Carolina's film production industry began growing after a five-year decline in the number of film industry jobs. The figure shows a 620 job decline from 2001 to 2006 and a slight increase of 61 jobs in the year after the 15% tax credit was enacted.

Figure 1. Employment in the North Carolina film and video production industry



Source: Bureau of Labor Statistics, Quarterly Census of Employment and Wages, NAICS 51211: Film and Video Production Industries

3. Data, assumptions, and estimation approach

The estimates presented in this study incorporate several key assumptions and sources of information. These data and assumptions are summarized below. (For a detailed discussion of the estimation methodology, see the appendix to this report.)

Data used in the analysis

Film spending data for productions with qualifying expenditures over $250,000 in 2007 were provided by the North Carolina Film Office. For films that had filed a credit claim with the North Carolina Department of Revenue, total qualified expenditures were disaggregated into spending on goods, services, and compensation.

Because qualifying expenditures for goods and services include only purchases for goods and services from North Carolina businesses, total spending by North Carolina productions was estimated from qualified spending amounts based on the portion of goods and services supplied by the North Carolina economy indicated in the IMPLAN economic model. (See the appendix for an additional description of this adjustment.)

Aggregated payroll data for a sample of productions was supplied by the North Carolina Film Office. This data was used to estimate the number of jobs and average wages for North Carolina film employees in 2007. The data provided included aggregate wages (excluding non-taxable benefits) and the number of hours worked for above-the-line and below-the-line employees.[1] From this data, the average annual compensation was calculated assuming each employee works an average of 3,120 hours per year, equivalent to a full-time employee working an average of 12-hours per day.[2]

The payroll data provided by the North Carolina Film Office also included the state of residence for each employee. Based on this information, 39% of wages were earned by employees residing outside North Carolina. The economic impact estimates assume that only 50% of these employees spending would result in North Carolina economic impacts, although all of their wages are assumed to be taxable in North Carolina.

Based on the data described above, Figure 1 illustrates the total qualified and non-qualified spending on each category of expenditure. As shown in the figure, total compensation expenses of $117 million include $88 million of qualifying wage and salary payments, $4 million of unqualified wages paid to extras and an estimated $25 million of fringe benefit payments that do not qualify for the credit. Similarly, only a portion of total expenditures for goods and services qualify for the credit. For goods and services, an estimated 74% of goods and 50% of services are purchases made from North Carolina businesses and qualify for the tax credit. The non-qualifying goods and services expenditures reflect purchases from out-of-state businesses. In total, 67% total spending qualified for the film credit.

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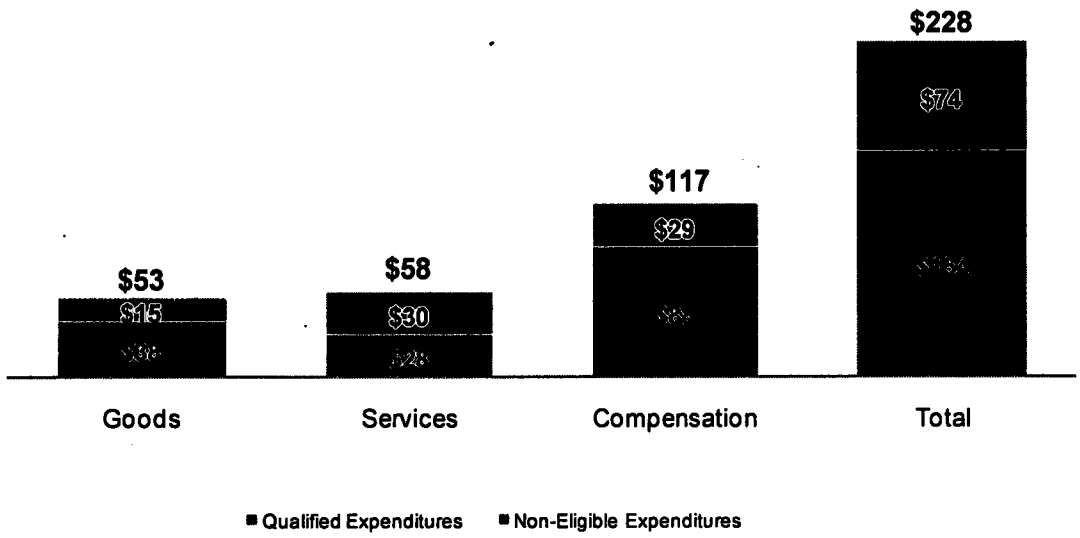
[1] Above-the-line employees are generally creative positions, such as writers, actors, directors, and producers. Below the line employees are generally technical positions, such as camera operators, editors, gaffers and other crew.

[2] Average number of hours worker per day was obtained through the North Carolina Film Office based on actual production reports showing the number of production hours per day. These production reports showed a typical morning crew call time of 8:00 am and a typical crew wrap after 8:30 pm.

Figure 2. 2007 Film production spending ($millions)



Economic impact estimation approach

The economic impact of feature films, television series, and other productions participating in the tax credit program are described here as direct, indirect, and induced impacts. Film tourism and capital investments in film related infrastructure (described later) also create these direct, indirect, and induced impacts throughout the North Carolina economy. The indirect and induced impacts described below were estimated using an IMPLAN economic model of the North Carolina economy. Additional details describing the estimation approach can be found in the appendix to this report.

- **Direct impacts:** The direct impact is the employment, income, and spending associated with the activity being modeled. Direct spending impacts include the spending on productions in North Carolina in 2007. Direct income impacts include the income earned by employees and income derived from ownership of property associated with film production in North Carolina. Direct employment impacts include the employees who are employed by film productions in North Carolina receiving the film credit.

- **Indirect impacts:** Indirect impacts arise from the purchase of goods and services from North Carolina businesses that support the film industry in North Carolina. These impacts are part of the multiplier effects as direct spending spreads throughout the North Carolina economy as businesses buy from other businesses in an ongoing supply chain of products and services.

- **Induced impacts:** Consumer spending resulting from an increase in employees' personal income creates 'induced impacts'. This spending by crew members, make-up artists, actors, and employees in supplier firms generates additional economic activity as North Carolina's retailers and service providers expand to meet this additional demand for goods and services. To simplify the presentation of results, indirect and induced impacts are combined and presented together as 'indirect impacts'.

4. Economic and tax impacts of the 15% North Carolina film tax credit

Table 1 presents the impact of North Carolina film production activity in 2007. The direct, indirect, and total economic impacts are described using three measures of economic impact:

- **Economic Output:** Direct economic output, which is equivalent to spending, was $228 million and created another $162 million of indirect output, resulting in a total impact on economic output of $390 million. As described above, direct output includes $154 million of qualified spending and another $74 million of other, non-qualifying spending.

- **Personal Income:** The direct personal income impact from film productions in 2007 was $120 million, including $92 million of wages, $25 million of non-wage benefits, plus proprietor's income and payments to capital. The indirect economic activity in other sectors of the North Carolina economy generates an additional $83 million of personal income impact, resulting in a total personal income impact of $203 million.

- **Employment:** An estimated 801 direct employees in the film industry create an additional 1,244 indirect jobs in other sectors of the North Carolina economy, resulting in a total employment impact from film productions of 2,045 employees.[3]

Film productions that do not qualify for the film tax credit also benefit from the presence of a well-established crew base in North Carolina and film infrastructure that supports smaller productions. There are also other companies unrelated to film productions that share the same equipment or facilities (e.g. sound stages, digital technology, etc.) that benefit from and are able to expand in North Carolina due to the availability of equipment and trained workers. The impact of these productions and businesses is not included in the estimates.

Table 1
Economic impact of film production activities in 2007

Film Production Activities	Direct	Indirect	Total
Economic Output ($mil)	$228.3	$161.6	$389.9
Personal Income ($mil)	$120.2	$82.6	$202.8
Employment	801	1,244	2,045

Tax impacts of North Carolina film productions

The increased level of statewide economic activity due to the film tax credit generates additional North Carolina state and local tax collections. Table 3 shows the tax impacts at the state and local level that were generated by film activity in North Carolina in 2007. These impacts were estimated based on the estimated increase in personal income and historical ratios of tax

[3] The ratio of total new jobs (2,045) to direct jobs (801) is 2.6. This "employment multiplier" indicates that each new direct job results in 2.6 total new jobs throughout the North Carolina economy.

collections to personal income in North Carolina. (For a more detailed discussion of the tax estimation approach, see the appendix.)

As shown in Table 2 below, the direct state tax impact of film productions in 2007 was $11.9 million. Combined with indirect state tax impacts of $6.8 million, an estimated $18.8 million of state taxes resulted from film production activity in 2007.

The total local tax impact from film production activities in 2007 was $6.0 million, including $3.6 million of direct local taxes and $2.4 million of indirect local taxes. This total local tax impact accounts for nearly one-quarter of the $24.8 million total state and local tax impact from film production activity in 2007.

Table 2
Estimated tax impact of film production activities
($millions)

State	Direct	Indirect	Total
Sales Tax	$2.3	$1.6	$3.9
Individual Income Tax	6.5	3.4	9.9
Franchise Tax	0.2	0.1	0.3
Corporate Income Tax	0.6	0.4	0.9
Corporate Income Tax on Credit*	0.4	0.0	0.4
Other State Taxes	2.0	1.4	3.4
Total	**$11.9**	**$6.8**	**$18.8**

Local	Direct	Indirect	Total
Property Tax	$2.5	$1.7	$4.2
Sales Tax	0.8	0.5	1.3
Other Local Taxes	0.3	0.2	0.5
Total	**$3.6**	**$2.4**	**$6.0**
State and Local Taxes	**$15.5**	**$9.3**	**$24.8**

* Corporate income tax adjustment for C-corporations receiving credit equal to 6.9% of credit amount

Economic and tax impacts of North Carolina film tourism

The film *Nights in Rodanthe* illustrates the impacts a single film can have on a state's tourism industry. *Nights in Rodanthe* was produced in the Outer Banks of North Carolina in 2007 and released in September 2008. Because the film was recently released and is just now available on DVD, there has not been sufficient visitor data collected to measure the total impact of this film on tourism in North Carolina. However, over a nine-month period from August 2008 through April 2009, an Outer Banks website devoted to promoting this film's actual location in North Carolina has been visited by 72,595 unique visitors (96,793 annualized) who have reached the site with queries such as, "Where was *Nights in Rodanthe* filmed?", "*Nights in Rodanthe* location", "*Nights in Rodanthe* beach house", "*Nights in Rodanthe* tour", etc. Although no data is available on the actual number of visitors to the Outer Banks induced to visit by the film, assuming 25% of these unique visitors to the website travel with an average family or

group of four to the Outer Banks and spend one day visiting the site where this film was produced, $6.1 million in direct spending resulting in $9.9 million of total economic output could be attributed to this particular film in the year after its release. This estimate is based on information provided by the Outer Banks Visitors Bureau indicating that average spending per visitor in the Outer Banks is $63 per day. In the subsequent years, additional spending would be expected to occur as tourists continue to visit North Carolina or extend their stay as a result of seeing this film.

Table 3 below shows the potential multiple-year direct economic impact of *Nights in Rodanthe* on North Carolina tourism based on the information and assumptions discussed above. These impacts are the discounted spending and corresponding personal income impacts that occur in the years following the film's release but are impacts that result from a film produced in 2007. The direct employment impact is the actual jobs that accrue in the tourism industry over time as the industry grows incrementally due to film tourism. Additional films produced in North Carolina that featured a North Carolina location could be expected to have similar tourism impacts, increasing the impact of film tourism each year.

Table 3. Economic impacts of film tourism

Economic Impact	Direct	Indirect	Total
Economic Output ($mil)	$19.9	$12.3	$32.2
Personal Income ($mil)	$10.0	$6.3	$16.3
Employment	311	104	415

The additional tax impact of tourist visitor spending is generated as taxes are collected from hotels, restaurants, car rental services, gasoline stations and gift shops that benefit from tourist activity in North Carolina. Table 4 shows these tax impacts, which are equivalent to $3.8 million of state and local tax, based on the discounted tourism spending presented in Table 3.

Table 4. Tax impacts from film tourism ($millions)

Tax Impact	Direct	Indirect	Total
State Taxes	$1.5	$1.2	$2.7
Local Taxes	0.6	0.4	1.1
State and Local Taxes	**$2.1**	**$1.6**	**$3.8**

Economic and tax impacts of film-related capital expenditures

In 2007, EUE Screen Gem Studios made a $1 million capital investment in its Wilmington, North Carolina studio in addition to a $250,000 investment made by Cinema Catering. These investments created an estimated $111,000 in total state and local taxes in 2007. As the state attracts additional film activity and capital investments, this impact is expected to grow. The total impact estimates presented in the next section assume that this investment is attributable to the expansion of the industry due to the adoption of the film credit in 2006.

Total economic and tax impacts of the 15% North Carolina film tax credit

The total economic impacts of film productions, film tourism, and capital expenditures resulting from the tax credit in 2007 are shown in Table 5. Total annual output generated from 2007 film productions and ancillary activities is $424 million. The total personal income is an estimated $220 million and an estimated 2,472 jobs were created.

Table 5. Total economic impacts from film production, capital expenditures, and tourism

Economic Impact	Direct	Indirect	Total
Economic Output ($mil)	$249.5	$174.7	$424.2
Personal Income ($mil)	$130.5	$89.3	$219.8
Employment	1,118	1,353	2,472

The total tax impacts of the three components, film productions, film tourism, and capital expenditures are shown below in Table 6. At the state level, $22 million of taxes were generated while $7 million of local taxes resulted from the 2007 film activity. The total amount of state and local taxes collected was $29 million.

Table 6. Total tax impacts from film production, capital expenditures, and tourism ($millions)

State Taxes	Direct	Indirect	Total
Sales Taxes	$3.2	$1.9	$5.0
Income Taxes	$7.8	$4.4	$12.2
Other Taxes	$2.4	$1.8	$4.3
Total State Taxes	**$13.4**	**$8.1**	**$21.5**
Local Taxes	**Direct**	**Indirect**	**Total**
Property Taxes	$2.7	$2.0	$4.7
Sales Taxes	$1.2	$0.6	$1.8
Other Taxes	$0.3	$0.2	$0.5
Total Local Taxes	**$4.2**	**$2.9**	**$7.1**
State and Local Taxes	**$17.7**	**$11.0**	**$28.6**

Return on investment at the 15% film tax credit rate

Table 7 presents the estimated state and local return on investment in North Carolina film tax credit expenditures. Qualified spending of $154 million in 2007 resulted in $23 million of accrued state credit cost. The net present value (NPV) of the credit cost is equal to $22 million.[4] Film productions and ancillary activities during 2007 generated just under $22 million of additional state tax revenue, offsetting 98% of the state credit cost. In other words, for each dollar of state credit expenditure, state tax revenues increased by an estimated $0.98.

[4] The net present value of the state's credit cost is equal to the credit cost ($23.1 million) discounted at a rate of 5% over an average 12 month payout period.

When both state and local taxes are considered, the total estimated tax impact exceeds the state credit cost. As shown in Table 7, the estimated state and local tax impact attributable to 2007 productions and ancillary activities was $29 million compared to net present value of the credit of $22 million, resulting in a combined state and local return on investment of 1.30. In other words, for each dollar of credit cost, $1.30 was generated in additional state and local tax revenue.

Table 7. Return on investment in film tax credit ($millions)

Qualified spending	$153.9
Credit rate	15%
Credit cost	$23.1
Present value of credit cost	$22.0
State taxes	$21.5
State return on investment	0.98
State and local taxes	$28.6
State and local return on investment	1.30

It is important to note that the numerator in the return on investment is measured as the change in state and local government taxes generated by the stronger state economy due to the film credit. It is limited to the public-sector benefits only. As shown in this analysis, the private-sector benefits total $220 million in income and 2,472 additional jobs. These benefits are not included in the return on investment figures.

5. Potential economic and tax impacts of a 25% North Carolina film tax credit

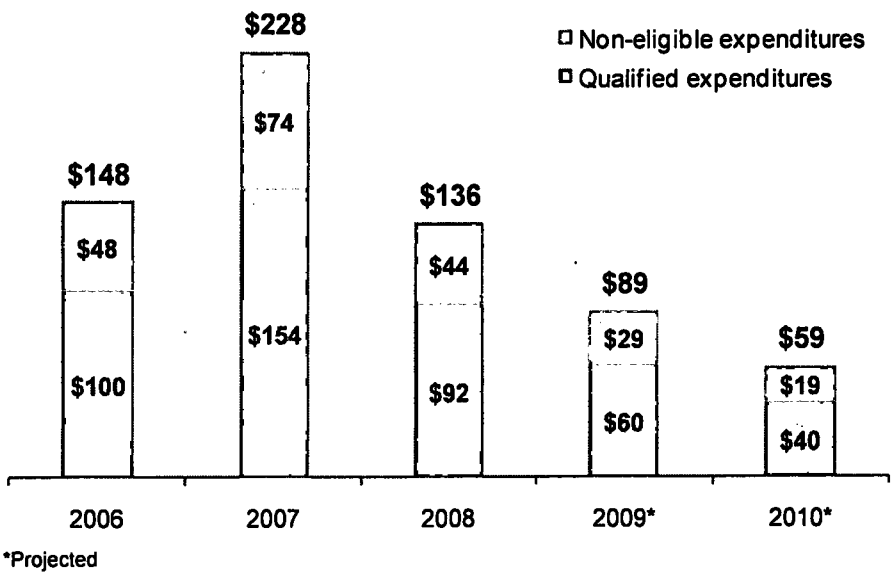
Many states compete to attract film productions and the associated jobs. Tax incentives have been an integral component of what competitive states offer production companies seeking to lower costs of production. North Carolina's 15% film credit attracted a significant number of productions in 2007, but has grown increasingly less effective as other states have adopted more competitive film credit rates ranging from 25% to 42%.

Comparison of projected levels of film production activity at 15% and 25% credit rates

Figure 3 below shows actual and projected film production spending from 2006 through 2010. The figure highlights the actual and projected decrease in film production spending in North Carolina since 2007 with estimates for 2009 and 2010 under a 15% credit.[5] The decline is comparable with the decline in employment shown in Figure 1, which shows that North Carolina's film industry declined over the 2001-2006 period, during which other states began to offer credits but North Carolina did not. A similar trend is projected to occur as other states adopt more competitive credits than North Carolina's 15% credit.

Given the significant size of the past investment that created North Carolina's film industry infrastructure, the costs to the state of retaining the film industry by offering a higher film tax credit rate could be less than the costs of re-building the industry's infrastructure if the decline in the size of the film industry is not reversed. If the projected decrease in film production activity occurs, it is likely that North Carolina's film industry infrastructure will decline.

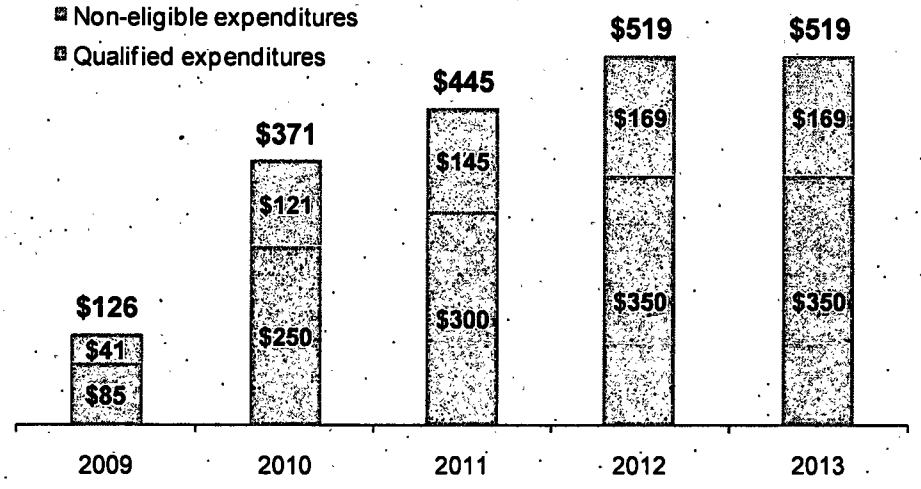
Figure 3. North Carolina film industry spending with 15% film credit ($millions)



[5] Projected film production spending in 2009 and 2010 was provided by the North Carolina film office.

States that have increased their credit rates to 25% or higher have experienced significant increases in the level of film production activity. As shown in Figure 4, the North Carolina Film Office projects that qualified expenditures would increase from $154 million in 2007 to $350 million by 2013 if a 25% credit rate is adopted. This increase in film spending in North Carolina would increase the total employment impact from productions to an estimated 4,649 jobs and would also increase the total personal income impact to an estimated $461 million in 2010.

Figure 4. Projected North Carolina film spending with 25% credit ($millions)



Projected economic impacts of a 25% film credit (2010-2011)

Table 8 presents the potential economic impact of the film credit at a 25% credit rate. Film industry spending with a 25% film tax credit rate would create an estimated 1,301 film production jobs in 2010 and 1,561 direct jobs in 2011. The personal income impacts associated with these jobs are $195 million in 2010 and $234 million in 2011.

The estimated production spending in 2010 ($371 million) and 2011 ($445 million) includes three films with average North Carolina spending of $40 million, based on projections by the North Carolina Film Office.[6] Given this assumption, $10 million of spending by each $40 million film would not generate credit costs due to the $7.5 million maximum credit allowed under the film tax credit program. This $7.5 million cap lowers the effective credit rate on a $40 million film to 18.8% of qualified expenditures. In other words, for three films with a total of $120 million in qualified expenditures, $30 million of their qualified spending will not generate additional credit costs but would generate additional economic activity and state and local tax revenues. It is important to note that when production companies are considering a location for a film, the effective credit rate is the determining factor when considering tax incentives. A credit cap lowers the effective credit rate for films that have expenditures that would otherwise qualify but do not generate credit cost because a credit cap has been reached. Generally speaking, larger budget films would likely locate where no credit cap is in place.

The direct economic output impacts from film tourism are estimated to be $32 million from 2010

[6] The North Carolina Film Office projects that three $40 million films will be attracted to the state each year as a result of increasing the credit from 15% to 25%.

productions and $39 million from 2011 productions. These amounts reflect the tourism spending that is projected to occur in future years due to films that were produced in North Carolina during the year indicated. For example, the amount of tourism spending shown for 2010 reflects the projected tourism spending that results in years after 2010 as potential tourists view films produced in North Carolina during that year. Film tourism is projected to create an estimated 505 jobs from 2010 productions and 606 jobs from 2011 productions.

The estimates of tourism spending assume that each dollar of direct film production spending will generate more than two cents of additional film tourism activity, based on the estimated ratio of film tourism spending to film production spending in 2007. The estimates assume that films have the most impact on film tourism in the year of their release. In each subsequent year, the analysis assumes that a film has 75% of the impact it had in its first year. That is, in any year, a film has 25% less impact than in the prior year.

Capital expenditures of $44 million are projected to occur over the two-year period, 2010-2011. These projects are currently planned for the Charlotte area and will include four new stages, management and production offices, warehouses, and construction shops. The impact of these expenditures includes 165 direct jobs and $7.3 million of personal income each year.

The total estimated economic impacts of North Carolina's film credit at a 25% rate are shown below in Table 8. The total combined economic output impact for the three components analyzed, film productions, film tourism, and capital expenditures, is an estimated $722 million for 2010 and $858 million for 2011. This level of economic activity will create an estimated 4,254 jobs in 2010 and 5,053 jobs in 2011. These jobs will create $369 million of personal income in 2010 and $441 million of personal income in 2011.

Table 8
Economic impacts of film, tourism, and capital expenditures

	Direct Impact		Total Impact	
Economic	**2010**	**2011**	**2010**	**2011**
Film production				
Output ($mil)	$370.8	$445.0	$633.2	$759.8
Personal Income ($mil)	$195.2	$234.3	$329.4	$395.3
Employment	1,301	1,561	3,320	3,984
Film tourism				
Output ($mil)	$32.4	$ 38.5	$52.4	$ 62.3
Personal Income ($mil)	$16.2	$ 19.5	$26.5	$ 31.8
Employment	505	606	674	809
Capital expenditures				
Output ($mil)	$22.0	$22.0	$36.3	$36.3
Personal Income ($mil)	$7.3	$7.3	$13.6	$13.6
Employment	165	165	260	260
Total economic impact				
Output ($mil)	$425.2	$ 505.5	$721.9	$ 858.5
Personal Income ($mil)	$218.8	$ 261.0	$369.5	$ 440.6
Employment	1,971	2,332	4,254	5,053

Projected tax impacts of a 25% film credit (2010-2011)

The estimated tax impacts of a 25% film tax credit are presented in Table 10. State and local direct tax collections will total approximately $30 million in 2010 and $36 million in 2011. In 2010, direct state and local taxes from film productions are estimated to equal $25 million in 2010 and $30 million in 2011. Direct state and local taxes resulting from film tourism associated with films produced in 2010 are estimated to be $3 million, which increases to $4 million for films produced in 2011. More than an estimated $1 million of direct state and local taxes attributable to capital expenditures will be collected in 2010 and another $1 million in 2011.

Table 10 also shows the total tax impact of the 25% tax credit, including both the direct and indirect tax impacts. As shown in the table, the total state tax impact is estimated to be $36 million in 2010 and $43 million in 2011 while the local tax impact is estimated to be $12 million in 2010 and $14 million in 2011, resulting in a combined state and local tax impact of $48 million in 2010 and $57 million in 2011.

Table 10
Tax impacts of film, tourism, and capital expenditures ($millions)

	Direct		Total	
Tax Impacts	**2010**	**2011**	**2010**	**2011**
Film production				
State taxes	$19.3	$23.2	$30.5	$36.5
Local taxes	$5.8	$6.9	$9.8	$11.7
State and local taxes	**$25.1**	**$30.1**	**$40.2**	**$48.3**
Film tourism				
State taxes	$2.4	$2.9	$4.3	$4.9
Local taxes	$1.0	$1.2	$1.7	$1.9
State and local taxes	**$3.4**	**$4.1**	**$6.1**	**$6.8**
Capital expenditures				
State taxes	$0.9	$0.9	$1.4	$1.4
Local taxes	$0.4	$0.4	$0.6	$0.6
State and local taxes	**$1.3**	**$1.3**	**$2.0**	**$2.0**
Total direct tax impacts				
State taxes	$22.6	$27.0	$36.2	$42.9
Local taxes	$7.2	$8.5	$12.1	$14.2
State and local taxes	**$29.8**	**$35.5**	**$48.3**	**$57.1**

Return on Investment at 25% Tax Credit Rate

Based on projected qualified spending that will grow to $250 million in 2010 after the adoption of the 25% credit rate, the credit cost accrued in 2010 would increase to $55.0 million.[7] Table 12 shows that the net present value of the $55.0 million credit cost is $52.4, assuming that credits are not claimed for an average of one year after a film production. This higher level of spending would also increase state tax revenue to an estimated $36 million and combined state and local taxes to an estimated $48 million. This level of credit cost and the estimated state and local tax impact results in a combined state and local return on investment of 0.92 in 2010 and 0.91 in 2011. In other words, for each dollar of state credit cost, state and local taxes would increase by $0.92 in 2010 or $0.91 in 2011. Ignoring the local tax impact that results from the 25% credit rate, the state return on investment is projected to be 0.69 in 2010 and 2011.

The estimated return on investment reflects the additional state and local taxes that would be collected for each additional dollar of state credit cost. As shown in Table 12, if the credit rate is increased to 25%, state credit costs increase by a larger percentage than state and local tax collections, reducing the combined state and local ROI to 0.92 in 2010 from 1.30 in 2007.

Table 12. Projected Return in Investment in Film Tax Credit at a 25% Credit Rate ($Millions)

	2010	2011
Qualified spending	$250.0	$300.0
Credit rate	25%	25%
Credits before cap	$62.5	$75.0
Accrued credit cost after cap	$55.0	$67.5
Present value of credit cost	$52.4	$64.3
State taxes	$36.2	$42.9
State return on investment	0.69	0.67
State and local taxes	$48.3	$57.1
State and local return on investment	0.92	0.89

[7] The accrued credit cost on $250 million of qualified expenditure is $62.5 million, but due to the credit cap per film, and the assumption that there will be three films with a combined total of $30 million of qualified expenditures that do not generate credit costs, the expected credit cost is reduced to $55 million.

Appendix: Description of methodology

Economic impacts

The sections below describe the economic impact estimation approach, including the calculation of the direct impacts and the derivation of the economic multipliers. Unless otherwise noted, 2007 data production data and estimates are described below.

Direct economic impacts

Direct production spending, personal income, and employment impacts are based on data provided by the North Carolina Film Office or imputed based on a sample of films produced in North Carolina in 2007.

Direct Economic Output (Production Spending). The direct output impact of film productions is equal to the amount of spending that occurred in 2007 by production companies applying for the North Carolina film credit. Data provided by the North Carolina Film Office indicated only the amount of qualified spending, which excludes expenditures related to imported goods and services and non-taxable fringe benefits. This qualified spending amount is shown in Table A.1, in the column labeled "Qualified Spending."

To reflect the total amount of spending by North Carolina film productions, an adjustment for spending on goods and services imported to North Carolina was made by increasing amounts for qualified goods and qualified services by the estimated amount of non-qualified goods and services purchased outside North Carolina. The IMPLAN economic model of North Carolina assumes that 74% of goods and 50% of services used by North Carolina productions are purchased from in-state companies while the remainder is imported. Therefore, the qualified spending amounts must be increased to reflect total spending (supplied by North Carolina firms and imported). Table A.1 shows spending on goods and services before and after this adjustment. The table also shows the amount of spending by commercial productions that did not qualify for the 15% film credit but were attracted to North Carolina because of infrastructure and cast and crew that are located in North Carolina largely due to the existence of the 15% credit.[8]

Table A.1 – Qualified & total spending, 2007

	Qualified Spending	% Spending Qualifying	Total Spending
Goods	$38.3	74%	$51.6
Services	$27.6	50%	$55.7
Compensation	$88.0	75%	$116.7
Non-Qualifying Commercials	$0.0	0%	$4.4
Total Spending	$153.9	67%	$228.3

[8] North Carolina retained an estimated 50% of its non-qualifying commercial production spending ($8.8 million) due to the 15% film tax credit in 2007.

Direct Personal Income. The direct personal income impact is equal to total wages, fringe benefits, proprietor's income, and other property income generated from productions in 2007. Film budget data received from the North Carolina Film Office indicates that qualified compensation averages 57% of total qualified expenses for the sample of 2007 film productions that applied for the credit and submitted this expense data to the North Carolina Department of Revenue. Non-qualifying fringe benefits are assumed to be equal to 18% of qualifying compensation plus payroll taxes and other employer costs equal to 10% of qualifying compensation. Finally, $4 million of non-qualifying wages paid to extras was included.

Direct Employment. Employment was derived by dividing the total qualified wage payments by the estimated average annual salary of $115,000. The average wage amount is based on data received from the North Carolina Film Office describing the number of hours worked and wages earned for employees working on films produced in North Carolina from 2006 to 2008, assuming that employees work 3,120 hours per year. The number of hours worked per year was derived from production reports summarized by the North Carolina Film Office that showed typical production days exceeded 12 hours in length, with typical crew calls at 7 am and crew wraps after 8:30 pm.

Economic multipliers

Output. The North Carolina IMPLAN model was adjusted to reflect the film budget and payroll data received from the North Carolina Film Office. These adjustments resulted in an increase in the output per worker for the motion picture industry. The output (production spending) per worker for the motion picture industry was increased from $110,000 in the stock 2007 North Carolina IMPLAN model to $285,000 in the adjusted model. The model adjustments increase the output multiplier from 1.74 in the initial IMPLAN model to 1.71 in the adjusted model.

Personal Income. To reflect the data received from the North Carolina Film Office, average compensation per worker was increased from $17,700 in the stock IMPLAN model to $135,000 in the adjusted model. Additionally, aggregated payroll data provided by the North Carolina Film Office indicates that 39% of compensation is paid to employees residing outside of North Carolina. Therefore, an adjustment was made to the induced spending estimates derived using the IMPLAN model. One-half of the induced impact resulting from income earned by non-residents was excluded from the impact. This adjustment reduces the overall induced economic impact from $44.3 million to $35.9 million.

The model adjustments reduce the combined personal income (labor income and other property type income) multiplier from 2.69 in the initial IMPLAN model to 1.69 in the adjusted model.

Table A.2 – Induced personal income impact adjustment

	Direct	Indirect	Induced	Total
Personal Income w/o adjustment ($mil)	$120.2	$46.8	$44.3	$211.3
Personal Income w/adjustment ($mil)	$120.2	$46.8	$35.9	$202.8

Employment. The model adjustments described above increase the employment multiplier from 1.67 in the stock IMPLAN model to 2.55 in the adjusted model.

Table A.3 – IMPLAN model multipliers

Multiplier	Initial Model	Adjusted Model
Output	1.74	1.71
Personal Income	2.69	1.69
Employment	1.67	2.55

Film tourism impacts

The estimates of tourism spending assume that each dollar of direct film production spending will generate almost 3 cents of additional film tourism activity, based on the estimated ratio of film tourism spending in the year following a production to the cost of the production. For 2007, productions totaling $228.3 million generated $6.1 million in film tourism spending the following year, 2008. The estimates assume that films have the most impact on film tourism in the year of their release, which is assumed to be the year after production. In each subsequent year after release, the analysis assumes that a film has 75% of the impact it had in its first year. That is, in any year, a film has 25% less impact than in the prior year. Table A.4 shows this 'spending decay' that occurs in the first year through the tenth year after popular films are produced in North Carolina. The total spending amount and the net present value of that amount are shown on the bottom two rows of the table. The net present value assumes a 5% discount rate.

Table A.4 – Film tourism spending

Years Following Production	Tourism spending from 2007 film productions	Tourism spending from 2008 film productions	Tourism spending from 2009 film productions	Tourism spending from 2010 film productions	Tourism spending from 2011 film productions
1st Year	$6.1	$3.6	$3.4	$9.9	$11.9
2nd Year	$4.6	$2.7	$2.5	$7.4	$8.9
3rd Year	$3.4	$2.0	$1.9	$5.6	$6.7
4th Year	$2.6	$1.5	$1.4	$4.2	$5.0
5th Year	$1.9	$1.2	$1.1	$3.1	$3.8
6th Year	$1.4	$0.9	$0.8	$2.4	$2.8
7th Year	$1.1	$0.6	$0.6	$1.8	$2.1
8th Year	$0.8	$0.5	$0.4	$1.3	$1.6
9th Year	$0.6	$0.4	$0.3	$1.0	$1.2
10th Year	$0.5	$0.3	$0.3	$0.7	$0.9
Total tourism spending	**$23.0**	**$13.8**	**$12.7**	**$37.4**	**$44.9**
Net present value	**$21.9**	**$13.1**	**$12.1**	**$35.6**	**$42.7**

Tax Impacts

North Carolina Tax Revenues

Tax impacts on state and local governments were estimated by multiplying the ratio of historical tax collections to state wide personal income by the total personal income impacts estimated using the IMPLAN economic model. There were two exceptions to this methodology used in the study, the direct individual income tax and direct corporate income tax adjustment, described below.

Individual Income Tax. The direct individual income tax impact was estimated using an average tax rate for above-the-line and below-the-line taxable wages. Average taxable income for above-the-line labor was equal to $350,000 while below-the-line labor earned an estimated average salary of $91,000. Roughly 72% of total wages paid in 2007 productions were below-the-line while above-the-line wages accounted for the remaining 28%. Based on the average annual earnings for both groups of employees, the average individual income tax rate was estimated based on North Carolina 2007 tax rate schedules for married taxpayers who do not file joint returns. Taxable compensation paid to above-the-line employees was multiplied by the 7.79% average income tax rate shown in Table A.4, while compensation paid to below-the-line employees was multiplied by the 7.22% average income tax rate.

Table A.5 – Average Individual Income Tax Rates

Income Tax Rates (2007): Married who do not file joint returns	
$100,000 and above	8.00%
$50,000 - $100,000	7.75%
$10,625 -$50,000	7.00%
Over 0 - $10,625	6.00%
Above-the-line taxable income	$350,187
Below-the-line taxable income	$91,186
Average rate for above-the-line	7.79%
Average rate for below-the-line	7.22%

Corporate Income Tax Withheld on Film Credit. A 6.9% corporate income tax credit adjustment is made for C-corporations who claim a film tax credit in North Carolina. In 2007, an estimated 21% of total credits ($5.2 million) were generated by C-corporations. Approximately $360,000 in corporate income tax liability resulted from these credit payments to C-corporations, reducing the effective tax credit for C-corporations to 14%.

Sales Tax: In North Carolina, a 1% privilege tax is imposed on sales of specific transactions in lieu of sales and use tax. Because detailed information on the amount of goods and services purchased by production companies in 2007 that would be subject to this reduced rate was not

available, this sales tax adjustment was not incorporated into the estimates. Had sufficient data been available to incorporate this adjustment, the direct sales tax impact for production activity would be reduced.

North Carolina Film Credit Expenditures

Total qualifying film expenditures for 2007 were provided by the North Carolina Film Office. North Carolina's current film tax credit rate of 15% was applied to the total qualifying expenditures to estimate the total film credit expenditures accrued in 2007. Based on information from the Film Office, credit payments are paid to qualifying productions 12 months following the end of production. The credit costs were discounted to the present value of the future payments by a 5% rate of over 12 months. Based on these assumptions, an estimated $23 million of credit costs has a net present value of $22 million.

Under a 25% tax credit program, three films per year are estimated to have qualified expenditures of $40 million. Of this $40 million per film, only $30 million would generate credit costs due to the credit cap of $7.5 million. The additional $10 million of qualified spending per film will generate economic activity and tax revenue for the state and local governments at no cost to the state.

Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina

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Research Project for the Wilmington Regional Film Commission, Inc.
Wilmington, North Carolina

Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina

Executive Summary

The motion picture industry has been an active component of the local economy since the early 1980s. To date, the Wilmington area has hosted over 300 features, mini-series, movies of the week, and eight television series along with numerous commercials and music videos.[1]

The production of a "mid-major" motion picture has sizeable economic effects on Southeastern North Carolina, viz., Brunswick, New Hanover, and Pender Counties. A "mid-major" production is defined as a production with a budget of approximately $25 million.

A typical production supports almost $18.7 million in total economic activity, 650 jobs (including part-time and full-time), almost $6.5 million in wages and salaries, almost $2.1 million in self-employment income, almost $1.2 million in property income (rents, interest payments, corporate profits/dividends, and royalties), and $265,000 in state sales and excise tax revenues. The local government share of these sales and excise tax collections is $88,000. These local governments receive $530,000 in county property tax collections. Given current tax rates, the implied size of the three-county property tax base necessary to support these property tax collections is approximately $124.8 million.

Based on a possible average of three such productions being completed during a 12-month period, the impacts rise three-fold. The impact on total economic activity of $56 million represents approximately 0.5 percent of estimated 2009 gross regional product. The job impact does not change as it is assumed that

the same employees can be utilized in more than one production. The impacts on labor income are follows: $19.4 million in wages and salaries, almost $6.2 million in self-employment income, and almost $3.6 million in property income. On an annualized basis, the average salary of a job supported by the motion picture production is close to $45,000, almost 30 percent above the current average salary across local employment sectors. The motion-picture-production-supported salary is almost one-third above the current per capita income estimate. Sales and excise tax collections total $796,000, with a local government share of $265,000. County property tax collections total almost $1.6 million. The implied size of the associated property tax base is $374.4 million, approximately 0.5 percent of the 2008-09 value of the three-county property tax base.

Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina

I. Introduction

In the summer of 2009, the Wilmington Regional Film Commission, Inc., contracted with the University of North Carolina Wilmington Center for Business and Economic Services for a faculty research team to conduct a study of the economic impact that the production of a "mid-major" motion picture would have on the economy of Southeastern North Carolina, defined as Brunswick, New Hanover, and Pender Counties. For the purposes of this study, a "mid-major" motion picture production has a budget of approximately $25 million.

II. The Nature of an Economic Impact Study

An economic impact study is conducted to estimate the impacts of specific economic activities (e.g., the "production") on the overall economy of a geographic region. The impacts take several forms. The most obvious is the direct impact of the initial, specified economic activities on employment, employee salaries, payments to suppliers, and taxes paid by employees and suppliers. Beyond the direct impact, there are the additional indirect and induced impacts[2] that reflect the "economic ripple effects," or "multiplier effects," of the initial direct impact. These ripple effects are generated because a portion of every direct-impact dollar received by employees and suppliers is re-spent in the local economy (viz., that portion that is not saved, spent on imports or lost to federal, state, and local taxes). In turn, this re-spending generates additional employment, salary and supplier payments, and tax revenue.

The input-output model used to estimate these economic impacts was developed using the IMPLAN Professional™ for Windows™ (Version 2.2) software. This software is commonly used by business, government, and academic institutions to provide assistance in developing economic impact analyses.

Simulated input-output models are far from perfect as they are approximations of area or regional spending patterns or transactions. However, they are widely used in economic impact studies. IMPLAN is a leading input-output modeling software package used in this work.

III. The Study

This study estimates the total economic impact – the sum of direct, indirect, and induced impacts – that the movie production would have on the three-county economy of Brunswick, New Hanover, and Pender bordering the Atlantic Ocean in Southeastern North Carolina. All dollar figures are in first quarter 2009 dollars. The impacts are based on the 2007 structure of the three-county economy.

Estimated total (direct, indirect, and induced) impacts include those on gross output or sales, employment (full-time and part-time), payrolls (wages and salaries), self-employment income, property income, and selected state and local government taxes. Self-employment income is income earned by those self-employed in the three-county area. Property income is income from such sources as rents, interest payments, corporate profits/dividends, and royalties.

The Wilmington Regional Film Commission provided detailed budget data for a "mid-major" film which was recently considering production in the local area. The total budget for the film production was approximately $25 million. The name

of the production company and the associated film were not provided for reasons of confidentiality. The budgeted items are shown in Table 1.

Table 1
Budget for "Mid-Major" Motion Picture Production

State Wages	$11,000,000
1099 Payments	$500,000
Loan-Out Payments	$2,800,000
Food	$380,000
Construction	$120,000
Wardrobe	$40,000
Camera	$230,000
Electric	$300,000
Set Dressing	$200,000
Grip	$200,000
Special Effects	$40,000
Props	$70,000
Accommodations	$450,000
Per Diems	$500,000
Rental Cars	$150,000
Airfares	$300,000
Fuel	$150,000
Security	$100,000
Police	$45,000
Trash Removal	$40,000
Postage	$115,000
Medical	$40,000
Offices	$70,000
Telecommunications	$70,000

Source: Wilmington Regional Film Commission

IV. Economic Impacts

Table 2 shows the economic impacts. The dollar figures reported in the table are in first quarter 2009 dollars.

Table 2
Economic Impacts of a Mid-Major Motion Picture Production

Type of Impact	Direct	Indirect	Induced	Total
Output	$12,584,000	$1,586,000	$4,498,000	$18,668,000
Employment[1]	570	30	50	650
Wages and Salaries	$4,836,000	$410,000	$1,222,000	$6,474,000
Self-Employment Income	$1,820,000	$75,000	$159,000	$2,054,000
Property Income	$811,000	$101,000	$283,000	$1,195,000
State Sales and Excise Taxes	N.A.	N.A.	N.A.	$265,000
Local Government Share[2]	N.A.	N.A.	N.A.	$88,000
County Property Tax Collections	N.A.	N.A.	N.A.	$530,000
(Equivalent) Property Tax Base[3]	N.A.	N.A.	N.A.	$124,800,000

1 The employment impact includes both full-time and part-time employment.
2 Each of the three county governments levies a 2.25% sales tax. After debiting a collection fee, state government remits the residual to the county government.
3 The estimate of the size of the property tax base that would support $530,000 in property tax collections is calculated by dividing the collections by a weighted average county tax rate using the FY 2008-09 value of county taxable property as weights.

Source: IMPLAN model and authors' calculations

During filming, the production would support almost $18.7 million in total output or economic activity in the three-county area. Other impacts include 650 jobs (full-time and part-time), almost $6.5 million in wages and salaries, almost $2.1 million in self-employment income, and almost $1.2 million in property income. A total of $265,000 in state sales and excise taxes would be collected. The local government share of these sales and excise tax collections would be $88,000. County property tax collections would total $530,000. The associated tax base which would generate these property tax collections at FY 2008-09 property tax rates is $124.8 million.

Table 3 shows the distribution of the output impacts[3] during movie production. Only those six sectors that experience an increase of at least $650,000 in

output or gross income are shown in the table. Combined, these six sectors account for more than one-half (57.4 percent) of the total impact.

Table 3
Distribution of Output Impact During Movie Production

IMPLAN Sector	Impact	% of Total
Total	$18,668,000	
Private Households	$4,032,000	21.6
Domestic Trade	$3,248,000	17.4
Hotels and Motels	$1,064,000	5.7
Commercial and Institutional Buildings	$1,046,000	5.6
Specialized Design Services	$672,000	3.6
Owner-Occupied Dwellings	$653,000	3.5
All Other	$7,953,000	42.6

Source: IMPLAN model and authors' calculations

Table 4 shows the distribution of the employment impacts during movie production. Only those nine sectors shown in the table that experience support of at least five jobs are shown in the table. Combined, these nine sectors account for more than four-fifths (84.8 percent) of the total employment impact. The private household sector alone accounts more than three-fourths (76 percent) of the employment impact.

Table 5 shows the distribution of the impact on wages and salaries during movie production. Only those seven sectors that experience an increase of at least $135,000 in wage and salary income payments are shown in the tables. Combined, these seven sectors account for more than two-thirds (71.1) percent of the total wage and salary income payment impact. The private household sector alone accounts for almost one-half (48.6 percent) of the impact.

Table 4
Distribution of Employment Impact During Movie Production

IMPLAN Sector	Impact	% of Total
Total	650	
Private Households	490	76.0
Hotels and Motels	20	2.4
Commercial and Institutional Buildings	10	1.6
Business Support Services	5	0.8
Food Services and Drinking Places	5	0.8
Specialized Design Services	5	0.8
Gasoline Stations	5	0.8
Photographic Services	5	0.8
Investigation and Security Services	5	0.8
All other	100	15.2

Source: IMPLAN model and authors' calculations

Table 5
Distribution of Wage and Salary Payment Impacts During Movie Production

IMPLAN Sector	Impact	% of Total
Total	$6,474,000	
Private Households	$3,146,000	48.6
Hotels and Motels	$363,000	5.6
Commercial and Institutional Buildings	$363,000	5.6
Physicians, Dentists, and Other Health Services Providers	$233,000	3.6
Postal Services	$181,000	2.8
Other Maintenance and Repair Construction	$181,000	2.8
Specialized Design Services	$136,000	2.1
All other	$1,871,000	28.9

Source: IMPLAN model and authors' calculations

Table 6 shows the distribution of the impact on self-employment income during movie production. Only those seven sectors that experience an increase of at least $25,000 in self-employment income payments are shown in the table.

Combined, these seven sectors account for almost 90 percent of the total impact on self-employment income. The private household sector alone accounts for almost three-fourths (74.7 percent) of the total impact.

Table 6
Distribution of Wage and Self-Employment Income Impact During Movie Production

IMPLAN Sector	Impact	% of Total
Total	$2.054,000	
Private Households	$1,534,000	74.7
Commercial and Institutional Buildings	$105,000	5.1
Other Maintenance and Repair Construction	$51,000	2.5
Physicians, Dentists, and Other Health Services Providers	$51,000	2.5
Real Estate	$51,000	2.5
Gasoline Stations	$27,000	1.3
Specialized Design Services	$27,000	1.3
All other	$208,000	10.1

Source: IMPLAN model and authors' calculations

Table 7 shows the distribution of the impact on property income during movie production. Only those six sectors that experience an increase of at least $75,000 in property income payments are shown in the table. Combined, these six sectors account for almost 96 percent (95.7 percent) of the total impact.

Table 7
Distribution of Property Income Impact During Movie Production

IMPLAN Sector	Impact	% of Total
Total	$1,195,000	
Owner-Occupied Dwellings	$494,000	41.3
Hotels and Motels	$182,000	15.2
Real Estate	$182,000	15.2
Gasoline Stations	$104,000	8.7
Power Generation and Supply	$104,000	8.7
Monetary Authorities and Depository Credit Intermediaries	$78,000	6.5
All other	$51,000	4.3

Source: IMPLAN model and authors' calculations

V. Annualized Impacts

The economic impacts presented above are based on the changes in selected measures of economic activity while movie production takes place. Given the Wilmington area's history of motions picture production and the availability of infrastructure, it is likely that more than one "mid-major" movie production could occur during a 12-month time span.

The following analysis assumes that three such productions occur within a calendar year. It also assumes that there are no overlapping production schedules. That is, only one movie production occurs at a time.

Table 8 shows the total impacts of the three movie productions. As before, all dollar figures are in first quarter 2009 dollars. The impacts can be viewed as "annualized" figures.

Table 8
Annualized Economic Impacts of a Mid-Major Motion Picture Production[1]

Type of Impact	Direct	Indirect	Induced	Total
Output	$37,752,000	$4,758,000	$13,494,000	$56,004,000
Employment[2]	570	30	50	650
Wages and Salaries	$14,508,000	$1,248,000	$3,666,000	$19,422,000
Self-Employment Income	$5,460,000	$226,000	$476,000	$6,162,000
Property Income	$2,434,000	$304,000	$850,000	$3,588,000
State Sales and Excise Taxes	N.A.	N.A.	N.A.	$796,000
Local Government Share[3]	N.A.	N.A.	N.A.	$265,000
County Property Tax Collections	N.A.	N.A.	N.A.	$1,591,000
(Equivalent) Property Tax Base[4]	N.A.	N.A.	N.A.	$374,400,000

1 Figures in the table are based on the production of three "mid-major" motion pictures during a 12-month period, e.g., a calendar year.

2 The annualized motion picture employment impacts are the same as the per production figures as the same employees can be utilized in more than one production if there are no overlapping production schedules.

3 Each of the three county governments levies a 2.25% sales tax. After debiting a collection fee, state government remits the residual to the county government.

4 The estimate of the size of the property tax base that would support $1,591,000 in property tax collections is calculated by dividing the collections by a weighted average county tax rate using the FY 2008-09 value of county taxable property as weights.

Source: IMPLAN model and authors' calculations

Measures of the relative importance of the motion picture industry in the area economy can be obtained by comparing the annualized measures of the industry's impact to averages for the three-county area as a whole. Three such comparisons are made.

V.A. Total Economic Activity

The IMPLAN model produces estimates of gross regional product (GRP), in this case an estimate of the total amount of economic activity produced by all sectors in the thee-county economy. This figure is analogous to gross domestic product

(GDP) calculated for the nation as a whole. The IMPLAN GRP estimate of $11.4 billion is in 2006 dollars. Using the implicit GDP deflator to account for inflation between the 2006 and early 2009, the comparable 2009 estimate is $12.2 billion. Given that three motion picture productions support $56 million in economic activity, these productions support approximately 0.5 percent of total economic activity in the three-county area.

V.B. Labor Income

The average annualized salary of the jobs supported by the production of three "mid-major" motion pictures can be calculated by dividing total labor income by employment. Total labor income is the sum of wage and salary payments, self-employment income payments, and property income payments. These three total $29.2 million. In turn, the average annualized salary of the 650 jobs that are supported during the movie production is $44,880. Based on third quarter 2008 North Carolina Employment Security Commission data, the average annual salary across all employment sectors in the three-county region was $34,400. Using the implicit GDP deflator to account for inflation between the third quarter of 2008 and early 2009, the annualized salary would be approximately $34,700. Consequently, the average annualized salary supported by the motion picture production of $44,880 is almost 30 percent above the all-sector estimate.

The Bureau of Economic Analysis in the U. S. Department of Commerce generates estimates of county per capita income. The most recent figures available are for 2007. Using 2007 county population estimates as weights, the 2007 weighted average per capita income for the three-county area is $32,394. Using the implicit

GDP deflator to account for inflation between 2007 and early 2009, the 2009 estimate is $33,799. Consequently, the average annualized salary supported by the motion picture production of $44,880 is almost one-third above the per capita income estimate.

V.C. Property Taxes

The North Carolina Department of Revenue reports that the total value of all real and personal property in the three-county region during FY 2008-09 was $68.6 billion. Given that the movie productions supported a property tax base of $374.4 million, the movie productions supported 0.5 percent of the tax base.

V. Summary

This study has analyzed the economic impact of a "mid-major" motion picture production on the economies of Brunswick, New Hanover, and Pender Counties located along the coast of Southeastern North Carolina. For research purposes, a "mid-major" motion picture production has a budget of approximately $25 million.

The study analyzed the impacts of both a single film production and multiple film productions. Although not addressed in the study, other qualitative impacts such as the "visibility" impact of being known as a location with infrastructure to accommodate productions are equally important.

Based on the production of three such films during a calendar year, the study found that motion picture production supported approximately 0.5 percent of total economic activity in the three-county area. Its contribution to state sales and excise tax collections and the local government share of the same were $796,000 and

$265,000, respectively. Its contribution to county property tax collections was almost $1.6 million. The size of the associated property tax base required to support these property tax collections was $374.4 billion, 0.5 percent of the FY 2008-09 value of the three-county property tax base.

Notes

1 **Wilmington Regional Film Commission, Inc., Wilmington Regional Production Guide, 2009.**

2 **Indirect effects are the changes in inter-industry purchases as these industries respond to new demands of the directly affected industries. In the present case, the indirect effects are a measure of the re-spending of the receipts by vendors supplying the motion picture industry. Induced effects reflect changes in spending by households as income changes due to changes in production, in the case changes in movie production.**

3 **The sectors shown in tables 2-6 are based on the North American Industrial Classification System (NAICS).**

The Economic Impact of the Motion Picture & Television Industry on the United States

April 2009

A Message from Dan Glickman

On behalf of the Motion Picture Association of America and our six member studios, I am pleased to present the industry's second biennial nationwide economic impact report.

The magic of the big screen is something we all have experienced. We can all recount the unforgettable moments from our favorite movies - scenes that make us laugh, cry, cheer, wonder, and believe. We associate these moments with Hollywood and big stars and big studios. And while these are important and visible pieces of the industry, they don't represent the entire picture.

Even as you read this report, workers in businesses both large and small across America are lending their talents behind the camera, on construction sites and in computer labs, revealing an industry that is:

A diverse job creator: 2.5 million Americans jobs are supported by the motion picture and television industry – costume designers, truck drivers, architects and accountants are but a few examples of the complex combination of workers who collectively make movies.

A community of small businesses and entrepreneurs: Over 115,000 businesses in all 50 states – 81 percent of which employ fewer than 10 people – comprise the motion picture and television industry.

A nationwide enterprise: On-location production, infrastructure development and movie and television-related tourism are contributing to the economies of all 50 states.

A successful exporter of American products: The American motion picture industry carries a positive balance of trade around the world and a $13.6 billion trade surplus.

For decades, the motion picture and television production industry has been a cornerstone in America's creative economy. Throughout that time, we have pushed the boundaries of technology to improve our product – from silent pictures to surround sound, from black and white film to digital computer animation. Today, we are pushing boundaries again, with purchasing options that give consumers better and more cost-effective choices.

We are committed to keeping our industry at the forefront of the worldwide entertainment market and to ensuring that our contribution to the U.S. economy continues to grow.

Now I invite you to take a peek behind the big screen by reading this report. I believe you will find it is an interesting, informative and entertaining look at an important American enterprise – the motion picture and television industry.

See you at the movies.

Hollywood: The Movie
By Edward Jay Epstein

Hollywood has spent the better part of the last century making movies out of the great inspirational sagas of human history. Ironically, the one epic it has yet to make is one about a uniquely American achievement that has and continues to mesmerize the world: The Rise Of Hollywood. Here is a true *Sturm and Drang* melodrama chock full of fascinating characters from the edges who overcome seemingly impossible obstacles to build a new industry that today defines the world of mass entertainment. The scenario would follow the classic Hollywood three-act formula.

ACT ONE
Fade in on the men who founded the studios of Hollywood. These are self-made and self-educated Jewish immigrants from impoverished backgrounds, who, prior to becoming movie exhibitors, had been ragpickers, furriers, errand boys, butchers and junk peddlers. They are true outliers: Louis B. Mayer, Samuel Goldwyn, Jack Warner, Adolph Zucker, William Fox, Carl Laemmle, and Harry Cohn, who first scraped together money to build arcades and nickelodeons to show movies, then resourcefully expanded them into theater chains, distribution networks, and, finally, studios. In the second decade of the 1900s, they moved their studios to a near desert in California - the tiny incorporated village of Hollywood - a place they could control and build. By the mid-1920s, 57 million people – over half the population - was going to their movies every week.

Yet, the saga is just beginning. In 1927, sound, now married to the picture, is introduced to the world with Al Jolson in *The Jazz Singer*. Even though huge capital is required to add this new dimension to movies, Hollywood - in one of the great technological feats of modern history - converts most of the 21,000 theaters in America to sound, rebuilds its studios to put sound on film, and casts new stars for talkie movies. Despite even the Great Depression of the 1930s, the weekly audience grows to 75 million who go to the movies to see not just feature movies, but newsreels, comedy shorts, action-packed serials and cartoons. A new generation of talent, including such brilliant innovators as Walt Disney, expands its realm to children's entertainment, and color adds to its ability to entertain the public even in the bleak years of the Depression and the grim war years of the early 1940s.

ACT TWO
The second world war has ended; the troops have come home. By 1948, the studio system is at its zenith. Over 90 million Americans go to the movies on a weekly basis, roughly two-thirds of the population. The studios produce over 500 feature movies a year, have all the major stars under iron-clad contract, and employ over 320,000 Americans. In little more than a generation, its founders have literally gone from rags to riches.

But there was an ever-darkening cloud forming: television. Even with its fuzzy black and white pictures, it offers free stay-at-home entertainment, which gradually eats away at its habitual audience. Even with new innovations, such as drive-ins, Cinemascope, 3-D, and surround sound, the entertainment landscape had irreversibly changed. After color TV is introduced in the 1950s, the weekly movie audience drops by 1958 to 40 million. Prophets of doom predict the end of Hollywood is near.

ACT THREE
But the prophets have underestimated the resourcefulness of Hollywood. Its genius had always been adaptation to new circumstances. It is, after all, in the business of entertainment– a medium which thrives on transformation. So Hollywood re-invents itself. The old studio system, with its contractual control of theaters and stars, is dead; long live the new studio system. Unable to depend on a habitual weekly audience, it turns television to its advantage, using national TV advertising to create tailor-made audiences for each and every movie. And, while remaining an

American business, it greatly expanded its reach overseas, creating a second stream of revenue from theaters and television abroad.

The audience of the new Hollywood is not limited to theaters. It finds new sources of revenue in licensing its movies to television, originating prime-time series, renting its movies on home video, putting it on planes via in-flight entertainment and in hotels, turning its characters into toys, and then, with the digital revolution, putting its movies on DVD, Blu-ray, video-on-demand, cell phones, and the Internet. In doing so, it not only kept alive the movie business, but made it central to the world's entertainment economy. With states and municipalities competing with one another for film production, it also continued to create jobs across the nation, supporting employment for 2.5 million people.

But beyond the movies, the money, and the job creation, Hollywood produces another form of wealth: the pictures in our head by which both we, and the world at large, define the phenomenon of American culture. What a movie that achievement would make. FADE OUT

THE END

***

The production and distribution of motion pictures and television programs is one of the nation's most valuable cultural and economic resources.

In 2007, the motion picture and television industry was responsible for:

- **2.5 million American jobs;**
- **an average salary of $74,700 for production employees;**
- **$41.1 billion in wages to workers in America;**
- **$38.2 billion in payments to U.S. vendors and suppliers, small businesses and entrepreneurs;**
- **$13 billion in income and sales taxes; and**
- **$13.6 billion in trade surplus.**

2.5 Million Diverse Jobs in 50 States

With a payroll of over $41 billion, the motion picture and television industry is a major private-sector employer. In total, the motion picture and television industry supports 2.5 million American jobs:

- Over 285,000 people are employed in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows, including full, part time and free-lance workers at major studios, independent production companies, and core industry suppliers like film labs, special effects and digital studios, location services, and prop and wardrobe houses dedicated to the production industry, among others. The industry employs workers in every major occupational group, including actors, accountants, agents, animators, camera operators, casting directors, computer specialists, directors, editors, engineers, graphic designers, marketers, producers, special effects, technicians, writers, and many, many more.

- Over 478,000 people are employed in the related businesses that distribute motion pictures and television shows to consumers. This includes workers at movie theaters, video rental operations, television broadcasters, cable companies, and new dedicated online ventures like Hulu and TV.com.

- The motion picture and television industry supports an additional 1.7 million indirect jobs at the thousands of companies doing business with the industry, such as apparel and accessory retailers, car rental and sales dealers, caterers, dry cleaners, florists, hardware and lumber suppliers, and transportation companies, as well as at a wide cross-section of companies doing business with consumers, such as retailers, themed restaurants and tourist attractions.

The average salary of those employed in the core production-related industry was just under $75,000 in 2007 – nearly 76 percent higher than the average salary nationwide. Including employees on the consumer-facing film and TV distribution side, the average salary of all workers in the motion picture and television industry is 26 percent higher than the average salary nationwide.[1]

A Nationwide Community of Small Businesses and Entrepreneurs

One of the most unique characteristics of the motion picture and television industry is its decentralized nature. As of 2008, the motion picture and television industry comprises more than 115,000 businesses around the country – in production to distribution – and 81 percent of these businesses employ fewer than 10 people.[2] One-quarter of the businesses are sole proprietorships. In essence, the motion picture and television production industry is largely entrepreneurial and dominated by small businesses and individuals. Thjs total includes only those businesses directly involved in making or distributing motion pictures and television shows, and does not include business that do not work with our industry on a full time basis, like lumberyards and florists.

Few industries in the world are as large and yet depend so heavily on an economically diverse work force based on regional networks collaborating on projects. The graphic on the following page illustrates the vast array of individuals vital to bringing a motion picture or television program to fruition.

In addition, the core production industry made $38.2 billion in direct payments for goods and services to vendors large and small in 2007. The vendors receiving these payments are not only specialized businesses that comprise and exclusively serve the entertainment industry, such as

wardrobe companies and camera equipment firms, including the 115,000 businesses noted above, but also innumerable general suppliers serving many other industries, such as caterers, lumberyards, apparel retailers and florists.

A Contributor to State and Federal Coffers

Communities zealously promote entertainment development because the motion picture and television industry attracts capital, creates a local production-related workforce, and generates tax revenues critical for public needs.

In 2007, just two types of taxes – taxes paid by industry workers and sales taxes on goods and services - generated approximately $13 billion in public revenues in the United States. This included $4.1 billion in income taxes at the federal level and $1.9 billion in income taxes at the state level, along with $6.4 billion in additional unemployment, Medicare and Social Security taxes, in addition to sales taxes on goods.

Other taxes paid, but that could not be quantified for this study, include corporate income taxes, property taxes and business license taxes. Also not included are tax revenues generated by indirect employment.

A Successful Exporter of American Products

The American motion picture and television production industry remains one of the most highly competitive around the world. In 2007, the enduring value and appeal of U.S. entertainment around the world earned $15 billion in audiovisual services exports, a 23 percent increase over 2006 and over 50 percent more than in 2003. The 2007 total is the highest since tracking began in 1992.

Moreover, this industry is one of the few that consistently generates a positive balance of trade. In 2007, that surplus was $13.6 billion, or 10 percent of the total U.S. private-sector trade surplus in services. The motion picture and television surplus was larger than the combined surplus of the telecommunications, management and consulting, legal, and medical services sectors, and larger than sectors like computer and information services and insurance services.[3]

The international market is vital for American motion picture and television product. MPAA member companies' international revenue has more than doubled in the last dozen years and nearly half of revenue is now derived from outside the U.S., making these international markets vital to American jobs.

International audiences continue to appreciate American products, but this industry also continues to innovate and increase its success internationally by co-producing films and television shows with foreign companies, acquiring and distributing foreign-made films and television shows in the U.S. and around the world, and making strategic investments overseas.

Understanding film and television credits

The reason film credits can be so long is that film-making draws on the efforts of numerous people over an extended period of time. The process of taking a film or television show from idea to audiences involves several key phases and a wide assortment of skills. Based on a typical live action film, following are a few examples of workers involved in a film. Many of these workers are involved on all or multiple phases of the production.

1. DEVELOPMENT

Coming up with an idea, writing a script and pitching it.

Agents
Assistants to the producers
Business managers
Consultants
Executive producers
Investors
Lawyers
Line producers
Personal Assistants
Producers
Publicists
Screenwriters
Studio executives

2. PREPRODUCTION

Developing, planning and visualizing the idea. Preparing a budget, hiring crew members, and making a schedule.

Art department assistants
Art department coordinators
Art directors
Artists
Assistant directors
Carpenters
Casting directors
Choreographers
Concept artists
Construction coordinators
Construction electricians
Construction first aid
Construction foremen
Construction grips
Construction workers
Costume designers
Costume supervisors
Costumers
Dialogue coaches
Directors
Directors' assistants
Directors of photography
Financial executives
Illustrators
Location assistants
Location managers
Paint foremen
Production assistants
Production designers
Production managers
Props builders
Props masters
Set designers
Set decorators
Set dressers
Set staff assistants
Storyboard artists
Stunt coordinators
Tailors/seamstresses
Wardrobe

3. PRODUCTION

Shooting scenes, working with cast, locations and reviewing footage.

Accounting clerks
Actors
Animal handlers
Assistant accountants
Assistant directors
Boom operators
Camera loaders
Camera operators
Caterers
Cinematographers
Drivers
Electricians
Extras
Extras casting coordinators
First aid workers
Gaffers (lighting)
Grips (set operations)
Hair stylists
Makeup artists
Office coordinators
On-set dressers
Payroll accountants
Picture car coordinators
Picture car drivers
Picture editors
Production accountants
Production coordinators
Production sound mixers
Property masters
Property workers
Script supervisors
Set strike workers
Sound editors
Sound technicians
Special effects coordinators
Special effects supervisors
Special effects technicians
Standby painters
Stills photographers
Stunt performers
Swing gang workers
Teachers/welfare workers
Technical advisors
Transportation coordinators
Transportation captains

4. POSTPRODUCTION

Editing the film, adding titles, music and special effects.

Audio recording engineers
Composers
Dubbing editors
Editing room assistants
Film and video editors
Lab technicians
Musicians
Projectionists
Sound designers
Special effects technicians

5. DISTRIBUTION

Taking the finished product and bringing it to theaters, home video, television, online and other venues for audiences to see it.

Accountants
Advertising executives
Distribution executives
Financial managers
Licensing executives
Marketers
Partnership developers
Publicists
Sales staff

Production around the country

All of the 50 states and the District of Columbia have film and television production activity. Throughout this report there are several spotlights highlighting the positive economic impact of on-location production on communities around the nation. California and New York, the historical centers of film and television production activity, are still the bellwether states. However, production activities are increasing in many key states. Following are the top production states outside of California and New York based on several factors: amount of productions industry-wide; production employees and wages; and the total number of vendors and vendor payments made by MPAA studios during 2007:

Top 10 Production States outside CA & NY[4]

- Illinois
- Texas
- Florida
- Georgia
- Pennsylvania
- New Jersey
- North Carolina
- Louisiana
- Tennessee
- Massachusetts

States to Watch

- Michigan
- Arizona
- Connecticut
- New Mexico
- Utah

States to watch are based on the above factors, as well as 2008 production levels, tax incentives, and economic impact of the industry.

Making an impact in states

In 2007 and 2008, film and television production and distribution contributed to the economies of all 50 states and the District of Columbia. In fact, 40 states and DC have found production activity to be so beneficial that they have enacted specific incentives to increase production in their states (denoted with an asterisk below). Following is information from state film commissions and industry sources on local production activity in 2007 and 2008, examples of recent productions in each state, and state-by-state details on wages paid by the motion picture and television production and distribution industry in 2007, the most current data available at the time of printing.

State	Movies and TV filming in 2007	Movies and TV filming in 2008	Recent Examples (2008 in bold)	Wages Paid by Motion Picture & TV Industry in 2007
Alabama*	14	21	**Final Destination: Death Trip 3D**	$214,929,950
Alaska*	2	4	**Corporate Headquarters, Deadliest Catch (TV),** Into the Wild	$24,975,280
Arizona*	147	106	**Away We Go, Middle Men (TV),** The Kingdom, Kids in America (TV)	$280,873,230
Arkansas*	2	5	**Chasing the Dragon, 17 Kids & Counting (TV)**	$72,381,540
California*	529	480	**American Idol (TV), Angels & Demons, G.I. Joe: The Rise of the Cobra,** 24 (TV), Frost/Nixon	$16,328,697,760
Colorado*	14	16	**NowhereLand, E-Vet Interns (TV),** The Bucket List, The Prestige	$474,326,920
Connecticut*	45	31	**Indiana Jones and the Kingdom of the Crystal Skull, Revolutionary Road,** College Road Trip	$505,510,030
Delaware	1	1	**Detox,** National Treasure: Book of Secrets	$15,862,410
District of Columbia*	36	21	**Night at the Museum: Battle of the Smithsonian, Bones (TV),** Get Smart, The Bourne Ultimatum	$444,379,000
Florida*	41	35	**New in Town, Burn Notice (TV),** Ace Ventura 3	$1,470,812,940
Georgia*	82	92	**Road Trip II, House of Payne (TV),** Stomp the Yard	$1,233,900,560
Hawaii*	22	18	**Lost (TV), The Informant,** Forgetting Sarah Marshall, Pirates of the Caribbean: At World's End	$101,539,030
Idaho	4	3	**Norman Waiting, Vagabond Lane, Baby Borrowers (TV)**	$61,509,810
Illinois*	72	38	**Judge Mathis (TV), Eagle Eye,** The Dark Knight, ER (TV)	$1,054,732,960
Indiana*	4	9	**American Teen, Made (TV)**	$274,702,220
Iowa*	3	7	**Ticket Out, South Dakota**	$91,519,090
Kansas	3	9	**My Own Love Song,** Bunker Hill	$110,043,280
Kentucky	5	6	**Jefferson Davis: An American President (TV)**	$142,103,790
Louisiana*	54	56	**The Open Road, Cirque du Freak, Imagination Movers (TV),** The Curious Case of Benjamin Button	$316,826,550
Maine*	9	2	**Shutter Island**	$80,428,020
Maryland*	10	7	**My One and Only,** Step Up 2: The Streets, The Wire (TV)	$494,769,410
Massachusetts*	15	27	**Paul Blart: Mall Cop, Surrogates,** The Game Plan	$495,900,770
Michigan*	11	43	**Gran Torino, Prayers for Bobby (TV),** Semi-Pro	$523,910,450
Minnesota*	4	14	**A Serious Man, Transylvania Television**	$340,791,420
Mississippi*	3	9	**Austin's Attic, M for Mississippi**	$24,853,150
Missouri*	10	14	**The Apology Dance, Works in Progress,** Farmer Wants a Wife (TV)	$304,641,120

State	Movies and TV filming in 2007	Movies and TV filming in 2008	Recent Examples (2008 in bold)	Wages Paid by Motion Picture & TV Industry in 2007
Montana*	47	51	**My Sister's Keeper, Modern Marvels (TV)**, Taking Chance	$36,241,200
Nebraska	9	1	**For The Benefit of Mr. Buffett**, Yes Man	$15,472,270
Nevada	234	264	**Race to Witch Mountain, The Bachelor (TV)**, What Happens in Vegas	$170,614,550
New Hampshire	15	29	**Mystery Team, The American Experience: We Shall Remain (TV)**	$86,743,230
New Jersey*	26	38	**The Wrestler**, The Sopranos (TV)	$763,357,780
New Mexico*	36	47	**Terminator Salvation, Breaking Bad**, Wild Hogs, No Country for Old Men	$118,798,420
New York*	371	351	**Confessions of a Shopaholic, Saturday Night Live (TV)**, Enchanted, Duplicity, I Am Legend	$7,420,591,410
North Carolina*	43	26	**Nights in Rodanthe, One Tree Hill (TV)**, The Guardian	$175,884,300
North Dakota	4	4	**Kristen Dunst/Jacob Soboroff Documentary**, Dangers from Within	$27,423,280
Ohio	8	6	**The Soloist**, Spider-Man 3	$499,442,690
Oklahoma*	2	6	**Barking Water**, Four Sheets to the Wind, Saving Grace (TV)	$154,530,790
Oregon*	6	9	**Twilight, Without a Paddle: Nature's Calling**, Mr. Brooks	$224,782,510
Pennsylvania*	57	52	**Marley & Me, She's Out of My League**, Baby Mama	$732,182,650
Rhode Island*	23	21	**Brotherhood (TV)**, Underdog, Dan in Real Life, 27 Dresses	$48,395,970
South Carolina*	6	9	**Nailed, Army Wives (TV)**, Leatherheads	$127,054,190
South Dakota	18	39	**Rez Bomb, Dinousar Dig (TV)**	$6,117,790
Tennessee*	30	26	**Can You Duet (TV), Gone Country (TV), Hannah Montana: The Movie**	$553,752,830
Texas*	134	115	**Open Season 2, Friday Night Lights (TV)**, There Will Be Blood, Prison Break (TV)	$1,695,394,580
Utah*	28	47	**High School Musical 3: Senior Year, Dogtown (TV)**, Unaccompanied Minors, High School Musical 2	$173,407,640
Vermont*	10	2	**Dumping Lisa, Moonlight & Mistletoe**	$27,996,120
Virginia*	29	31	**Body of Lies, Code Breakers (TV)**, John Adams	$610,258,250
Washington*	11	13	**Traveling**, The Last Mimzy	$321,861,930
West Virginia*	32	25	**The Road to Emmaus, PA**, We Are Marshall	$49,836,970
Wisconsin*	4	25	**Nephilim, The Watch (TV)**	$231,803,610
Wyoming*	1	11	**The Real Cowboys (TV), This American Life (TV)**, Flicka	$4,794,840

Filming data provided by local film commissions, and supplemented with data from industry sources where necessary. Methodology used by each commission varies, and efforts were made to harmonize to the greatest degree possible. Figures do not include commercials, sporting events, student films, or local-only programming.

Leatherheads in the Carolinas

The film *Leatherheads* was filmed in North and South Carolina during the winter and spring of 2007, covering communities in and around Greenville, South Carolina, as well as Charlotte, Winston-Salem and Statesville, North Carolina. Over two months of shooting, and several more of preparations and wrap-up, the *Leatherheads* production paid more than $1.7 million in total wages to local cast, extras, crew and other employees in South Carolina, and $2.3 million in North Carolina. The film employed 4,720 local residents in South Carolina and 6,745 in North Carolina. Local businesses, including hotels, car rental outlets, hardware stores, dry cleaners and caterers, received payments of nearly $3 million in South Carolina, and just under $2.5 million in North Carolina.

Behind the numbers are countless stories of collaboration, from the generous support from the small town of Greer, South Carolina, with its period-perfect storefronts; to the historic Vance Hotel in Statesville, North Carolina; to local real estate agents in South Carolina, who delayed construction at the Calhoun Hotel in South Carolina so filming could occur prior to its conversion into condominiums; and to the North Carolina train museum, which provided the picture-perfect trains in the film.

Spotlight

On-Location Production is Good for America: Messages from Key Policymakers

"Virginia has always recognized the positive economic impact that film production has on the state and local economies--that's why the Commonwealth has made it a priority to recruit and attract film and television production. Virginia will continue to look at conventional and innovative ways to attract additional film and television production--and the associated benefits in terms of jobs and economic growth.

The Emmy Award winning *John Adams* miniseries was filmed in Virginia in 2007 and added $80 million in economic impact and 2,000 jobs to the state while stimulating the local economies where it was filmed."
- Commonwealth of Virginia Governor Timothy M. Kaine

"Georgia's excellent talent base and outstanding locations make our state a very desirable place to film. Our new legislation puts in place the economic cornerstone that will encourage producers to convert that desire into action."
-Georgia Governor Sonny Perdue

"Chicago is one of the best cities in the world to film television and movie productions because of our city's incredibly picturesque settings, talented actors, directors and crew combined with the commitment from our city and state governments.

Increased production creates jobs for the hard-working people of our city – not only actors and crew members, but also caterers, electricians, truck drivers and all the others who devote their talents and skills to the project.

For example, when Warner Bros. filmed *The Dark Knight* in Chicago, it generated a record $40 million in revenue, employed more than 4,000 people and purchased goods and services from over 300 vendors.

I'm proud that Chicago is able to meet the creative needs of the productions while providing people with jobs in this dynamic and growing industry."
-Chicago, Illinois Mayor Richard M. Daley

"We recognize the enormous positive impact motion picture and television production can have on creating jobs and revenue to small businesses across the United States. That's why I am interested in continuing to work with the legislature on how to make Kentucky an even more attractive venue for the film industry. In these challenging and uncertain times for the economy, the creation of movies and television programs can potentially be a bright star on the horizon for the Commonwealth."
-Kentucky Governor Steve Beshear

"By enacting one of the most competitive film incentive packages in the nation we are growing a new job-creating industry in Michigan. As we continue to work to diversify Michigan's economy, we are proud to be at the heart of the film renaissance and we look forward to continued robust growth in Michigan's film industry."
-Michigan Governor Jennifer M. Granholm

"The film and TV industries are crucial to New York State's economy, contributing an estimated $7 billion annually. In 2008 we raised the New York State Film Production Credit to 30% of qualified costs, three times larger than the credit it replaced. As a result more than 60 feature films took advantage of our new incentives, 20 television pilots and 30 television show productions. These new projects will spend more than $2 billion in our great state. The industry as a whole is a vital economic engine for our state, luring tourists and employing more than 100,000 people. From Montauk to Niagara Falls and all points in between, New York State is home to some of the most desired and diverse filming locations across the country."
-New York Governor David A. Paterson

"Texas, more so than most states, has enjoyed a long history of on-location filming. For more than 50 years, we have seen economic benefits flow to our workforce and especially to the small businesses serving the industry, in all parts of the state. Now, with more than 40 states offering incentive programs, we are working to become more competitive, to bring these proven benefits back to Texas. I am proud of our production industry, and will do everything I can to preserve this essential part of Texas' economy."
-Texas Governor Rick Perry

"More than 100,000 local New Yorkers rely on the behind-the-scenes jobs that are created when film and television productions shoot in our City. This past season alone, we hosted 17 primetime television shows, with each show employing 1,000 to 2,800 people per season. In addition, 4,000 local businesses reap the benefits of this production business, and that includes lumberyards, hardware stores, dry cleaners, and restaurants. Films and television shows also help attract millions of tourists to our City, and all of them spend money in our local businesses. All told, the film and television industry generates about $5 billion each year in local economic activity, making it one of our most important – and exciting – industries."
-New York City Mayor Michael R. Bloomberg

"Oregon has been able to attract more production to the state through the Oregon Production Investment Fund and Greenlight Oregon. In 2003, we created the Oregon Production Investment Fund, which offers a financial incentive to qualified productions. In 2005, Greenlight Oregon was created, giving the state's film office a package of incentives that has been instrumental in making Oregon a serious player in the competition for major film and television productions. These productions create jobs and generate millions of dollars in economic activity."
-Oregon Governor Ted Kulongowski

"The motion picture and television industry helps drive California's diverse economy, employing over 200,000 Californians and generating more than $35 billion in economic activity. And the reach of production goes beyond the people directly employed by the industry, affecting businesses large and small throughout our economy. We value the production industry not only for its contribution to our economy in these challenging economic times, but also for its creative and entrepreneurial spirit – for which California is known throughout the world."
-California Governor Arnold Schwarzenegger

"Los Angeles is proud to be America's creative capital and the undisputed home to the motion picture and television industry. The stories of Hollywood reflect the best talents and contributions of our nation's most inventive and innovative minds. And there is no doubt that the entertainment industry will remain a strong and thriving engine for our local economy. From the mega-stars of the silver screen to the makeup artists, costume designers, stage hands, and sound engineers behind-the-scenes, LA will continue to offer an open, accessible, and welcoming set for this iconic industry."
-Los Angeles, California Mayor Antonio Villaraigosa

Surrogates in Massachusetts

The film *Surrogates,* based on the comic book series of the same name, was filmed in Massachusetts during a 24-week period. The production spent $21 million in Massachusetts with hundreds of local vendors, including dry cleaners, lumber suppliers, hotels, restaurants, rental car services, furniture rental services and retailers, crane companies, and local labor. *Surrogates* hired hundreds of local crew including office staff, drivers, electricians, grips, and carpenters, and over 2,000 background locals as extras. In the many cities around the state where *Surrogates* filmed, upgrades were often made to locations used. For example, the production spent thousands of dollars to upgrade offices, a phone system and a warehouse in Woburn that are currently being used by local businesses.

Shutter Island in Maine and Massachusetts

Shutter Island, based on the novel of the same name by Dennis Lehane, was filmed in locations in and around Bar Harbor, Maine and Boston, Massachusetts during 2008. During 18 total days on location in Maine, including three days of shooting, the *Shutter Island* production spent nearly $170,000 with various local vendors. The production encompassed over five months on location in Massachusetts, including 89 shooting days. During that time, over $22 million was spent in the local economy, including $8.3 million on payroll – employing 460 crew members, 15 actors and 478 extras -- and $11.4 million on local vendors. These included crane and scaffolding vendors like Marr Equipment, NES Rentals and United Rentals, which provided the scaffolding and cranes that were required on almost every day of production; and building supplies vendors like Burnett & Moynihan and Lynn Lumber, which provided materials for extensive construction projects, like the renovation and outfitting of a large medical facility.

Shutter Island mobilized a strong source of production specific services from Massachusetts, including production equipment such as cameras from Boston Camera and generators from All State Power & Control Inc.; production facilities, including tent and warehouse rental; transportation like crew car rental and local boating; and of course, significant local employment of crew, actors and extras. For members of the production that came from out of state, $2.6 million was spent on local hotels, including The Intercontinental Boston, Hilton Dedham and Residence Inn Dedham. These visitors also impact local business in the proximity, patronizing local health clubs and restaurants, including Benjamin's Restaurant in Taunton, which became a frequent dining choice for Martin Scorsese and friends, and That's Amore Brick Oven Pizza, which fed the production crew.[5]

Investing in infrastructure and community development

In addition to direct entertainment production payrolls and expenditures, the motion picture and television industry actively invests in infrastructure and facilities that have a positive effect on community development and local real estate markets. Following are a few samples of such capital projects.

- The multi-million dollar film and TV studio, Tyler Perry Studios, opened in **Atlanta, Georgia** in October 2008. The 30-acre studio features over 200,000 square feet of studio and office space, including five soundstages.[6]

- The $45 million Celtic Media Centre, being constructed on a 20-acre lot in **Baton Rouge, Louisiana**, includes 11,000 square feet of stage space, 6,000 square feet of office space, and 4,000 square feet of post-production space. Raleigh Studios Baton Rouge, housed in the Celtic Media Centre, is also constructing a new studio.[7]

- Construction on Norristown Studios at Logan Square in **Norristown, Pennsylvania** is expected to be completed in 2009. The 280,000 square-foot production facility will have eight sound stages, post-production facilities, and 180,000 square feet of support space, including a vocational school to be used by local universities.[8]

- Twentieth Century Fox opened a five-story office building on its **Century City, California** lot in 2006 and the studio is nearing completion on another office building and parking facility.[9]

- Spiderwood Studios, being constructed on 200 acres in **Bastrop, Texas**, to include facilities for set and prop design and construction, sound stage, production offices, and back lot, was close to finishing the first phase of construction in December 2008.[10]

- EUE/Screen Gems Studios in **Wilmington, North Carolina** broke ground on a new 37,500 square-foot sound stage (Stage 10) on its 50-acre studio lot in September 2008. Stage 10 will feature a 60-foot-by-60-foot indoor water tank.[11]

- Nu Image/Millennium Films broke ground on a new studio in **Shreveport, Louisiana** in April 2008. The Millennium-Ledbetter Film Studio, which will be built on 6.7 acres and will eventually expand to 20 acres, will accommodate up to six productions and employ up to 500 production personnel.[12]

- Plymouth Rock Studios is building a $488 million, 240-acre film and television studio complex in **Plymouth, Massachusetts**. The studio complex will include 14 sound stages, a 10-acre back lot, production offices, post-production facilities, a theater, offices, an amenity village, and a 300-room hotel. Plymouth Rock Studios, which is expected to create over 2,000 jobs, will also house M.I.T. Media Laboratory's new Center for Future Storytelling.[13]

- The G-Star School of the Arts for Motion Pictures and Broadcasting in **West Palm Beach, Florida**, which has a motion picture studio on campus where over 20 feature films have been produced, is building an $8 million sound stage to be completed in Fall 2009.[14]

Albuquerque Studios
By Jeremy Hariton, Albuquerque Studios

The Albuquerque Studios opened on June 1, 2007. At a cost of $91.5 million, the entire facility was privately financed and none of the investment was subject to the rebate incentive offered by the state of New Mexico. The studio includes eight sound stages of 18,000 and 24,000 square feet, which can be paired into spaces that double in size, 95,000 square feet of production office space, and 70,000 square feet of mill space. The overall project consists of over 400,000 square feet on 28.1 acres.

Over the initial 20 months of operation the studio has played host to two television series, *In Plain Sight* and *Breaking Bad* as well as four feature films, *The Spirit*, *Game*, *Terminator Salvation: The Future Begins* and *The Book of Eli*. These productions have created over 2,600 high paying production jobs and over $221.5 million in direct spending in the state. Along with the infrastructure cost The Albuquerque Studios has generated over $313.0 million in its short 20-month existence. The Albuquerque Studios has paid over $7 million in gross receipts tax to the state over its first 20 months of operations and pays an estimated $600,000 in property taxes annually.

- Capital Studios (formerly Sunset Gower) recently completed a $40 million six-story, 96,000 square-foot building to house post-production operations of Technicolor Inc on the 15-acre Sunset Gower Studios lot in **Los Angeles, California**.[15]

- SHM Partners is pursuing plans to build Kapolei Studios on a 22-acre site on the island of Oahu in **Hawaii**. The studios will include four 18,000 square-foot sound stages; 60,000 square feet of office, dressing room, set construction and production office space; a student film annex for University of Hawaii's Academy of Creative Media; a commissary/screening room facility; and a backlot with workable sets and retail venues.[16]

- Sony Pictures Entertainment is constructing two four-floor buildings on its **Culver City, California** lot of 125,000 and 96,000 square feet, to be completed by the summer of 2009.[17]

- Groundbreaking is expected to occur in 2009 for Santa Fe Studios located in **Santa Fe, New Mexico**. The studio will consist of 10 sound stages on 500,000 square feet.[18]

- In March 2009, Evergreen Films opened a $10 million production and post-production facility in **Anchorage, Alaska**. They are looking for partners to build a high-end sound stage and studio facility in Anchorage.[19]

- The $125 million Commonwealth Studios, set to break ground in **Moorpark, California** in April 2009, will offer 14 soundstages on a 37-acre lot, including an exterior backlot featuring city streets plumbed for rain and fire effects.[20]

- The Museum of the Moving Image, dedicated to the art, history, technique, and technology of film, television, and digital media, in **Astoria, New York** broke ground in February 2008 on a $65 million expansion to the Museum that will double its size and is expected to be completed in late 2009.[21]

- The Jacob Burns Film Center in **Pleasantville, New York** opened a new 27,000 square-foot Media Arts Lab in December 2008, containing 16 editing suites, five film studios, an animation studio, a recording studio, a sound stage, a library, and a 60-seat screening room.[22]

Building in Michigan

Michigan's aggressive film production attraction efforts are expected to create 5,993 new jobs in Michigan, including 4,066 new film, animation and programming jobs. The new efforts include two major motion picture infrastructure projects, leading to investment of more than $156 million in Detroit and Pontiac. Wonderstruck Studios' $85.9 million venture, to be known as Detroit Center Studios, will produce computer-generated (CG) visual effects and animated content, while Motown Motion Pictures' $70 million venture in Pontiac will be both a film studio and a production services company in a 600,000-square-foot development with nine sound stages.[23] Both projects will result in permanent production-related jobs in Michigan, and are among numerous infrastructure projects in Michigan, like the City Center Studios project in **Lansing, Michigan**, which will include two 24,000 square-foot sound stages, production offices, and post-production and screening facilities.[24]

The Industry's Eco-Friendly Building Practices

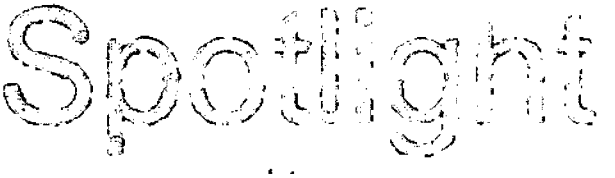
The motion picture and television production industry has developed and adopted best practices for reducing waste and carbon emissions, and encouraging recycling and energy conservation, in all areas of film and television production. For over a decade, the industry has annually diverted more than 50 percent of studio sets and other solid waste from landfills to reuse and recycling. In 2008, the amount diverted was over 20,000 tons, which prevented the emission of nearly 34,000 metric tons of greenhouse gasses - the annual equivalent of removing over 7,000 cars from the road.

The eco-friendly efforts extend beyond recycling movie and TV sets, to the studios' major building projects, where they are constructing new buildings according to Leadership in Energy and Environmental Design (LEED) guidelines; installing water-conservation measures, and receiving energy from alternative sources such as several major solar energy installations generating major kilowatts of power for the facilities.

The Dark Knight in Chicago

The Dark Knight, which was filmed in Chicago during the summer of 2007, spent over $35 million in the local economy. The 65-day shoot directly employed 900 crew members, 88 actors and 7,500 man/days of extras, who were paid $18 million in wages. It also generated $17 million in payments to 793 local vendors, including more than $3 million in spending on hotels, $1 million on catering, $1 million on office rental and equipment, and $980,000 on lumber and other set materials.

Although there were many film-industry specific vendors, like lighting equipment or film processing, the vast majority of local Chicago vendors that provided service for *The Dark Knight* production were from outside the industry, illustrating the widespread effect. NAPCO Steel provided more than 60 tons of steel for sets and special effects stunts – including building a steel cylinder that was embedded in the street that popped out and flipped over a semi tractor-trailer. Service Glass removed existing glass walls and doors in both the IBM Building and Illinois Plaza and replaced them with breakaway glass for stunt sequences. Gatwood Crane provided the industrial-sized cranes for a key scene. North Suburban Asphalt completed road work for the production and a local lumber supplier provided much of the production's needs for set construction. These are a few examples of the vital service provided by local Chicago vendors, and the far-reaching effects of one two-month film shoot.



Promoting Tourism

An increasing amount of film and television production is taking place throughout the United States, leading to a positive impact on tourism as fans are eager to visit locations featured in movies and television shows. Filming locations are highlighted in DVD Special Features and online sites with behind-the-scenes information, making it easier for film fans to identify destinations that they want to visit. A study published in the Journal of Travel Research analyzed the effects of film tourism on a variety of different locations throughout the United States, and found that a location featured in a successful film can see an increase of up to 75 percent in tourism the year after the film is released.[25]

The effect from individual films can vary and research has shown that collaborative campaigns between the tourism and film industries are the most powerful way to induce film tourism.[26] Tourism organizations can use films as springboards for marketing campaigns in order to promote their city or attraction. The Santa Barbara Conference and Visitors Bureau effectively promoted Santa Barbara wine country by offering visitors a detailed map of locations from the film *Sideways*. As a result, certain Santa Barbara County wineries saw a 300-percent increase in visitors a year after the film was released.[27]

Companies are also offering professional tours of film locations in cities like Boston, Washington D.C. and New York City so visitors can visit the sites where scenes from movies like *Good Will Hunting, Wedding Crashers,* and *The Sopranos* were filmed.[28] According to On Location Tours, Inc., the largest such TV and movie locations tour company, the *Sex and the City* tour in New York City was already drawing 1,200 visitors per week even prior to the release of the film in 2008.

Certain destinations can see increases in tourism long after the film is released. Twenty years after the release of *Field of* Dreams, the town of Dyersville, Iowa still gets 65,000 tourists a year to visit the cornfield in the film.[29] The town of Preston, Idaho, featured in *Napoleon Dynamite*, hosts an annual Napoleon Dynamite Festival for tourists visiting because of the film.[30] A survey completed by the New Mexico Tourism Department indicates that film-related tourism accounted for an estimated 5.5 percent of total New Mexico tourism expenditures in 2008, due to visitors' interest in seeing where movies like *No Country for Old Men* and *3:10 to Yuma* were filmed, even though those films did not specifically identify New Mexico locations.[31] Certain locations in Alaska saw a 100-percent increase in tourism as a result of the film *Into the Wild*.[32]

Sex and the City and New York City

The television show *Sex and the City*, based on the novel by Candace Bushnell, was on location in and around Manhattan for six seasons from 1998 to 2004. In the last few months of 2007, a feature film based on *Sex and the City* went on to film in New York City. Both the show, which aired on television and was released on DVD all over the world, and the film, which opened in theaters around the world during 2008 and was recently released on DVD, were unparalleled advertising for the city of New York and its attractions. Locations featured in the show, such as hotels, shops, bakeries and restaurants, see traffic from fans and have made special movie-related packages, as have local tour companies.[33] NYC & Company - New York City's official tourism marketing organization - used the film as a cost-free way to promote the city, highlighting the film and its locations on its website, and launching international promotions to amplify the impact of the film. George Fertitta, CEO of NYC & Company, says, "*Sex and the City* has been one of the all-time great commercials for the city of New York. There's all of the fabric and the texture and the vibrancy of New York. ... It shows everything: from a great shopping component to a nightlife component, to a restaurant component."[34]

Nights in Rodanthe and the Outer Banks of North Carolina

By Carolyn McCormick
Managing Director, Outer Banks Visitors Bureau

The motion picture *Nights in Rodanthe*, based on the bestselling novel by author Nicholas Sparks, was shot on location in the Hatteras Island village of Rodanthe, in the Outer Banks of North Carolina. Pictured here is the real oceanfront cottage that is portrayed as the fictional Inn at Rodanthe. The filming of *Nights in Rodanthe* employed 160 local crew member and 248 local talent and extras, and generated in-state production spending of over $10 million, with $3 million on Hatteras Island and the village of Rodanthe.

But the movie's impact goes far beyond filming. With its release in theaters, on video and on television, the world gets to see the beauty of the Outer Banks on an epic scale. The Outer Banks Visitors Bureau is promoting tourism based on movie scenes and nearby locations through a special *Nights in Rodanthe* tour, and ads featuring a specific location and a caption referring to its presence in the motion picture. Since the movie's release in theaters and the publicity around the movie, traffic to Hatteras Island and inquiries to visit the locations of the movie have increased by 20 percent. The Visitors Bureau's movie-related websites have received tens of thousands of new visitors. We anticipate visitors from around the world in 2009 and have already seen many taking the trip this last fall of 2008.

The economic climate has made the competition for the tourism dollar even more challenging. Having a major motion picture filmed on location has enabled the Outer Banks and the people of the Outer Banks to be introduced to the world. As the COO of the public authority responsible for the core of our economy, which is tourism, this opportunity to have Hollywood spend time here and feature our destinations could not have come at a better time. The experience and challenges that we all faced during filming will forever be a highlight of my 22-year career. And for that I thank the world of motion pictures.

Marley & Me in Florida and Pennsylvania

The film *Marley & Me*, based on the memoir of the same name by John Grogan, was filmed on location in two states: Florida, where John and his wife began married life; and in Pennsylvania, where the Grogan family later resided, and where they live to this day. These settings are critical to Grogan's book and to the film.[35] The production spent 113 days on location in Florida, injecting $10.1 million into the local economy, including $1.1 million at seven different hotels including The Mutiny Hotel and The Sonesta Hotel & Suites and $5.1 million in wages to 2,020 local personnel hires. Local vendors included C.F.R. Coastal Enterprises, which provided soundproofing for the set, and Foliage Express, Inc. and Shell Lumber & Hardware, which provided set construction materials. In Pennsylvania, $2.2 million was spent over 36 days in production, and 480 people were hired locally. Two local residents making an appearance in the film were the Grogans themselves, who appeared in the film as participants in the obedience school sequence.

In addition to the 2,500 additional cast, extras, crew, security, off-duty government personnel, and office personnel hired locally by the production, the film features 22 even more remarkable employees – the 22 dogs used to portray Marley, who ages thirteen years in the story. Since films shoot scenes out of sequence, eleven Marley puppies were needed, while the other eleven Marleys ranged in age from six months to fourteen years. The complexity of coordinating these 22 employees and their on-screen appearances kept the animal trainers and handlers extremely busy. They spent weeks training the dogs, acclimating to the shooting locations, and polishing their "skills," all of which was observed by American Humane animal safety representatives, who noted that the best part of the experience was seeing some of the shelter dogs used in the film adopted following production.[36] One of the Marleys was adopted by the author[37], but the Marley puppy who seemingly took his "training" most to heart belongs to a woman in West Kendall, Florida, who has her hands extremely full with a Marley just like the original.[38] The film may have a positive effect on the dog training industry – the Association of Pet Dog Trainers used the film as an opportunity to promote effective dog training and qualified trainers around the country.[39]

Online Production and Distribution

Most people are familiar with watching trailers, finding movie tickets and buying DVDs online, but the Internet is an even more exciting space for distributing motion picture and television, on-demand, wherever and whenever the viewer wants it. Motion picture and television producers are providing full-length television shows and films at countless websites – over 50 in the U.S. alone – for people to view, to rent, or download to own. The sites are not only from telecom and online players like Apple, but television networks like ABC, pay television operators like HBO, social networking sites like MySpace, retailers and rentailers like Amazon and Netflix, gaming systems like PlayStation and Xbox and new ventures devoted entirely to this space like Hulu and TV.com.

Such websites are growing in popularity. More than 75 percent of people online view videos. A few examples of popular sites for films and TV shows are:

ABC.com
In the first year of the broadband player launched on ABC.com (September 2006-2007), users watched over 140 million episodes of ABC primetime series.[40] As of January 2009, that number is now over 500 million episodes.[41]

Apple - iTunes
As of October 2008, the iTunes store has sold over 200 million television episodes since inception three years earlier, including more than 1 million high definition episodes in the one-month since launch.[42] iTunes customers are also renting and purchasing over 50,000 movies online every day.[43]

Hulu
Hulu, which just launched to the public in March 2008, was the 6th ranked website in the U.S. in videos viewed by December, with 241 million videos viewed, and 25 million unique viewers[44] and reached the number two position by February 2009.[45]

Nickelodeon – Nick.com
Nick.com delivered 69 million streams and 2.5 million unique video viewers in February 2009. Users viewed an average of 39 minutes of videos on the site.[46]

Xbox & Netflix
Xbox movie and television sales online increased 174% between December 2008 and January 2009, compared to December-January of last year.[47]
Xbox Live users watched 25 million hours of movies and TV shows from Netflix on their Xbox in the three months following launch in November 2008.[48]

Marketing and distributing movies and television shows online not only meets consumer demand, but creates new jobs and demand for technology innovation in the areas of engineering, software development, web design, advertising and marketing, legal and more. It even creates new opportunities for professional production specifically for the Internet, such as "webisodes" produced by major networks from their shows, or new content provided by online-only production companies.

Pioneering technological advancement in storytelling and distribution

The American motion picture and television industry is a world leader in developing and deploying new technologies, providing highly-sought after jobs at the cutting-edge intersection of entertainment and technology. Whether it is pioneering and expanding the field of computer animation and computer-generated imagery (CGI) for film, pursuing advanced 3-D display, or utilizing the highest quality audio technology, the industry has continued to further the use of technology used in film and technology production at every stage. Beyond production, the industry is aggressively involved in the development of new technologies to provide enhanced filmed entertainment to consumers in theaters, at home and on the go. The efforts of many hard-working and inventive people mean that consumers can now enjoy digital and 3-D cinema in theaters and highest quality entertainment formats in the home (Blu-Ray, high definition televisions, network connected set-top boxes and personal video recorders), while also having countless options for watching content on the go (websites offering streaming, rental and downloaded entertainment, SD cards with movies, mobile phones that can receive broadcast or streaming content, etc). The motion picture industry's engineers and other employees are also collaborating with other industries to enable "buy once, play anywhere" downloading, provide consumers with digital copies of films with their packaged discs, enable rich digital and online features on Blu-Ray discs, and permit DVD-burning of legally downloaded content, while still protecting the investment of the creator.

The industry's demand for new methods of storytelling, advanced special effects, and improved sound and visual quality, has resulted in innovations that not only enrich the viewing experience, but advance the progress of science and the public good. Examples of such innovations have come in areas such as:

- Building design and operation that reduce lifetime energy and resource consumption;
- Research and development of environmentally friendly fireworks;
- Facial recognition and biometric scanning;
- Crash barriers to secure facilities from unauthorized vehicle intrusions;
- Fasteners useful in high stress mechanical structures such as planes, bridges as well as roller coasters;
- Passenger restraint systems;
- Train car coupling systems;
- Improvements in wheelchair accessibility; and
- Handheld information devices to improve communication in multiple languages.

The Creators Behind Visual Effects

The inventive filmmaking of the American motion picture industry is made possible through the development of innovative technology and the creation of jobs on the cutting edge of visual effects. These jobs already number over 10,000, and are expected to grow over 25% in the next five to seven years.[49]

Highly skilled artists combine their efforts with computer engineers to produce photorealistic characters and imagery in the field of computer-generated animation. Pixar, which unveiled groundbreaking computer-generated (CG) animation technology in November 1995 with the release of *Toy Story*, integrated CG animation with live action for their first time on *WALL-E* in order to produce a new look and feel.[50] The visual effects team at Blue Sky Studios must often write custom software tools in order to create the desired animated effect, such as exploding lava geysers or falling snow in the *Ice Age* films.[51] In order to create the elaborate martial arts scenes in *Kung Fu Panda,* DreamWorks' team of artists and technical leaders used the largest number of moving cameras in a DreamWorks Animation picture to date.[52]

Visual effects employees must constantly adapt existing technology to meet increasingly more complex and sophisticated filmmaking demands. When production started on the film *Spider-Man 3,* computer programs were not available that could achieve the effects needed. Sony Pictures Imageworks artists and engineers wrote code in order to manipulate millions of grains of sand as they formed a character made entirely of sand, resulting in one of the most visually complex characters in film history.[53]

Similarly, technology did not exist that could make a faithful visual depiction of a character who is born old and ages in reverse, as in the film *The Curious Case of Benjamin Button.* Special effects company Digital Domain solved this problem by combining motion picture capture technology, high definition cameras and image analysis in new and unique ways in order to realistically portray this reverse life journey and overcome yet another storytelling challenge previously thought unconquerable.[54]

These technological challenges are met by teams of hard-working individuals. To give you an idea of the scope, the creative team working on the 3D animated film adaptation of the book, *Cloudy with a Chance of Meatballs,* numbers 250 people. One full week's work by this team turns out two and a half minutes of footage.[55]

Angels & Demons in Los Angeles

The movie *Angels & Demons*, based on the bestselling novel by Dan Brown, was filmed extensively in Los Angeles, both on studio sets carefully constructed to recreate Vatican City locations, as well as local venues like UCLA's Royce Hall. During its more than two years of production starting in December 2006, *Angels & Demons* employed over 1,400 U.S. workers, including over 1,000 union technicians like the 272 construction workers who did extensive set building; 73 actors; and 9,066 man-days of extras. Filming in Los Angeles took place during 103 days, including 87 days on the various stages constructed, as well as 26 days of post production.

Angels & Demons relied on small businesses and vendors to help create the settings and effects. Sprung Instant Structures provided massive tent structures used to reproduce famous Italian sculptures to scale. Wallpaper vendors carefully matched the walls of Vatican and church locations. And a team of over 450 visual effects illustrators and technicians worked on the multi-million dollar recreation of St. Peter's and other Italian landmarks for the big screen.

A project of this size, scope and duration requires the tremendous efforts from numerous people and businesses, and its economic impact is felt far and wide.

Spotlight

Methodology

The creative output of the American motion picture and television industry is widely recognized around the world, yet its contribution to the nation's economy is less well known. This purpose of this report is to shed light on the industry as a significant job creator and economic engine. The report is prepared by the Motion Picture Association of America (MPAA) using data from a number of sources, including studios, networks, key government agencies such as the Bureau of Labor Statistics and International Trade Administration, and various other proprietary and publicly-available data. Where 2008 data was available, it was used; however, at the time of printing 2008 data was not available for many of the sources.

All attempts have been made to calculate the full impact of the industry. However, we have been intentionally conservative with the appropriate Bureau of Economic Analysis' Regional Input-Output Multiplier (RIMS II) to calculate indirect jobs, and have not calculated further downstream dollar impact or "induced" effects from spending resulting from those jobs. Thus, the total economic impact is even greater, and more far-reaching, than revealed in this report.

Studios and Networks

Participants in a periodic survey supply employment, payroll, vendor expenditure and tax information covering all motion picture and television production functions to enable the Association to build a comprehensive picture of the size, scope, and impact of the industry.

The core survey data covered the following studios and networks: ABC, Dreamworks, Fox, NBC Universal, Paramount Pictures, Sony Pictures Entertainment, 20th Century Fox Film Corp. The Walt Disney Company, and Warner Bros., along with their subsidiaries and affiliates.

Bureau of Labor Statistics

The Bureau of Labor Statistics (BLS) provides additional information on employment in the industry. The BLS no longer publishes key employment data based on the U.S. Standard Industry Classification (SIC) codes. Since the SIC category 7819 of "Allied Services to the Motion Picture Production" was reallocated under the North American Industry Classification System (NAICS) into a number of different industry classifications, correspondence tables (census bridges) were used in an effort to capture more accurate employment figures. The same correspondence tables were used as in earlier reports. Note that according to Economic Research Associates, BLS captures the 85-95% of U.S. employees that are eligible for unemployment insurance.

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State and local film commissions around the country

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SESSION 2009

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HOUSE BILL 203
Committee Substitute Favorable 2/25/09
Committee Substitute #2 Favorable 4/8/09

Short Title: Increase Small Estate Amount. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE SIZE OF ESTATES THAT MAY BE ADMINISTERED UNDER THE SMALL ESTATES PROVISIONS OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-25-1(a) reads as rewritten:

"(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that he or she is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and his residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ~~ten thousand dollars ($10,000);~~ twenty thousand dollars ($20.000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20.000) in value but shall not exceed ~~twenty thousand dollars ($20,000)~~ thirty thousand dollars ($30.000) in value. In such cases, the affidavit shall state: (i) the name and address of

the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ~~twenty thousand dollars ($20,000);~~ thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection."

SECTION 2. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that he is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and his residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of his death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) in value but shall not exceed ~~twenty thousand dollars ($20,000)~~ thirty thousand dollars ($30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~twenty thousand dollars ($20,000);~~ thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection."

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

HOUSE BILL 203:
Increase Small Estate Amount

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 17, 2009
Introduced by:	Reps. Randleman, Hurley, Spear, Faison	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***The Proposed Committee Substitute for House Bill 203 would increase the cap on the size of estates that may be administered under the Small Estates provisions of the General Statutes (Article 25 of Chapter 28A). The total value of an estate that could be administered under this Article would increase from $10,000 to $20,000, and surviving spouses would be eligible to collect property valued between $20,000 and $30,000 (was $10,000 to $20,000).***

CURRENT LAW: Article 25 (Small Estates) of Chapter 28A of the General Statutes (Administration of Decedents' Estates) sets forth provisions governing the administration of small estates for persons dying testate or intestate. Current law establishes a cap of $10,000 on the size of a small estate and allows surviving spouses to collect from estates valued between $10,000 and $20,000. The $10,000 amount has been in place since 1983. In 1995, the General Assembly established the $20,000 threshold for situations in which the sole heir is the surviving spouse.

BILL ANALYSIS: House Bill 203 would amend G.S. 28A-25-1 to raise the value of estates of persons dying intestate that may be administered under the Small Estate provisions of the General Statutes by $10,000. Under the proposed provisions, small estates would include those valued up to $20,000 and surviving spouses would be allowed to collect estates valued between $20,000 and $30,000.

House Bill 203 would also amend G.S. 28A-25-1.1 to make identical changes to the Small Estate provisions applying to persons dying testate.

EFFECTIVE DATE: The act would become effective October 1, 2009 and would apply to estates of persons dying on or after that date.

Ben Popkin, counsel to House Judiciary III, substantially contributed to this summary.

H203-SMTD-89(e3) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 203 (Third Edition)

SHORT TITLE: Increase Small Estate Amount.

SPONSOR(S): Representatives Randleman, Hurley, Spear, and Faison

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14

No Significant Impact is Expected

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Courts

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY: House Bill 203 would amend G.S. 28A-25-1 to raise the value of estates of persons dying intestate that may be administered under the Small Estate provisions of the General Statutes by $10,000. Under the proposed provisions, small estates would include those valued up to $20,000. The bills also increase the size of estates that surviving spouses would be entitled to collect from $20,000 to $30,000. House Bill 203 would also amend G.S. 28A-25-1.1 to make identical changes to the Small Estate provisions applying to persons dying testate.

ASSUMPTIONS AND METHODOLOGY:
House Bill 203 increases the value of estates that may qualify as a small estate from $10,000 to $20,000 and allows surviving spouses to collect estates valued up to $30,000. This increases the number of estates that may qualify under the small estate provisions and expedites the collection of properties and debts after the death of the decedent by enabling a greater number of estate executors to file affidavits to collect the property and debts of an estate. This bill will not impact the amount of estate tax collected and therefore has a negligible fiscal impact.

SOURCES OF DATA: NC General Statutes

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

Marjorie Rutherford

APPROVED BY:

John Poteat
on behalf of Marilyn Chism, Director
Fiscal Research Division

DATE: April 9, 2009

HOUSE BILL 384

Short Title:	Fuquay-Varina Quick Take.	(Local)
Sponsors:	Representative Stam.	
Referred to:	Local Government II, if favorable, Judiciary I, if favorable, Finance.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF FUQUAY-VARINA TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING PUBLIC STREETS AND ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property interests (including, without limitation, fee simple title, rights-of-way, and easements) to be used for waterlines and treatment facilities, and sewer lines and treatment facilities, and opening, widening, extending, or improving public streets and roads, a town may use the authority and procedure prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to be 'Town Manager,' and whenever the word 'highway' appears, it is deemed to include 'public works' in accordance with this section, providing further that nothing herein shall be construed to enlarge the power of the town to condemn property already committed to public use; provided further, just compensation for the acquisition of fee simple title or a perpetual easement pursuant to this section to be used for street or road right-of-way shall be no less than (i) one dollar ($1.00) per square foot of real property taken or (ii) the prorated ad valorem tax value of the parent tract, whichever is less. The powers granted by this act are in addition to and supplementary to those powers granted by any local or general law.

SECTION 2. This act applies to the Town of Fuquay-Varina only.

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

HOUSE BILL 384:
Fuquay-Varina Quick Take

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 17, 2009
Introduced by:	Rep. Stam	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 384 would authorize the Town of Fuquay-Varina to use the condemnation procedures of Article 9 of Chapter 136 when taking property for water lines and treatment facilities, sewer lines and treatment facilities, or for opening, widening, extending or improving public streets and roads. Where property is taken for street or road right-of-way, the bill also would require that the owner be paid no less than either $1.00 per square foot of property taken or the prorated ad valorem tax value of the parent tract, whichever is less.

CURRENT LAW: Chapter 40A sets forth the procedure that must be followed when a municipality such as the Town of Fuquay-Varina, takes private property for a public purpose. When the Department of Transportation exercises it power of eminent domain, it does so according to the provisions of Article 9 of Chapter 136 of the General Statutes. The differences between the two procedures are:

- Under Chapter 40A, the condemnor must give the owner of the property to be acquired 30 days notice of its intent to institute an action to condemn the property.[1] Under Article 9 of Chapter 136, the condemnor does not have to give this 30 day notice.
- Under Chapter 40A, just compensation, where there is a partial taking of a tract, is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking or (ii) the fair market value of the property taken. Under Article 9 of Chapter 136, consideration is also given to any benefit created by the proposed improvement or project for which the property is taken.

BILL ANALYSIS: House Bill 384 would allow the Town of Fuquay-Varina to use the condemnation procedures under Article 9 of Chapter 136 when the property is being taken for the specified water, sewer, and streets and roads projects. Under the procedures authorized by the bill, the Town would not be required to give the owner 30 days advance notice before it commences a condemnation proceeding, as now required under Chapter 40A. In addition, when the Town acquires property for street or road right-of-way, the bill would require that the owner be compensated in an amount not less than either $1.00 per square foot of property taken, or the prorated ad valorem tax value of the parent tract, whichever is less.

Other local governments have been authorized to use the "quick take" procedures set forth in Article 9 of Chapter 136,[2] and in at least two instances, the General Assembly has placed minimum limits on the amount of compensation to be paid when property is taken for street or road right-of-way.[3]

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

Bill Patterson, and Judy Collier substantially contributed to this summary.

H384-SMTD-90(e1) v2

[1] For purposes of road construction and improvement, the title to the property and the right to immediate possession vests automatically with the city subject to the filing of the condemnation complaint and deposit of the estimated just compensation. Chapter 40A and Article 9 of Chapter 136 do not differ in this point.

[2] *See, e.g.*, S.L.1983-437 (Charlotte), S.L. 1985-47 (Winston-Salem), S.L. 1985-422 (Conover, Hickory, and Maiden), S.L. 1989-328 (Rocky Mount), S.L. 1989-348 (Wilson).

[3] *See, e.g.*, S.L. 2003-88 (Apex) and S.L. 2005-57 (Holly Springs).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 394
Committee Substitute Favorable 3/18/09

Short Title: Raleigh Motor Vehicles. (Local)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO INCREASE ITS GENERAL MOTOR VEHICLE TAX BY UP TO FIVE DOLLARS EACH YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b), as it applies to the City of Raleigh under Section 2 of S.L. 2007-333, reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) per year upon any vehicle resident in the city or town. The proceeds of the tax up to fifteen dollars ($15.00) may be used for any lawful purpose. The proceeds of these taxes derived from any levy above fifteen dollars ($15.00) and up to ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) shall be used exclusively for transportation-related purposes, including sidewalks."

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

HOUSE BILL 394:
Raleigh Motor Vehicles

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Reps. Ross, Weiss	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 394 increases the amount of general municipal vehicle tax the City of Raleigh may impose from $20 to $25. The proceeds of the additional tax may be used only for transportation-related purposes, including sidewalks.***

CURRENT LAW: The City of Raleigh is authorized to levy a general motor vehicle tax of not more than $20. The first $15 may be used for any lawful purpose. Any amount above $15 and up to $20 must be used for transportation-related purposes, including sidewalks.

Under general law, counties may not impose a license or privilege tax on motor vehicles[1] and municipalities are limited in the taxes they may impose on motor vehicles to the taxes listed below:

- **General Municipal Vehicle Tax.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. The revenue generated by this tax may be used for any lawful purpose. By local acts, the amount of the tax has been increased for several cities and towns. The cities of Durham, Henderson, and Oxford and the towns of Ahoskie, Cary, Creedmoor, and Hillsborough may levy a tax of up to $10. The cities of Gastonia and Kinston and the towns of Apex, Garner, Holly Springs, Knightdale, Morrisville, and Rolesville may levy a tax up to $15. The cities of Charlotte, Greenville, Raleigh, and Winston-Salem; the towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Murfreesboro, and Pineville; and the municipalities located wholly or partially in Cabarrus County may levy a tax up to $20. The towns of Carrboro and Chapel Hill may levy a tax of up to $25. The town of Matthews may levy a tax up to $30. This vehicle tax is shown on the bill for vehicle taxes sent by the county.
- **Local Public Transportation.** – A tax not to exceed $5 a year on a motor vehicle resident in the municipality. Only municipalities that operate a public transportation system may impose this tax and the proceeds from the tax may be used only for local public transportation systems.[2]
- **Tax on Taxicabs.** – A tax not to exceed $15 a year on each vehicle operated in the municipality as a taxicab. The proceeds of this tax may be used for any lawful purpose.

BILL ANALYSIS: House Bill 394 would authorize the City of Raleigh to increase its motor vehicle tax from $20 to $25. The proceeds of the additional taxes must be used exclusively for transportation-related purposes, including sidewalks.

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

BACKGROUND: Attached is a chart showing local modifications to motor vehicle taxes.

H394-SMRE-43(e2) v1 Martha Walston, counsel to House Finance Committee substantially contributed to this summary.

[1] By local acts modifying G.S. 20-97, Alleghany, Caswell, and Pamlico Counties may impose an annual motor vehicle tax. The amounts vary from $5 to $15.

[2] This tax may not be imposed by the city of Durham or by any cities and towns in Gaston County.

Local Modifications – Motor Vehicle Taxes

LOCAL GOVERNMENT	SESSION LAW	MODIFICATION
Alleghany County	1993-456	$10.00
	1993-761	technical change
Cabarrus County	2005-116	$20.00
Caswell County	1977-420	$1.00
	1979-450	$5.00
	1987-334	$15.00
	1989-527	SL 1979-450 is repealed
		SL 1987-334 applies to Caswell County under authority of SL 1977-420
Pamlico County	1993-751	Additional $5.00 for payments Global TransPark Development Zone
City of Charlotte	1985-1009	$20.00
	1991-209	$25.00 Over $20 – public transit purposes only
	1993-345	$30.00 Over $20 – public mass transit systems and mass transit-related activities
City of Concord	2005-116	$20.00 Up to $5 – any lawful purpose Over $5 – Special fund for transportation
City of Durham	1991-31	City of Durham may levy not more than $1 per year upon any vehicle resident therein.
	1991-209	City of Durham may levy not more than $1 per year upon any vehicle resident therein.
	1993-456	City of Durham may not levy more than $5 per year upon any vehicle resident therein.
	2003-329	2003-329 provided that the increase expires one year after the act became law (*July 18, 2003*). It also stipulated how the increase funds could be used.
	2004-103	2004-103 removed the restrictions and extended the sunset to 5 years after the act became law.
City of Gastonia	1989-1016	$5.00 → $15.00
	1991-557	$15.00
City of Greensboro	1991-31	$5.00 → $10.00
City of Greenville	1993-200	$20.00
City of Henderson	1987-1066	$5.00 → $10.00
City of Kannapolis	2005-116	$20.00 Up to $5 – any lawful purpose Over $5 – Special fund for transportation
City of Kinston	1991-838	$5.00 → $15.00
City of Oxford	1987-610	$5.00 → $10.00

	2008-29	$10.00→ $20.00
City of Raleigh	1987-998	$10.00
	1991-229	$10.00 → $15.00
	2007-333	1991-229 REPEALED
		$20.00 Up to $15 – any lawful purpose $15.00 → $20.00 – Transportation-related purposes, including sidewalks
City of Winston-Salem	1993-56	$10
	2005-278	1993-56 REPEALED
		$5.00 → $15.00
		Above $10.00 and up to $15.00– for transportation-related purposes as follows: 1/3 = traffic management functions 1/3 = public transit functions 1/3 = nonmotorized transportation functions, including sidewalks
		$15.00 → $20.00 – effective 1-1-07
Town of Ahoskie	1989-893	$5.00 → $10.00
Town of Apex	2007-108	$5.00 → $15.00 Up to $5—any lawful purpose Above $5/up to $15—Transportation-related purposes, including sidewalks
Town of Black Mountain	2005-306	$5.00 Municipal Tax for Public Transportation
Town of Carrboro	1991-392	$5.00 → $10.00
	1995-339	$10.00 → $15.00
	2005-306	$5.00 → $25.00—any lawful purpose
		1991-392 a/a/b 1995-339 REPEALED
Town of Cary	1993-325	$10.00
Town of Chapel Hill	1991-392	$5.00 → $10.00
	1993-456	
	1995-339	$10.00 → $15.00
	2008-16	$5.00 → $25—any lawful purpose Above $15.00—only for public transportation purposes
Town of Cornelius	1985-1009	$20.00
Town of Creedmoor	1987-610	$5.00 → $10.00
Town of Davidson	1985-1009	$20.00
Town of Garner	2007-73	$15.00 Up to $5 – any lawful purpose Above $5 – Transportation-related purposes, including sidewalks
Town of Hillsborough	1991-822	$5.00 → $10.00
Town of Harrisburg	2005-116	$20.00 Up to $5 – any lawful purpose

		Over $5 – Special fund for transportation
Town of Holly Springs	2007-73	$15.00 Up to $5 – any lawful purpose Above $5 – Transportation-related purposes, including sidewalks
Town of Huntersville	1985-1009	$20.00
Town of Knightdale	2007-73	$15.00 Up to $5 – any lawful purpose Above $5 – Transportation-related purposes, including sidewalks
Town of Matthews	1985-1009	$20.00 – any public purpose
	1991-209	$25.00 Over $5 – public transit purposes only
	1993-345	$30.00 Over $5 – public mass transit systems and mass transit-related activities
	2007-109	$30.00 – Road construction; maintenance, and repair, including sidewalks, or for public mass transit systems and mass transit-related activities
Town of Midland	2005-116	$20.00 Up to $5 – any lawful purpose Over $5 – Special fund for transportation
Town of Mint Hill	1985-1009	$20.00
Town of Morrisville	2007-108	$5.00 → $15.00 Up to $5—any lawful purpose Above $5/up to $15—Transportation-related purposes, including sidewalks
Town of Mount Pleasant	2005-116	$20.00 Up to $5 – any lawful purpose Over $5 – Special fund for transportation
Town of Murfreesboro	1987-953	$5.00 → $20.00
Town of Pineville	1985-1009	$20.00
Town of Rolesville	2007-73	$15.00 Up to $5 – any lawful purpose Above $5 – Transportation-related purposes, including sidewalks

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 394 (Second Edition)

SHORT TITLE: Raleigh Motor Vehicles.

SPONSOR(S): Representatives Ross and Weiss

FISCAL IMPACT ($ Millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Local Government	**$1.6**	**$1.6**	**$1.6**	**$1.6**	**$1.6**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Raleigh

EFFECTIVE DATE: Effective when bill becomes law

BILL SUMMARY:
House Bill 394 enables The City of Raleigh to increase its vehicle tax from $20 to $25. As under existing law, the bill requires that the proceeds of any levy above $15 shall be used exclusively for transportation-related purposes.

ASSUMPTIONS AND METHODOLOGY:
In order to calculate the impact of House Bill 394, it is necessary to know how many resident vehicles there are in the City of Raleigh. This will be the number of vehicles on which a tax may be levied. According to the Department of Transportation Driver and Vehicle Services, there are currently 313,671 resident vehicles in Raleigh. Assuming that Raleigh chooses to increase its motor vehicle tax to the maximum amount, multiplying the number of vehicles by the $5 increase in the tax results in a $1.57 million increase in revenues for FY 2009-2010. Assuming that the number of resident vehicles stays roughly the same over time, $1.57 million will also be the increase in revenues for the following four fiscal years.

SOURCES OF DATA: NC Department of Transportation Driver and Vehicle Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

Marjorie Rutherford

APPROVED BY: Bob Weiss

Bob Weiss
on behalf of Marilyn Chism, Director
Fiscal Research Division

DATE: April 3, 2009

HOUSE BILL 511

Short Title:	EMS/Fire Dept. Sales Tax Refund.	(Public)
Sponsors:	Representatives Williams, Goforth, Lucas, E. Warren (Primary Sponsors); Faison, E. Floyd, McLawhorn, Randleman, Setzer, Spear, Starnes, Tarleton, R. Warren, and Wray.	
Referred to:	Homeland Security, Military, and Veterans Affairs, if favorable, Finance.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REENACT THE SALES TAX REFUND FOR CERTAIN VOLUNTEER EMERGENCY RESPONSE PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.14(b) is amended by adding a new subdivision to read:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

...

(2a) An organization that is exempt from income tax under the Code and is one of the following:

a. A volunteer fire department.

b. A volunteer emergency medical services squad."

SECTION 2. This act is effective July 1, 2008, and applies to purchases made on or after that date.

HOUSE BILL 511:
EMS/Fire Dept. Sales Tax Refund

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2009
Introduced by:	Reps. Williams, Goforth, Lucas, E. Warren	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 511 would allow semi-annual refunds of sales and use taxes paid by a volunteer fire department or an emergency medical services (EMS) squad that is exempt from income tax under the Internal Revenue Code. This act would be effective retroactively to July 1, 2008, and apply to purchases made on or after that date.***

[HB 511 is identical to SB 980, as introduced by Sen. Jenkins, which is currently in Senate Finance.]

CURRENT LAW: During the 2008 Session, the General Assembly clarified the types of nonprofits that may receive a semiannual refund of State and local sales and use taxes paid by the nonprofit on direct purchases of tangible personal property and services[1] for use in carrying on the work of the nonprofit entity. Prior to the clarification, the Department of Revenue had to determine whether an entity requesting a refund was a 'charitable institution.' To make its determination, the Department relied upon past determinations and court decisions. In May 2008, the North Carolina Court of Appeals appeared to expand what could be considered a 'charitable institution'.[2] The intent of the 2008 legislation was to neither expand nor limit the prior law's application but to clarify it.

The clarification provided a bright line test that used as its starting point nonprofits exempt from income tax under section 501(c)(3) of the Code. The clarification became effective July 1, 2008. After the passage of the legislation, some volunteer fire departments learned they no longer qualified for the sales and use tax refund because they were not organized as a section 501(c)(3) organization. Many of the volunteer fire departments organized prior to the mid-1970s organized as a section 501(c)(4) organization[3] because that is how, at the time, the IRS recommended they organized.

BILL ANALYSIS: House Bill 511 would allow a volunteer fire department and a volunteer EMS squad that is exempt from income tax under the Code a sales and use tax refund, regardless of how the nonprofit is organized. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. However, under G.S. 105-164.14(d), a refund is not barred unless it is applied for more than three years after its due date.

EFFECTIVE DATE: The act is effective July 1, 2008, and applies to purchases made on or after that date. The retroactive effective date refers back to the date the clarification in the 2008 legislation became effective. The change made by this bill effectively reinstates the semiannual sales and use tax refund for volunteer fire departments and voluntary EMS squads.

Martha Walston, counsel to House finance, substantially contributed to this summary.

H511-SMRB-33(e1) v2

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[1] The refund does not apply direct purchases of electricity, telecommunications service, and ancillary service.

[2] *The Lynnwood Foundation v. N.C. Department of Revenue.*

[3] Section 501(c)(4) refers to civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 511 (First Edition)

SHORT TITLE: EMS/Fire Dept. Sales Tax Refund.

SPONSOR(S): Representatives Williams, Goforth, Lucas, and E. Warren

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES					
General Fund Impact	$ (2.44)	$ (2.51)	$ (2.56)	$ (2.60)	$ (2.65)
Local Impact	$ (1.07)	$ (1.06)	$ (1.08)	$ (1.10)	$ (1.12)
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue

EFFECTIVE DATE: Effective for purchases made on or after July 1, 2008.

BILL SUMMARY: HB 511 amends GS 105-164.14(b) adding (1) volunteer fire departments and (2) volunteer emergency medical services squads, which are also exempt from income tax under the Internal Revenue Code, to the list of nonprofit entities allowed a semiannual refund of sales and use taxes on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity. Effective for purchases made on or after July 1, 2008.

Under current law, GS 105-164.14(b), non-profit hospitals, certain qualified retirement facilities, and certain 501 c (3) organizations receive a semi-annual refund of sales and use taxes. The refund applies to direct purchases of tangible personal property and services used in carrying on the work of the nonprofit entity. The indirect purchases of materials used in carrying on the work of the nonprofit such as, building materials, supplies, fixtures, and equipment that become a part of a building or structure are also considered purchases eligible for the sales and use tax refund.

Refund requests must be in writing and requests for purchases made in the first six months of a calendar year are due by the following October 15th; requests for purchases made in the second six months of a calendar year are due the following April 15th.

By extending the nonprofit sales and use tax refund to (1) volunteer fire departments and (2) volunteer emergency medical services squads, HB 511 expands the definition of organizations eligible for state and local sales and use tax refunds to certain 501c (4)s as defined by the Internal Revenue Service (IRS).

ASSUMPTIONS AND METHODOLOGY: Based on the methodology described below, Fiscal Research expects that HB 511 will reduce General Fund availability by $2.4 million in FY 09-10 and $2.5 million in FY 10-11. Expanding the sales and use tax refund will also lower county and municipal sales and use tax revenue by $1.0 million in FY 09-10 and FY 10-11. This amount represents the refund that volunteer fire departments and emergency medical services squads will receive on non-salary, -facility, or -utility related operating expenditures.

Operating expenditures represent 48% of a 501 c (4)'s annual expenses according to 2004 Statistics of Income data from the IRS. Tax information on North Carolina's emergency and disaster preparedness 501 c (4)s suggests that these organizations will expend $107 million annually, during the 2008-09 and 2009-10 fiscal years, $51 million of which will be subject to sales tax. Under HB 511, these organizations will be eligible for refunds of approximately $3.4 million in state and local taxes each fiscal year.

SOURCES OF DATA:
National Center for Charitable Statistics

Internal Revenue Service, Statistics of Income Division. Table 2: Form 990 Returns of 501c (3)-(9) Organizations: Total Functional Expenditures, by Code Section, Tax Year 2004. Published August 2007.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sandra Johnson, Fiscal Analyst

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 3, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 533
Committee Substitute Favorable 4/6/09
Committee Substitute #2 Favorable 5/20/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H533-CSSVx-39 [v.3]

6/17/2009 10:54:08 AM

Short Title: Modify Hickory and Conover Occupancy Tax. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF HICKORY AND CONOVER TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

HICKORY OCCUPANCY TAX

SECTION 1.(a) Occupancy tax. – Authorization and Scope. – The City of Hickory may, by joint resolution with the City of Conover, levy a room occupancy and tourism development tax of not less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Authorization for Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the City of Hickory may, by joint resolution with the City of Conover, levy an additional room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The City of Hickory may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 1.(c) Administration. – Except as otherwise provided in this subsection, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. The City of Hickory may not repeal the levy of the room occupancy tax levied by it if, before the effective date of the repeal, either Hickory or Conover has outstanding indebtedness under Article 4, 5, 8, or 9 of Chapter 159 of the General Statutes for the provision of a convention center facility. A repeal of a tax levied under this section must be made by joint resolution with the City of Conover.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The City of Hickory shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism Development Authority. The funds remitted under this subsection must be used as follows:

(1) Through December 31, 2019. – Prior to and through December 31, 2019, the Authority may use two-thirds of the funds remitted to it under this subsection for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a convention center facility, including parking facilities for the convention center. The remainder of the funds must be used to promote travel and tourism. Debt issued to finance these improvements or facilities and that is secured by occupancy tax proceeds remitted under this subdivision must mature on or before December 31, 2019.

(2) After December 31, 2019. – After December 31, 2019, the Authority must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the area and must use the remainder for tourism-related expenditures.

SECTION 1.(e) The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hickory-Conover Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.(a) Tourism Development Authority. – Appointment and Membership. – If the City of Hickory levies a tax under Section 1 of this act, being the Hickory Occupancy Tax, and the City of Conover has created a Tourism Development Authority pursuant to Section 4 of this act, being the Conover Occupancy Tax, then the proceeds of any tax levied under Section 1 of this act shall be remitted to that Authority in accordance with Section 1(d) of this act.

If the City of Hickory levies a tax under Section 1 of this act, being the Hickory Occupancy Tax, and the City of Conover has not created a Tourism Development Authority pursuant to Section 4 of this act, being the Conover Occupancy Tax, then when the City Council of Hickory adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Hickory-Conover Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Hickory-Conover Tourism Development Authority is as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover, two of whom shall be appointed by the Hickory City Council and one appointed by the Conover City Council.

(2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council, and one by the Conover City Council.

(3) Three ex officio members shall be the City Managers of Hickory and Conover and the Executive Vice President of the Catawba County Chamber of Commerce.

All members of the Council shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms that will be staggered and may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer who shall serve for a term of two years.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Hickory shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hickory and Conover City Councils on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Councils may require."

CONOVER OCCUPANCY TAX

SECTION 3.(a) Occupancy tax. – Authorization and Scope. – The City of Conover may, by joint resolution with the City of Hickory, levy a room occupancy and tourism development tax of not less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.(b) Authorization for Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the City of Conover may, by joint resolution with the City of Hickory, levy an additional room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The City of Conover may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 3.(c) Administration. – Except as otherwise provided in this subsection, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. The City of Conover may not repeal the levy of the room occupancy tax levied by it if, before the effective date of the repeal, either Hickory or Conover has outstanding indebtedness under Article 4, 5, 8, or 9 of Chapter 159 of the General Statutes for the provision of a convention center facility. A repeal of a tax levied under this section must be made by joint resolution with the City of Hickory.

SECTION 3.(d) Distribution and Use of Tax Revenue. – The City of Conover shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism Development Authority. The funds remitted under this subsection must be used as follows:

(1) Through December 31, 2019. – Prior to and through December 31, 2019, the Authority may use two-thirds of the funds remitted to it under this subsection for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a convention center facility, including parking facilities for the convention center. The remainder of the funds must be used to promote travel and tourism. Debt issued to finance these improvements or facilities and that is secured by occupancy tax proceeds remitted under this subdivision must mature on or before December 31, 2019.

(2) After December 31, 2019. – After December 31, 2019, the Authority must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the area and must use the remainder for tourism-related expenditures.

SECTION 3.(e) The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hickory-Conover Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 4.(a) Tourism Development Authority. – Appointment and Membership. – If the City of Conover levies a tax under Section 3 of this act, being the Conover Occupancy Tax, and the City of Hickory has created a Tourism Development Authority pursuant to Section 2 of this act, being the Hickory Occupancy Tax, then the proceeds of any tax levied under Section 3 of this act shall be remitted to that Authority in accordance with Section 3(d) of this act.

If the City of Conover levies a tax under Section 3 of this act, being the Conover Occupancy Tax, and the City of Hickory has not created a Tourism Development Authority pursuant to Section 2 of this act, being the Hickory Occupancy Tax, then when the City Council of Conover adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Hickory-Conover Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Hickory-Conover Tourism Development Authority is as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover, two of whom shall be appointed by the Hickory City Council and one appointed by the Conover City Council.

(2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council, and one by the Conover City Council.

(3) Three ex officio members shall be the City Managers of Hickory and Conover and the Executive Vice President of the Catawba County Chamber of Commerce.

All members of the Council shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms that will be staggered and serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Hickory shall be the ex officio finance officer of the Authority.

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hickory and Conover City Councils on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Councils may require.

ADMINISTRATIVE PROVISIONS

SECTION 5.(a) The following acts, or portions of acts, having been revised and consolidated into this act, are repealed:

(1) Chapter 929 of the 1985 Session Laws, as it relates to the Cities of Hickory and Conover only.

(2) Chapter 319 of the 1987 Session Laws.

(3) Section 21(j) of S.L. 2007-527.

SECTION 5.(b) With respect to the City of Hickory, this section is effective upon the date the City of Hickory acts to levy a tax under Section 1 of this act. With respect to the City of Conover, this section is effective upon the date the City of Conover acts to levy a tax under Section 3 of this act.

SECTION 6. This act does not affect the rights or liabilities of a levying unit, a taxpayer, or another person arising under the laws revised and consolidated by this act before the effective date of this act; nor does it affect the right to any refund or credit of a tax that accrued under the laws revised and consolidated by this act before the effective date of this act.

SECTION 7. The purpose of this act is to revise and consolidate certain acts that authorize the Cities of Hickory and Conover to levy a room occupancy and tourism development tax, to clarify the authority of Hickory and Conover to levy a room occupancy tax by establishing separate authorizing provisions for each city, and to authorize each city to levy an additional one percent (1%) room occupancy tax. No provision of this act is intended, nor shall be construed, to affect in any way the authority of any other municipality authorized under the acts listed in Section 5 of this act to levy a room occupancy and tourism development tax.

SECTION 8. Administrative provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, ~~Elizabeth City,~~ Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of

Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 9. This act is effective when it becomes law.

HOUSE BILL 533:
Modify Hickory and Conover Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 17, 2009
Introduced by:	Reps. R. Warren, Setzer	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to Third Edition H533-CSSVx-39		

SUMMARY: ***House Bill 533 would authorize the cities of Hickory and Conover to levy an additional 1% room occupancy tax. Through 2019, the distribution of the proceeds from the additional 1% and the existing 5% would be reversed from the formula under the guidelines. Two-thirds would be permitted to be used for convention center expenditures, including parking facilities, and the remainder would be used tourism promotion. After 2019, the distribution would revert to the standard formula under the guidelines. The bill does, however, conform the existing legislation to the uniform administrative provisions related to the levy, collection, administration, repeal, and applicable penalties for occupancy tax.***

This bill was given a favorable report by the Occupancy Tax Subcommittee of the House Finance Committee. The PCS makes technical drafting changes only.

CURRENT LAW: In 1986, the General Assembly authorized the Cities of Hickory and Conover to levy a room occupancy tax of not less than 3% and not more than 5%, with 100% of the proceeds to be remitted to the Hickory-Conover Tourism Development Authority ("TDA"), for its use in funding tourism-related projects, events, and activities, with priority to be given to providing a civic center facility. Both the Cities of Hickory and Conover are currently levying a 5% room occupancy tax. The TDA is currently obligated through the City of Hickory for annual payments of approximately $800,000 per year for outstanding debt on the convention center.

BILL ANALYSIS: House Bill 533 repeals the existing occupancy tax legislation for Hickory and Conover and creates revised authority that is clearer and conforms to the uniform administrative provisions. The provisions for Hickory and Conover are identical.

The bill also authorizes each city to levy an additional 1% room occupancy tax, for a total rate of up to 6%, with net proceeds remitted to the TDA. Through December 31, 2019, the TDA would be able to use up to two-thirds of the remitted funds for the convention center facility, including parking facilities, with the remainder being used to promote travel and tourism. The Town is seeking the additional 1% to be able to construct a parking deck adjacent to the convention center.

After December 31, 2019, the distribution of the tax proceeds would return to the standard formula set out in the guidelines: at least two-thirds for promote travel and tourism and the remainder for tourism-related expenditures.

The bill does not make any changes to the composition of the TDA. Under current law, the Hickory-Conover is a nine-member board consisting of three owners or operators of taxable accommodations, three members who have a demonstrated interest in convention and tourism development who are not hotel owners, and three ex officio members.

The bill also requires that any debt service entered into to finance improvements to the convention center, including parking facilities, mature on or before December 31, 2019, to coincide with the return of the distribution of proceeds to the required formula under the guidelines.

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

BACKGROUND: Since 1983, the General Assembly has authorized many local government units to levy a room occupancy tax, with wide variation in the rate of tax, administration of the tax, use of the tax proceeds, and the body responsible for deciding how the tax proceeds will be spent. The North Carolina Travel and Tourism Coalition has issued a policy statement for legislation authorizing local occupancy taxes, which contains many principles similar to those established by the House Finance Subcommittee on Occupancy Taxes in 1993. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 (counties) and G.S. 160A-215 (municipalities) – to provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

Bill Patterson, counsel to House Local Government II, substantially contributed to this summary.

H533-SMSV-72(CSSVx-39) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 533 (Third Edition)

SHORT TITLE: Modify Hickory and Conover Occupancy Tax.

SPONSOR(S): Representatives Setzer and R. Warren

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	**Cities of Hickory and Conover**				
	$225,466	**$236,048**	**$254,026**	**$270,326**	**$280,914**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Cities of Hickory and Conover

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

BILL SUMMARY:

House Bill 533 revises and consolidates SL 1985-929, as amended, to authorize the cities of Hickory and Conover, by joint resolution, to levy a room occupancy and tourism development tax between 3% and 5%. The cities may also, by joint resolution, levy an additional 1% room occupancy tax. It provides that the tax must be levied, administered, collected, and repealed as provided in GS 160A-215 (Uniform provisions for room occupancy taxes).

The bill requires the Hickory-Conover Tourism Development Authority (TDA) to (1) prior to and through December 31, 2019, use two-thirds of the occupancy tax proceeds for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a convention center facility, including parking facilities, and the remainder used to promote travel and tourism and (2) after December 31, 2019, use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. It mandates that the TDA

membership consists of (1) three owners or operators of hotels, motels, or other taxable accommodations in the cities of Hickory and Conover, two of whom are to be appointed by the Hickory City Council and one appointed by the Conover City Council; (2) three individuals who have demonstrated an interest in convention and tourism development and do not own or operate taxable accommodations, one appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council, and one by the Conover City Council; and (3) the three following ex officio members: the city managers of Hickory and Conover and the Executive Vice President of the Catawba County Chamber of Commerce. Either city may create the TDA, by resolution, when adopting its resolution to levy its occupancy tax, unless the other city has already established it.

House Bill 533 makes a conforming change to GS 160A-215(g). It repeals (1) SL 1985-929 (multicity occupancy tax) as it relates to the cities of Hickory and Conover only, (2) SL 1987-319 (modifying the Hickory-Conover occupancy tax law), and (3) Section 21(j) of SL 2007-527 (amending SL 1985-929). And the bill specifies that all existing resolutions of the cities of Hickory and Conover adopted that are not inconsistent with the provisions of this act will continue in full force and effect until repealed, modified, or amended.

It requires that the net proceeds of the occupancy tax remitted to the Hickory-Conover Tourism Development Authority (TDA) by the cities of Hickory and Conover must be used as specified in the act. The bill requires that debt secured by occupancy tax proceeds that is entered into for the purpose of providing for the convention center facility, including the construction of parking facilities, must mature on or before December 31, 2019

ASSUMPTIONS AND METHODOLOGY:

The cities of Hickory and Conover currently have a maximum room occupancy tax rate of 5%. House Bill 533 would authorize the cities, by joint resolution, to levy an additional 1% tax, for a combined 6% local room occupancy tax.

According to the North Carolina Department of the State Treasurer, FY07-08 local occupancy tax collections for the cities of Hickory and Conover were $1,119,312 at the current 5% rate. Assuming a base of $22,386,430, an additional 1% room occupancy tax would have raised $223,864 in FY07-08. Those collections were then grown using North Carolina's leisure and hospitality growth rates as projected by Moody's Economy.com.

The Hickory-Conover TDA is currently obligated through the City of Hickory for annual payments of approximately $800,000 per year for outstanding debt on their convention center. At the new 6% rate, the two-thirds of occupancy tax collections allowed to be used towards convention center expenditures would equal $895,450.

SOURCES OF DATA: Moody's Economy.com, North Carolina Department of the State Treasurer

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 16, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 646

Short Title:	Bridgeton Satellite Annexations.	(Local)
Sponsors:	Representative Underhill.	
Referred to:	Local Government I, if favorable, Finance.	

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF BRIDGETON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

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

HOUSE BILL 646:
Bridgeton Satellite Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Rep. Underhill	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 646 is a local bill that would exempt the Town of Bridgeton from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.**

BILL ANALYSIS: House Bill 646 would add the Town of Bridgeton to the list of municipalities for which the fifth requirement stated above has been eliminated. The other municipalities include the following:

Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

EFFECTIVE DATE: This act would become effective when it becomes law.

H646-SMRE-44(e1) v1

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

HOUSE BILL 854

Short Title:	Forsyth County Occupancy Tax Modifications.	(Local)
Sponsors:	Representative McGee.	
Referred to:	Local Government I, if favorable, Finance.	

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORSYTH COUNTY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part VII of Chapter 908 of the 1983 Session Laws, as amended by Chapters 33 and 924 of the 1985 Session Laws, Chapter 870 of the 1989 Session Laws, and S.L. 1997-408, reads as rewritten:

"Part VII. Forsyth Occupancy Tax.

~~"Sec. 24. Levy of Tax. (a) The Board of Commissioners of Forsyth County may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"Sec. 25. Occupancy Tax. – Authorization and Scope. – ~~The county room occupancy and tourism development tax that may be levied under this Part shall be~~ The Board of Commissioners of Forsyth County may levy a room occupancy and tourism development tax of two percent (2%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county ~~now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3).~~that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to ~~gross receipts derived by the following entities from~~ accommodations furnished by ~~them:~~ any of the following:

(1) Religious organizations.~~religious organizations;~~
(2) Educational organizations.~~educational organizations;~~
(3) Any ~~any~~ business that offers to rent fewer than five units.~~units; and~~
(4) Summer ~~summer~~ camps.

"Sec. 26. Administration of Tax. ~~(a)~~ – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.~~Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed six months, or both.~~

~~"Sec. 27. Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Forsyth County. The room occupancy tax levied pursuant to this Part shall be added to the sales price and shall be passed onto the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in Forsyth County the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 28. ~~Disposition~~ Distribution of Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County ~~shall~~ shall, on a quarterly basis, remit the net proceeds of the occupancy taxes levied under Sections ~~24, 25,~~25 and 30.1 of this Part ~~on a quarterly basis~~ as follows:

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.

(2) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

~~'Net proceeds' has the meaning provided in Section 30.2(d) of this Part.~~

(b) Use. – A municipality may expend funds distributed to it pursuant to subsection (a) of this section only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) of this section to further the development of travel, tourism, and conventions within Forsyth County. ~~The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses.~~

"Sec. 29. Appointment and Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following ~~thirteen~~ nine members:

(1) A county commissioner appointed by the board of county commissioners, who shall serve as an ex officio member.

(2) A member of the Winston-Salem Board of Aldermen appointed by the board of aldermen, who shall serve as an ex officio member.

(3) Four owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate hotels, motels, or other accommodations with more than 100 rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of

county commissioners; and two of which own or operate hotels, motels, or other accommodations with 100 or fewer rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners.

(4) Three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Winston-Salem Board of Aldermen, one by the Winston-Salem Area Chamber of Commerce, and one by the board of county commissioners.

~~(5) Four individuals appointed by the Forsyth County Tourism Development Authority who do not own or operate hotels, motels, or other tourist accommodations taxable under this Part or tourist businesses, and who (i) are local citizens with a demonstrated interest in the tourist and visitor industry or (ii) have demonstrated relevant expertise in such fields as the transportation industry, visitor attractions, the convention center and coliseum, or marketing and advertising.~~

(a1) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the members appointed pursuant to subdivisions (a)(1) and (2), who shall serve at the pleasure of the appointing board, and the initial members, who shall serve the following terms:

(1) Of the members appointed pursuant to subdivision (a)(3), one appointee of the board of aldermen and the board of commissioners shall serve a two-year term and one appointee of the board of aldermen and the board of commissioners shall serve a three-year term, as designated by the board of aldermen and board of county commissioners;

(2) Of the three members appointed pursuant to subdivision (a)(4), the appointee of the Winston-Salem Board of Aldermen shall serve a one-year term, the appointee of the Winston-Salem Area Chamber of Commerce shall serve a two-year term, and the appointee of the board of county commissioners shall serve a three-year term.

Except for the ex officio members, members~~Members~~ may serve no more than two consecutive terms. The members shall elect a chairman, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Forsyth County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 30. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Forsyth County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax~~

~~that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~

"Sec. 30.1. Additional One Percent (1%) Tax. – In addition to the tax authorized by ~~Sections 24 and~~ Section 25 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections.~~ that section. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections ~~24 through 30~~25 through 29 of this Part. Forsyth County may not levy a tax under this section unless it also levies a tax under ~~Sections 24 and~~ Section 25 of this Part.

"Sec. 30.2. Additional Three Percent (3%) Tax. (a) Levy. – In addition to the taxes authorized by Sections ~~24, 25,~~25 and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 25, 26, and 29~~24 through 27 and 29 through 30~~ of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections ~~24, 25,~~25 and 30.1 of this Part.

(b) Distribution. – The net proceeds of the tax levied under this section shall be distributed as follows:

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.

(2) After subtracting the amount provided in subdivision (1) of this subsection, one-third of the remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

(3) After subtracting the amounts provided in subdivisions (1) and (2) of this subsection, ten percent (10%) of the remaining net proceeds shall be divided among those municipalities in Forsyth County, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality.

(4) After subtracting the amounts provided in subdivisions (1), (2), and (3) of this subsection, the remaining net proceeds shall be divided between Forsyth County and the City of Winston-Salem on a pro rata basis.

(c) Use. – A municipality that receives funds pursuant to subdivision (b)(3) of this section shall use at least two-thirds of all funds it receives pursuant to this Part to promote travel and tourism in the municipality and shall use the remainder for tourism-related expenditures. ~~The~~ A municipality may use no more than ten percent (10%) of the funds it receives pursuant to this Part for its administrative expenses, including salaries and benefits.

Forsyth County or a municipality that does not receive funds pursuant to subdivision (b)(3) of this section may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part.

(d) Definitions. – The following definitions apply in this ~~section:~~Part:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or

business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity making the expenditure, are designed to increase the use of lodging and meeting and convention facilities in the area by attracting tourists or business travelers to the area; the term includes tourism-related capital expenditures."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

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

HOUSE BILL 854:
Forsyth County Occupancy Tax Modifications

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Rep. McGee	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 854 modifies the Forsyth County occupancy tax by conforming the act to the uniform administrative provisions on occupancy tax and by modifying certain provisions related to the Forsyth County Tourism Development Authority.***

The Occupancy Tax Subcommittee gave this bill a favorable report on May 7, 2009.

CURRENT LAW: Forsyth County currently has the authority to levy a 6% room occupancy and tourism development tax. Originally enacted in 1983 and most recently amended in 1997, the local act does not conform to the guidelines adopted by the House Finance Committee.

The first three percent (3%) is distributed as follows:

- 5% is divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis, to be used for economic development and cultural and recreational purposes.
- The remainder is remitted to the TDA to further the development of travel, tourism, and conventions within Forsyth County.

The second three percent (3%) is distributed as follows:

- 5% is divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis, and is to be used for economic development and cultural and recreational purposes.
- One-third of the remaining net proceeds are remitted to the TDA to be used to further the development of travel, tourism, and conventions within Forsyth County.
- 10% of the remaining net proceeds is divided among the municipalities in Forsyth, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality. Of these proceeds, at least two-thirds must be used for tourism promotion and the remainder for tourism-related expenditures.
- The remaining net proceeds are divided between Forsyth County and the City of Winston-Salem on a pro rata basis, and are to be used for economic development and cultural and recreational purposes.

Forsyth County has a 13-member TDA Board consisting of two ex officio members, four owners or operators of accommodations, three individuals involved in the tourist business but who do not own taxable accommodations, and four individuals appointed by the TDA who do not own taxable accommodations and (1) who are local citizens with a demonstrated interest in the tourism industry, or (2) have expertise in fields such as the transportation industry, visitor attractions, the convention center, or marketing and advertising.

BILL ANALYSIS: House Bill 854 does not change the rate of tax or the manner in which the funds are distributed. However, the bill does make the following changes:

- Applies the uniform statutory administration provisions to the administration of the occupancy tax.

- Reduces the membership of the TDA from 13 to 9 members by eliminating the 4 individuals appointed by the TDA.
- Currently, the TDA may not use more than 10% of the funds distributed to it for administrative expenses. The bill eliminates the 10% cap.
- Authorizes ex officio members of the TDA (a county commissioner and a member of the Winston-Salem Board of Alderman) to serve more than two terms on the Authority.

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

BACKGROUND: ***Since 1983, the General Assembly has authorized many local government units to levy a room occupancy tax, with wide variation in the rate of tax, administration of the tax, use of the tax proceeds, and the body responsible for deciding how the tax proceeds will be spent. The North Carolina Travel and Tourism Coalition has issued a policy statement for legislation authorizing local occupancy taxes, which contains many principles similar to those established by the House Finance Subcommittee on Occupancy Taxes in 1993. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 (counties) and G.S. 160A-215 (municipalities) – to provide uniformity in the areas of levy, administration, collection, repeal, and penalties***

H854-SMRE-45(e1) v1

The following Research Division staff made substantial contributions to this summary:

- *Trina Griffin, counsel to House Finance Committee*
- *Giles Perry, counsel to House Local Government I Committee.*

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 854 (First Edition)

SHORT TITLE: Forsyth County Occupancy Tax Modifications.

SPONSOR(S): Representative McGee

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
EXPENDITURES	***No Fiscal Impact Expected***				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Forsyth County Tourism Development Authority

EFFECTIVE DATE: Effective when bill becomes law

BILL SUMMARY:
House Bill 854:

- applies the uniform statutory administration provisions to the administration of the Forsyth Occupancy tax.
- repeals the provision providing that the Forsyth County Tourism Development Authority may not use more than 10% of the fund distributed to it for administrative expenses.
- reduces the membership of the Tourism Development Authority, created by the Board of County Commissioners, from 13 to 9 members.
- authorizes ex officio members of the Tourism Development Authority (a county commissioner and a member of the Winston-Salem Board of Alderman) to serve more than two terms on the Authority.

Source: adapted from bill analysis done by the Committee Counsel of House Local Government I on 04/17/2009

ASSUMPTIONS AND METHODOLOGY:
House Bill 854 makes structural modifications to the existing occupancy tax in Forsyth County. It does not alter the amount of occupancy tax that will be collected. Although the bill reduces membership of the Tourism Development Authority from 13 to 9 members, these positions are voluntary. Therefore, no fiscal impact is expected.

SOURCES OF DATA: Forsyth County Tourism Development Authority

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 5, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 986
Committee Substitute Favorable 4/29/09

Short Title: Spencer/Amend Property Description. (Local)

Sponsors:

Referred to:

April 2, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE DESCRIPTION OF A RIGHT-OF-WAY THAT THE TOWN OF SPENCER WAS PREVIOUSLY AUTHORIZED TO ANNEX BY ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2008-112 reads as rewritten:

"**SECTION 3.** The Town of Spencer may annex by ordinance ~~an area of Department of Transportation right-of-way~~ a parcel of land owned by the Department of Transportation bordered by the town, more particularly described as follows: That portion of State of North Carolina land beginning at a point abutting the corporate limits of the Town of Spencer and specifically located between Tax Map 046, Parcel ~~012~~ 015 and Tax Map 047, Parcel 011 along US Highway 29N. The ordinance may also include that portion of the Department of Transportation's right-of-way along US Highway 29N that is abutting the parcel."

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

HOUSE BILL 986:
Spencer/Amend Property Description

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Reps. Coates, Steen	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 986 makes two corrections to a bill enacted last session that allowed the Town of Spencer to annex a right-of-way owned by the Department of Transportation (DOT).***

CURRENT LAW: S. L. 2008-112, section 3 authorizes the Town of Spencer to annex by ordinance an area of Department of Transportation right-of-way bordered by the town and described as follows:

> That portion of State of North Carolina land beginning at a appoint abutting the corporate limits of the Town of Spencer and specifically located between Tax Map 046, Parcel 012 and Tax Map 047, Parcel 011 along US Highway 29N.

BILL ANALYSIS: House Bill 986 does two things:

1) It corrects an incorrect parcel number; and
2) It amends the property description in House Bill 986 to include that portion of the DOT right-of-way along US Highway 29N that is abutting the parcel of land owned by the DOT.

Both DOT and the Town of Spencer thought this right-of-way along US Highway 29N was included by language in last year's legislation. House Bill 986 rectifies the error of omission from prior legislation.

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

H986-SMRE-46(e2) v1

HOUSE BILL 991

Short Title:	Montgomery County Debt Collection/Water.	(Local)
Sponsors:	Representatives Goodwin and Burr (Primary Sponsors).	
Referred to:	Local Government I, if favorable, Finance.	

April 2, 2009

A BILL TO BE ENTITLED

AN ACT RELATING TO THE AUTHORITY OF MONTGOMERY COUNTY TO COLLECT MONEY OWED TO THE COUNTY FOR WATER SYSTEM FEES.

The General Assembly of North Carolina enacts:

SECTION 1. The board of commissioners of a county may, by resolution, require the register of deeds of the county not to accept any deed transferring real property for registration unless the county water system has certified that no delinquent debt is owed to the county for water system fees on the property. The county commissioners, by resolution, may describe the form the certification must take in its resolution.

SECTION 2. This act applies to Montgomery County only.

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

HOUSE BILL 991:
Montgomery County Debt Collection/Water

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Reps. Goodwin, Burr	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: House Bill 991 is a local bill that would authorize the Montgomery County Board of Commissioners to require the Register of Deeds to refuse to accept any deed transferring real property if there are delinquent water system fees owing on the property.

CURRENT LAW: G.S. 161-31 authorizes a number of counties to adopt a resolution to require the register of deeds in the county to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. This provision applies to 65 counties, and HB 215, in Senate Finance, would add Catawba and Alexander Counties.

BILL ANALYSIS: House Bill 991 would give similar authority to Montgomery County when there are delinquent water system fees due on property in a deed transfer. House Bill 991 does the following:

- Authorizes the Montgomery County Board of Commissioners to adopt a resolution to require the Register of Deed not to accept any deed transferring real property for registration unless the County's water system has certified that no delinquent debt is owed to the County for water system fees on the property.
- In the resolution, the Board of County Commissioners may describe the form the certification must take.

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

BACKGROUND: As indicated, similar legislation has been enacted authorizing registers of deeds in a number of counties[1] to refuse to register a deed if delinquent taxes are due on the property described in the deed.

Also, the following local legislation regarding delinquent water and sewer fees has been enacted:

- Authorizes City of Durham to collect delinquent water and sewer fees resulting from leaking or broken pipes of the real property owner in the same manner as property taxes S.L. 1993 – 768.
- Authorizes Columbus, Davie, Duplin, and Lenoir Counties, the municipalities in these counties, and water and wastewater authorities in these counties to collect delinquent water and sewer fees in the same manner as delinquent property taxes. (S.L. 2003-270)

H991-SMRE-47(e1) v1
Martha Walston, counsel to House Finance Committee, substantially contributed to this summary.

[1] Anson, Avery, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Mitchell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin.

HOUSE BILL 992

Short Title:	Landis/Repeal Annexation.	(Local)
Sponsors:	Representatives Steen and Coates (Primary Sponsors).	
Referred to:	Local Government I, if favorable, Finance.	

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE ANNEXATION OF CERTAIN PROPERTY BY THE TOWN OF LANDIS.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2006-58, as amended by S.L. 2007-139 and S.L. 2008-26, is repealed.

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

HOUSE BILL 992:
Landis/Repeal Annexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2009
Introduced by:	Reps. Steen, Coates	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 992 repeals the annexation of certain property in prior local acts by the Town of Landis in Rowan County.***

CURRENT LAW: S.L. 2006-58, as amended by S.L. 2007-139 added several tracts to the corporate limits of the Town of Landis, effective September 30, 2008. S.L. 2008-26 delayed the effective date for adding the tracts described in the prior local acts to December 31, 2010.

BILL ANALYSIS: House Bill 992 repeals S.L. 2006-58, as amended by S.L. 2007-139 and S.L. 2008-26.

EFFECTIVE DATE: House Bill 992 would become effective when it becomes law.

BACKGROUND: During the Regular Town Board Meeting on Monday, April 6, 2009 at 7:00 p.m., the Landis Town Board of Aldermen unanimously moved to approve an act to repeal the annexation of certain property by the Town of Landis. This is the property where Valley Development had proposed to establish a new subdivision around Lake Wright, which was known as "The Village at Lake Wright."

H992-SMRE-48(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 17, 2009

TO: Senator Garrou

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 943 (First Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund		***See Assumptions and Methodology***			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Commerce; NC Department of Revenue

EFFECTIVE DATE: January 1, 2009

BILL SUMMARY:
Senate Bill 943 would increase the income tax credit for a production company from 15% to 25% of the company's qualifying expenditures. The bill would become effective for taxable years beginning on or after January 1, 2009.

BACKGROUND:
The 2005 General Assembly enacted legislation that allows an income tax credit for 15% of the qualifying production expenses of film and television production companies that spend at least

$250,000 on a production in North Carolina. The credit is limited to $7.5 million per feature film and is refundable in cases where the credit exceeds tax liability. Finally, the bill disallowed the credit for expenses incurred for compensation of $1 million or more paid to an individual. In 2008, the General Assembly made changes to the definition of eligible expenses to include amounts paid to a highly compensated individual only to the extent that amount exceeds $1 million, and the cost of production-related insurance.

ASSUMPTIONS AND METHODOLOGY:

To calculate the impact of the bill, Fiscal Research obtained data from the North Carolina Film Office on projected eligible film expenses assuming a 25% credit. The estimates factor in the increased film activity expected to be spurred by the higher credit. The impact to the General Fund is calculated by applying the 25% rate to eligible expenses for each year. The cost of the current 15% credit is subtracted to obtain the net impact of the bill. The estimates assume that three films each year (beginning in 2010) would have eligible expenses that would cause them to exceed the credit cap. The three films are assumed to have eligible expenses of $40 million each year. Since the credit cap is $7.5 million, the credit would apply to only $30 million of expenses ($30 million * 25% = $7.5 million).

Estimated Cost of Film Credit at 25%					
	($millions)				
	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Eligible Expenses at 25%	$85.0	$250.0	$300.0	$350.0	$350.0
Cost of 25% Credit	-19.8	-51.2	-62.8	-74.5	-74.5
Eligible Expenses at 15%	80.0	80.0	80.0	80.0	80.0
Cost of 15% Credit	-11.2	-11.2	-11.2	-11.2	-11.2
Net Impact of S943	**-$8.6**	**-$40.0**	**-$51.7**	**-$63.3**	**-$63.3**

For purposes of this analysis, it is assumed that the tax year impact of the proposed change matches up with the fiscal year ending six months after the end of the tax year. Thus, the full impact of new activity in the 2010 tax year would be in the 2010-11 fiscal year. This rationale assumes that taxpayers take the credit in the form of lower final tax payments rather than reduced estimated payments sent in during the tax year.

In a report studying the economic impact of a 25% credit, Ernst and Young estimated a return on investment (ROI) of 69 cents for each dollar of credit cost. The return represents additional tax revenue related to film activity and its indirect impact on the economy. The current economic recession adds uncertainty to the ROI estimates, particularly as they relate to tourism and other indirect expenditures. Other states have recently estimated lower returns on investment. For example, Louisiana and Connecticut estimated ROIs of 18% and 20% respectively for their film credits. To the extent that additional tax revenues are realized, they will occur beginning in the year of production and, in the case of tourism-related revenues, extend several years beyond completion of the film.

SOURCES OF DATA: NC Film Office, North Carolina Department of Commerce; *Economic and Fiscal Impacts of the North Carolina Film Credit Program*, Ernst and Young, June 2009.

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Tuesday, June 30, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 30, 2009, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator Clark Jenkins presided.

H.B. 23 – Strengthen Child Labor Violation Penalties.

Representative Weiss was recognized to explain the bill. The bill amends Chapter 95 of the General Statutes to protect the health and safety of children by increasing the penalties for violations of child labor laws. Senator Purcell offered an amendment regarding civil penalties and moved for its adoption. The motion carried. Art Britt, a liaison from the Department of Labor was recognized to answer questions. Senator Allran moved for a favorable report and the motion carried. A copy of the bill, the amendment, and the summary is attached.

H.B. 401 – Boone Occupancy Tax.

Representative Tarleton was recognized to explain the bill, which authorizes the Town of Boone to levy an additional three percent room occupancy and tourism development tax and to make other administrative changes. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 403 – Fremont Charter Rewrite.

Representative Sager was recognized to explain the bill which revises and consolidates the Charter of the Town of Fremont. Senator Tillman moved for favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 566 – Charlotte-Monroe Executive Airport Quicktake.

Senator Goodall was recognized to explain the bill. It authorizes the City of Monroe to take immediate possession of property condemned for the Charlotte-Monroe Executive Airport. Senator Soles moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 743 – Wendell ETJ Extension Authorized.

Representative Jackson was recognized to explain the bill. It allows the Town of Wendell to extend its extraterritorial jurisdiction over a certain described area with the approval of the Board of Commissioners of Wake County. Senator Soles moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 886 – Allow Dietetics/Nutrition Bd./Recover Costs.

Representative Ross was recognized to explain the bill, which allows the Board of Dietetics/Nutrition to recover costs incurred by the Board in connection with disciplinary proceedings of the Board. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

S.B. 308 – Endangered Manufacturing and Jobs Act.

Senator Jacumin was recognized to explain the bill. Senator Purcell moved to adopt the proposed committee substitute for discussion and the motion carried. The PCS provides for the formation of a limited liability company as a low-profit limited liability company. Senator Soles moved for a favorable report and the motion carried. A copy of the bill, the summary, Senator Jacumin's handout and the fiscal memo is attached.

S.B. 807 – Public Registration of Wild Animals.

Senator Jones was recognized to explain the bill. Senator Nesbitt offered a technical amendment and moved for its adoption. The motion carried. The bill provides for the protection of the public against the health and safety risks that certain characteristically wild animals post to the community. Senator Hartsell moved for a favorable report and the motion carried. A copy of the bill, the summary and the amendment is attached.

S.B. 460 – Commercial Dog Breeders.

Senator Davis was recognized to explain the bill. Senator Purcell moved to adopt the PCS for discussion and the motion carried. The PCS regulates puppy mills. Joe McClees, lobbyist for the NC Sporting Dog Association, and Stephen Wallis, representing the NC Federation of Dog Clubs, were recognized to speak in opposition to the bill. Vicky Falconer, Director of the Wayne County Animal Control, was recognized to speak in favor of the bill. Dr. David McCloud, a veterinarian with the Department of Agriculture, was recognized to answer questions and said that the Department does not support the bill because it does not have the resources to fulfill the bill's requirements. Senator Garrou moved for a favorable report and the motion carried. A copy of the PCS, the fiscal memo, and the summary is attached.

The meeting adjourned at 2:04 PM.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 30, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 23	Strengthen Child Labor Violation Penalties.	Representative Bryant Representative Weiss Representative Goodwin Representative Luebke
HB 148	Congestion Relief/Intermodal Transport Fund.	Representative Carney Representative Ross Representative Allen Representative McGee
HB 401	Boone Occupancy Tax.	Representative Tarleton
HB 403	Fremont Charter Rewrite.	Representative Sager
HB 566	Charlotte-Monroe Executive Airport Quicktake.	Representative Gibson, III
HB 743	Wendell ETJ Extension Authorized.	Representative Jackson
HB 886	Allow Dietetics/Nutrition Bd./Recover Costs.	Representative Ross
SB 308	Endangered Manufacturing and Jobs Act.	Senator Jacumin
SB 460	Commercial Dog Breeders.	Senator Davis
SB 807	Public Safety Registration.	Senator Jones
SB 860	Student Protection Fund/Proprietary Schools.	Senator Clodfelter

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Tuesday, June 30, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 23	Strengthen Child Labor Violation Penalties.	Rep. Bryant Rep. Weiss Rep. Goodwin Rep. Luebke
HB 401	Boone Occupancy Tax.	Rep. Tarleton
HB 403	Fremont Charter Rewrite.	Rep. Sager
HB 566	Charlotte-Monroe Executive Airport Quicktake.	Rep. Gibson
HB 743	Wendell ETJ Extension Authorized.	Rep. Jackson
HB 886	Allow Dietetics/Nutrition Bd/Recover Costs.	Rep. Ross
SB 308	Endangered Manufacturing and Jobs Act.	Sen. Jacumin
SB 460	Commercial Dog Breeders.	Sen. Davis
SB 807	Public Safety Registration.	Sen. Jones
SB 860	Student Protection Fund/Proprietary Schools.	Sen. Clodfelter

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MEG NEITZ	Carolina Kennel Club
Michael Greenberg	Carolina Kennel Club
Alexandra Embory	DENR
Carlton Waun (Pete)	Federal Fax Hunter's Assoc. - Governor
Allison Waller	Charlotte Chamber
Amy Schilder	MWC
Will Colpoys	Moore + Van Allen
Amy McConkey	Smith Anderson
Ashley Jones	Biofuels Ctr of NC
AMY LEIGH MARTIN	CENTRAL CAROLINA CAVALIER KING CHARLES SPANIEL CLUB
David Bowy	MWC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara A Wladkowski	Central Carolina Dachshund Club DACHSHUND CLUB OF AMERICA Piedmont Kennel Club
ROBERT J. WLADKOWSKI	DACHSHUND CLUB OF AMERICA CENTRAL CAROLINA DACHSHUND CLUB PIEDMONT KENNEL CLUB
Lynn Cope	Jeric's Kennels - Dachs Club of Amer. - Central Carolina Dachs Club 929-B Rodell Barrow Rd. LaGrange, NC 28551
Sylvia Butler	Salisbury NC Kennel Club Miniature Pinscher Club of America
Joel Butler	Salisbury Kennel Club Miniature Pinscher Club of America 405 Grant Rd Salisbury 28146
Debra DeCamillis	UNC · IOG
[signature]	NC Fed Dog Clubs
PATRICIA BARTON WILLIAMSON BLVD 3480 WADESBORO, NC 28170	CAROLINA KENNEL CLUB PRES. NC COALITION OF ANIMAL OWNERS MEMBER: THE CANINE CONNECTION INC THE NEW BERNE ANIMAL CLUB
HENRIETTA JENRETTE	TARHEEL WEIMARANER CLUB WWW.NCWEIMARANER.ORG
Jack Soppenfield II	Tarheel Weimaraner Club; Durham KC. AKC Judge

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	ElectriCities of NC, Inc.
Cindy Stansell	NC Federation of Dog Clubs
Sheila Goffe	American Kennel Club
Deedy Sorenson	Central Carolina Dachshund Club Cary Kennel Club
LARRY SORENSON	CAROLINA DACHSHUND CLUB DACHSHUND CLUB OF AMERICA
WILLIAM PFEIFFER	GERMAN SHEPHERD DOG CLUB of GREATER RALEIGH + RALEIGH KENNEL CLUB
Florence Taylor	Raleigh Kennel Club Central Carolina Toy Dog Club
CURT KENNEDY	CARY KENNEL CLUB
Majella A Kerr	Central Carolina Dachshund club
Zach Kerr	central carolina Dachshund club
Karen Peterson	Central Carolina Dachshund Club
M Sellers	DCR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
L. Andrews	NCFB
PGP	NCFB
Jim Blackburn	NC Associations of County Commissioners & friend of PGP
Amanda Hunnicutt	HSUS
Vicki Falconer	Wayne County Animal Control
Jennifer Clark	Raleigh, NC
Michelle Lennon	Durham, NC
Sally E. Sasser	Goldsboro, NC
Patricia H. Bakwin	Raleigh N C
LEE HUNTER	NCDACS
Meredith Cook	NCDOL

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Haigwood	NCDOL
Art Britt	NCDOL
Teresa Vili	Fayetteville Kennel Club
Kathy Wosnak	Central Carolina Dalmatian Club
Hailey Queen	400 Hillstone Dr., Raleigh
Ardis Watkins	SEANC
Farah Qubaum	seanc
Jay Hicks	NCDA&CS
David McLeod	NCDA&CS
[signature]	GOV

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
R. Paul Wilms	WGR
Jessi Hays	NC Home Builders Assn
GARY Miller	U.S. Quail Shooting Dog Futurity, Jackson Springs
J. Peele	Staff
Amy Simes	DENR
Stevin McClees	McClees Consulting
Joe McClees	McClees Consulting
Connie Wilson	ECNC
Drew Kennedy	NC Bear Hunters Assoc.
Brock David-Yeruno	intern - Atwater

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 30, 2009

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

FAVORABLE

H.B.(CS #1) **401** Boone Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

H.B. **403** Fremont Charter Rewrite.
Sequential Referral: None
Recommended Referral: None

H.B. **566** Charlotte-Monroe Executive Airport Quicktake.
Sequential Referral: None
Recommended Referral: None

H.B. **743** Wendell ETJ Extension Authorized.
Sequential Referral: None
Recommended Referral: None

H.B. **886** Allow Dietetics/Nutrition Bd./Recover Costs.
Sequential Referral: Finance
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **807** Public Safety Registration.
Draft Number: 15313
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **23** Strengthen Child Labor Violation Penalties.

Draft Number:	50630
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comments:

H23 – Sen. D. Berger
H566 – Sen. Goodall
H886 – Sen. Purcell

HOUSE BILL 23
Committee Substitute Favorable 3/12/09

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

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

(2) The gravity of the violation.

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

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

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

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

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

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

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

"**§ 95-139. Criminal penalties.**

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

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

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

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

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

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of

(i) not more than ten thousand dollars ~~($10,000).~~($10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars ($20,000) for falsifications pertaining to employees under 18 years of age.

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

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

HOUSE BILL 23:
Strengthen Child Labor Violation Penalties

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Reps. Weiss, Luebke, Bryant, Goodwin	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 23 would increase the penalties for violations of child labor laws.

[As introduced, this bill was identical to S277, as introduced by Sen. Berger of Franklin, which is currently in Senate Judiciary II.]

CURRENT LAW:

Article 2A of Chapter 95 of the General Statutes is the **Wage and Hour Act**. The Act is enforced by the Commissioner of Labor and governs wage levels, hours of labor, and the well being of minors. The Act contains a number of restrictions regarding when and how a youth may be employed. It provides a civil penalty not to exceed $250 for each violation of the youth employment provisions. It also requires employers to make and keep records of wages, hours, and other conditions and practices of employment. Violations of these requirements result in civil penalties of up to $250 per employee with a maximum of $1,000 per investigation.

Article 16 of Chapter 95 of the General Statutes is the **Occupational Safety and Health Act of North Carolina** (OSHA). OSHA is administered by the Commissioner of Labor and is designed to ensure safe conditions for workers. OSHA contains the following civil and criminal penalties:

- Willfully violating a standard promulgated under OSHA and causing the death of **any** employee is a Class 2 misdemeanor, which may include a fine of not more than $10,000. A subsequent violation would be a Class 1 misdemeanor, which could include a fine of not more than $20,000.
- Making a false statement in a document is a Class 2 misdemeanor which may include a fine of not more than $10,000.

The penalties set out above for the Wage and Hour Act and OSHA do not take into consideration the age of the worker.

BILL ANALYSIS:

House Bill 23 would make the following changes to the Wage and Hour Act:

Violations Regarding Youth Employment:

- Increases the civil penalty for violations regarding youth employment to $500 for the first violation (was $250).
- Provides that fines for each subsequent violation cannot exceed $1,000.

Maintaining Records:

- Requires employers to maintain records of the ages of employees.
- Increases the maximum civil penalty per investigation for violations regarding employer's records of employees to $2,000 (was $1,000).
- Clarifies that in determining the amount of the penalty, the Commissioner of Labor must consider whether the violation involves an employee less than 18 years of age.

House Bill 23 would make the following changes to OSHA:

Civil Penalties:

- Provides that when determining whether a penalty is appropriate, the Commissioner of Labor must consider, in addition to other factors, whether the violation involves injury to an employee less than 18 years of age.

Criminal Penalties: The bill would not change the offense class, but would create differences regarding the amount of fines that may be imposed as follows:

- **First violation** – Willfully violating a standard promulgated under OSHA and causing the death of an employee:
  - If the employee is 18 years of age or older – Class 2 misdemeanor which may include a fine of up to $10,000.
  - If the employee is less than 18 years of age – Class 2 misdemeanor which may include a fine of up to $20,000.
- **Subsequent violations** – If an employer is convicted of a willful violation that results in the death of *any* person, the subsequent violation is penalized as follows:
  - If the subsequent violation leads to the death of someone 18 years of age or older- Class 1 misdemeanor which may include a fine of up to $20,000.
  - If the subsequent violation results in the death of an employee less than 18 years of age- Class 1 misdemeanor which may include a fine of up to $40,000.
- **False statements in documents** –
  - Falsifications pertaining to employees 18 years of age or older-Class 2 misdemeanor, which may include a fine of up to $10,000.
  - Falsifications pertaining to employees less than 18 years of age-Class 2 misdemeanor, which may include a fine of up to $20,000.

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

Brad Krehely, counsel to House Judiciary II, and Jeff Hudson counsel to Senate Judiciary II, substantially contributed to this summary.

H23-SMTD-100(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 23 (Second Edition)

SHORT TITLE: Strengthen Child Labor Violation Penalties.

SPONSOR(S): Representatives Weiss, Luebke, Bryant, and Goodwin

FISCAL IMPACT	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
Fines & Forfeitures Account	at least $44,923	at least $51,341	at least $51,341	at least $51,341	at least $51,341
DOL Collection Costs	at least $3,432	at least $3,922	at least $3,922	at least $3,922	at least $3,922
EXPENDITURES:					
Department of Labor	*Negligible administrative expense. See Assumptions & Methodology.*				
Administrative Office of the Courts	Indeterminate fiscal impact				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Labor, Judicial Branch

EFFECTIVE DATE: December 1, 2009

BILL SUMMARY:

H.B. 23 provides for a doubling of several penalties related to child labor laws. The bill increases the penalty for violation of the youth employment statute from $250 to $500 for the first violation and increases the maximum to $1,000 for subsequent violations. Section 3 revises G.S. 95-25.23A, which deals with record keeping, to include consideration of whether the violation involved an employee under the age of 18; the maximum penalty is increased to $2,000 from $1,000. Section 4 rewrites G.S. 95-138(b) to add that when assessing a penalty, the Commissioner should consider whether the violations involved injury to an employee under 18. Section 5 changes the criminal penalty related to violations involving death of a worker such that the associated fine is increased from $10,000 to $20,000 for any death involving a worker under 18 and up to $40,000 for any subsequent violations. Likewise any person who makes false statements about such violations can be assessed a fine of up to $20,000 if the violation involved the death of a worker under 18.

ASSUMPTIONS AND METHODOLOGY:

Revenues

Historical data on violations and penalties assessed was obtained from the North Carolina Department of Labor (DOL). Currently DOL uses a sliding scale to assess penalties for wage and hour violations. Fiscal Research, based on conversations with DOL, has made the assumption that if this legislation were enacted, DOL would double the penalties on this sliding scale. Thus, it is estimated that DOL will collect twice the amount they currently do for wage and hour violations involving youth. A breakdown of estimated revenue by each section of the bill is included below.

Section 1 – Violations and Penalties under G.S. 95-25.23(a) - Youth Employment

The Wage and Hour Bureau at DOL tracks youth employment violations. Fiscal Research used historical data from the past five years to estimate the number of future violations as well as the amount collected. As there were no discernible trends in the number of violations, Fiscal Research used an average figure to estimate the number of violations and the amount collected in future years. The amount collected was then doubled to reflect the new fees. For FY 2009-10 the amount is prorated to reflect the December 1, 2009 effective date of the bill.

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Violations	210	210	210	210	210
Total Penalties Collected	$25,491	$29,133	$29,133	$29,133	$29,133
Amount of New Penalty Money	$12,746	$14,566	$14,566	$14,566	$14,566
Collection Costs	$905	$1,034	$1,034	$1,034	$1,034
Total New Penalty Money (less cost of collection)	$11,841	$13,533	$13,533	$13,533	$13,533

Section 3 – Violations and Penalties under G.S. 95-25.23A(a) – Recordkeeping

The Wage and Hour Bureau at DOL tracks recordkeeping violations. As with youth employment violations, Fiscal Research used historical data to calculate the average number of violations as well as the amount collected. The amount collected was then doubled to reflect the new fees. For FY 2009-10 the amount is prorated to reflect the December 1, 2009 effective date of the bill.

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Violations	398	398	398	398	398
Total Penalties Collected	$71,219	$81,393	$81,393	$81,393	$81,393
Amount of New Penalty Money	$35,609	$40,696	$40,696	$40,696	$40,696
Collection Costs	$2,527	$2,888	$2,888	$2,888	$2,888
Total New Penalty Money (less cost of collection)	$33,082	$37,808	$37,808	$37,808	$37,808

Section 4 – Violations and Penalties under G.S. 95-138(b) – OSH Serious Violations
The DOL Occupational Safety and Health Division (OSH) does not currently collect data on employee age. Estimates are not available as to how many OSH violations occurred at facilities where an employee under the age of 18 was injured or endangered. On average, OSH assesses approximately 5,200 violations and collects $2.44 million in penalties each year. It is not known how many of these violations involve employees under the age of 18 and how the Commissioner might change the penalty assessed based on youth involvement in the violation; thus, it is not possible to calculate the potential increase in penalties collected.

Section 5 – Violations and Penalties under G.S. 95-139 – OSH Criminal Penalties
In the past five years, OSH investigated only one fatality involving an employee under the age of 18; penalties associated with that fatality totaled $12,000. Fiscal Research estimates that over the next five years, there may be one fatality, and that penalties, if this legislation is enacted, might total $24,000.

Expenditures
This bill should have no appreciable increase in costs for DOL. Most of the data required to assess these penalties is already collected under current practices.

Administrative Office of the Courts

Fiscal Research requested information on the potential fiscal impact to the court system that may result from the passage of this proposed bill. The Administrative Office of the Courts (AOC) provided the following analysis. The table below compares current law to the proposed legislation.

	Current Law		Proposed Law	
	Maximum Fine*	Criminal Penalty (misdemeanor)	Maximum Fine*	Criminal Penalty (misdemeanor)
Youth Employment (G.S. 95-25.5)				
First Violation G.S. 95-25.23	$250	n/a	$500	n/a
Subsequent Violations	$250	n/a	$1,000	n/a
Violation G.S. 95-25.15(b)	$1,000	n/a	$2,000	n/a
NC OSH Act (G.S. Chapter 95, Article 16)				
First violation, death of employee age 18 or older:	$10,000	Class 2	no change	no change
First violation, death of employee under age 18:	$10,000	Class 2	$20,000	no change
Subsequent violation, death of employee age 18 or older:	$20,000	Class 1	no change	no change
Subsequent violation, death of employee under age 18:	$20,000	Class 1	$40,000	no change
Falsifications of records pertaining to employees 18 or older:	$10,000	Class 2	no change	no change
Falsifications of records pertaining to employees under age 18:	$10,000	Class 2	$20,000	no change

Source: NC Administrative Office of the Courts

- Note: the fines for violations of G.S. 95-25.5 and 95-25.15(b) are civil penalties; no criminal penalties are assessed.

Section 1 of this proposed bill would increase the fine for violations of G.S. 95-25.5 (Youth Employment); Section 2 would expand employer record-keeping requirements in G.S. 95-25.15(b) to include the age of employees, thus expanding potential violations. Section 3 would increase the maximum fine for violating the (now expanded) record-keeping provisions in G.S. 95-25.15(b). These violations are subject to civil penalties, as determined by the Commissioner of Labor. Impact on the courts would come from any appeals made by employers regarding the Commissioner's decisions. AOC cannot project whether increasing the maximum fine would increase the number of appeals. Any additional appeals generated by this proposed bill would impact the court system.

The violations of the NC OSH Act outlined in G.S. 95-139 in Section 5 of the bill are punishable as Class 1 and Class 3 misdemeanors. The criminal penalties would not change under this bill, but the maximum fine included in the penalties would increase for violations involving employees under age 18. It is possible that the potential for higher fines will lead to a more vigorous defense in these cases.

In FY 2008, the NC Department of Labor investigated 47 workplace fatalities, one of which involved the death of an employee under age 18. In FY 2002 through 2007, the other years with data available, none of the workplace fatalities investigated involved deaths of employees under age 18. Therefore, it is unlikely that many cases will be impacted by this legislation.

AOC cannot project the number of cases involving the provisions of this bill that will be filed or the impact of the increased fines on the time required to dispose of these cases. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North Carolina Department of Labor, North Carolina Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristin Walker, Danielle Seale

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 29, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 23

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

H23-ATD-45 [v.1]

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

Date _____,2009

Senator _____

moves to amend the bill on page 2, lines 9 through 22,
by rewriting those lines to read:

"**SECTION 4.** G.S. 95-138 reads as rewritten:
"**§ 95-138. Civil penalties.**

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

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

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

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

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

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

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

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

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

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

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

HOUSE BILL 401
Committee Substitute Favorable 3/19/09

Short Title: Boone Occupancy Tax. (Local)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BOONE TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 170 of the 1987 Session Laws, as amended by S.L. 1998-35 and Section 21(o) of S.L. 2007-527, reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and ~~scope.~~scope. – The Boone Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Boone Town Council may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with this section. The Town of Boone may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.~~

(b1) Definitions. – The following definitions apply in this section:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the town. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Distribution and ~~use of tax revenue.~~ Use of Tax Revenue. – The Town of Boone shall, on a quarterly basis, remit ~~sixty percent (60%) of~~ the net proceeds of the occupancy tax levied under this section to the Boone Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism. The Authority shall use the remainder for tourism-related expenditures that are recommended by the Boone Town Council and approved by the Authority. ~~may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions for the Town of Boone. The Town of Boone may deposit the remainder of the net proceeds in its general funds to be used for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer.~~

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Boone Town Council. Repeal of a tax levied under this section shall become effective on the~~

~~first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Tourism Development Authority. (a) Appointment and membership. – When the town council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Boone Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

~~The Authority shall be composed of nine voting members appointed by the Boone Town Council as follows:~~

~~(1) Three individuals who are owners or operators of taxable tourist accommodations in Boone, one of whom resides in Boone and two of whom reside in Watauga County.~~

~~(2) One resident of Watauga County who owns or operates a restaurant in Boone.~~

~~(3) Two residents of Boone who are members of the Boone Area Chamber of Commerce.~~

~~(4) One member of the Boone Town Council.~~

~~(5) Two residents of the Town of Boone.~~

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Boone shall be the ex officio finance officer of the Authority but shall not be a member of the authority.

~~The members of the Authority shall serve without compensation and shall serve for a term of three years, except that the town council shall designate three of the initial appointees to serve two year terms. Vacancies shall be filled in the same manner as original appointments and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect from its membership a chair; the Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.~~

(b) Powers and ~~duties.~~ Duties. – The Authority may contract with any person, legal entity, firm, or organization to advise it and assist it in carrying out its duty to promote travel, tourism, and conventions for the Town of Boone. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the town council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require.

Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach,

Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

HOUSE BILL 401:
Boone Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Tarleton	**Prepared by:**	Judy Collier
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 401 authorizes the Town of Boone to levy an additional 3% room occupancy and tourism development tax and makes other changes to its original legislation so that it conforms to the uniform administrative provisions for occupancy tax and the guidelines adopted by the North Carolina Travel & Tourism Coalition and the House Finance Committee. At least two-thirds of the total proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures that are recommended by the Boone Town Council and approved by the Tourism Development Authority (TDA).***

CURRENT LAW: In 1987, the General Assembly authorized the Town of Boone to levy a 3% room occupancy tax, with 60% of the tax going to the town TDA to be used to promote travel, tourism and conventions and the remainder going to the town's general fund to be used for any lawful purpose.

BILL ANALYSIS: House Bill 401 authorizes the Town of Boone to levy an additional room occupancy tax of up to 3%, for a total rate of 6%. Under the bill, the proceeds of the additional tax and the existing 3% tax must be remitted to the town (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. The tourism-related expenditures must be recommended by the Boone Town Council prior to approval by the TDA. This language is not standard language within the guidelines, but was requested by the Town. If enacted, no portion of the proceeds would be remitted to the town's general fund.

Except for the deviation mentioned above, the administrative and use provisions are rewritten to contemporary standards and conform to the uniform guidelines followed by the House Finance Committee.

UNIFORM OCCUPANCY TAX PROVISIONS	HB 401
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.	Conforms
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.	Conforms[1]
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.	Conforms
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.	Conforms
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.	Conforms

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

[1] The language requiring the Boone Town Council to recommend tourism-related expenditures prior to approval by the TDA is not required by the guidelines.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

H401-SMRE-52(e2) v2

Trina Griffin, counsel to House Finance Committee, substantially contributed to this summary.

HOUSE BILL 403*

Short Title:	Fremont Charter Rewrite.	(Local)
Sponsors:	Representatives Sager; Bell, Braxton, and E. Floyd.	
Referred to:	Local Government I, if favorable, Finance.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF FREMONT.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Fremont is revised and consolidated to read as follows:

"CHARTER OF THE TOWN OF FREMONT.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Sec. 1.1. **Incorporation.** The Town of Fremont in Wayne County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the "Town of Fremont," hereinafter at times referred to as the "Town."

"Sec. 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Fremont specifically by this Charter or upon municipal corporations by general law. The term "general law" is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Wayne County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. **Town Governing Body; Composition.** The Mayor and the Town Board of Aldermen, hereinafter at times referred to as the "Board" shall be the governing body of the Town.

"Sec. 2.2. **Town Board of Aldermen; Composition; Terms of Office.** The Board shall be composed of six members to be elected for terms of four years, or until their successors are elected and qualified.

"Sec. 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years.

"Sec. 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with G.S. 160A-70.

"Sec. 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. **Quorum; Voting Requirements.** Official actions of the Board and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Sec. 2.7. **Qualifications for Office; Compensation; Vacancies.** The qualifications of the Mayor and Board members shall be in accordance with general law. The Mayor and Board members shall receive compensation as they shall from time to time determine. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in the town every four years beginning in 2011 and quadrennially thereafter, and shall be conducted in accordance with the uniform municipal election laws of North Carolina.

"Sec. 3.2. **Mode of Election.** The town shall be divided into six single-member electoral districts and the qualified voters of each district shall elect one board member who resides in the district, for the seat apportioned to that district.

"Sec. 3.3. **Nonpartisan Elections.** Municipal elections shall be conducted according to the nonpartisan plurality election method as provided by G.S. 163-292.

"Sec. 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TAXATION.

"Sec. 4.1. **General Authority to Levy and Collect Taxes.** To raise revenue for defraying expenses incident to the proper government of the Town, the Board may annually levy and collect: (i) a tax on real and personal property and on all other property subject to taxation; (ii) a tax on all businesses, trades, professions, avocations, privileges, and franchises, carried on or enjoyed within the Town; and (iii) any other taxes permitted by general law.

"Sec. 4.2. **Levy, Collection, and Payment of Property Taxes.**

(a) Except as otherwise herein provided, property taxes shall be imposed and collected in the manner provided by general law.

(b) Property taxes shall become due and payable on the date provided by general law. Interest shall be charged for late payment, and discounts may be allowed for prepayment of taxes, in the amounts and during the periods covered by general law.

"Sec. 4.3. **Additional Remedies for Collection of Privilege License Taxes.** In addition to any other civil or criminal remedy available to enforce the collection of privilege license taxes, the Town may employ the remedies of levy upon personal property, attachment and garnishment, in the manner of the subject to the limitations provided in general law.

"Sec. 4.4. **Administration.** The listing and appraisal of property and the levy and collection of property taxes in the Town shall in all respects be governed by the general laws of the State, except as they shall be specifically amended by this Charter.

"ARTICLE V. PUBLIC IMPROVEMENTS.

"Sec. 5.1. **Assessments for Street and Sidewalk Improvements, Petition Unnecessary.**

(a) In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Town may order street improvements and assess the total cost thereof against the abutting property owners, exclusive of the cost incurred at street intersections, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq., without the necessity of a petition, upon the finding by the Board as a fact:

(1) That the street improvement project does not exceed 2,000 linear feet; and

(2) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvements; or

(3) That it is in the public interest to connect two streets, or portions of a street already improved; or

(4) That it is in the public interest to widen a street, or part thereof, which is already improved, provided that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such streets in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

(c) For the purpose of this Article, the term "street improvement" shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq.; provided however, that regardless of the assessment basis or bases employed, the Town may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

(e) In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by G.S. 160A-216 et seq., except those provisions relating to the petition of property owners and the sufficiency thereof.

(f) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of G.S. 160A-216 et seq.

"Sec. 5.2. **Power of Eminent Domain.** The procedures provided in G.S. 136-103 et seq., as specifically authorized by G.S. 136-66.3(c), shall be applicable to the Town in the case of acquisition of lands, easements, privileges, rights-of-way and other interests in real property for streets, sewer lines, storm drains, waterlines, electric power lines, and other utility lines in the exercise of the power of eminent domain. The Town, when seeking to acquire such property or rights or easements therein or thereto, shall have the right and authority, at its option and election, to use the provisions and procedures as authorized and provided in G.S. 136-66(c) and G.S. 136-103 et seq., for any of such purposes without being limited to streets constituting a part of the State highway system; provided, however, that the provisions of this section shall not apply with regard to properties owned by a private condemnor except as permitted by G.S. 40A-5(b).

"ARTICLE VI. NUISANCES.

"Sec. 6.1. **Abatement of Public Health Nuisances.** The Town shall have authority to summarily remove, abate, or remedy everything in the Town limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety pursuant to G.S. 160A-193.

"Sec. 6.2. **Chronic Nuisance Violators.** The Town may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the Town of Fremont gave notice of violation at least

two times under any provision of the public nuisance ordinance. A property owner shall remain a chronic violator until one calendar year after the date of the property owner's last violation.

"Sec. 6.3. **Junked Motor Vehicle.** In applying G.S. 160A-303.2 to the Town, junked motor vehicle means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or removed in the manner in which it was originally intended to move; or

(3) Is more than five years old and appears to be worth less than $500.00."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Fremont and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 244, Private Laws of 1903
Chapter 236, Private Laws of 1913
Chapter 123, Private Laws of 1917
Chapter 203, Private Laws of 1927
Chapter 66, Session Laws of 1957
Chapter 567, Session Laws of 1963
Chapter 113, Session Laws of 1971
Chapter 314, Session Laws of 1981, as to Fremont.

SECTION 4. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

SECTION 5. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 6. All existing ordinances and resolutions of the Town of Fremont and all existing rules or regulations of departments or agencies of the Town of Fremont not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Fremont or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 8. If any part of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 10. This act does not affect the terms of office of the current Mayor and Board of Aldermen of the Town of Fremont.

SECTION 11. This act is effective when it becomes law.

HOUSE BILL 403:
Fremont Charter Rewrite

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Sager	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: House Bill 403[1] would enact a complete rewrite of the Town Charter of Fremont.

CURRENT LAW: The Charter of the Town of Fremont was last enacted as a whole in 1913. Since that time a string of local acts have been passed to amend the Charter, but none have done a complete rewrite.

BILL ANALYSIS: The bill would rewrite the entire charter. It would provide for a Mayor and 6 Aldermen. The town would be divided into six aldermanic districts, and each Alderman would be elected by the voters of a district. The rewritten charter would not effect the terms of the current Mayor and Aldermen. The Mayor and Aldermen under the new Charter would be elected for the first time in 2011. They would all be elected to 4-year terms.

The Charter also gives the Town the authority to make street improvements it considers to be in the public interest and assess the cost to the abutting property owners. They Town may do that without the property owners having petitioned for the improvements.

EFFECTIVE DATE: When it becomes law. Since the Charter involves town elections, it may not be implemented until the session law has received "preclearance" approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice. Fremont is in Wayne County, which is one of the 40 NC counties covered by Section 5.

BACKGROUND: Fremont is a town in northern Wayne County, near Goldsboro. In the 2000 Census the town's population was 1,463.

H403-SMRE-53(e1) v1

William R. Gilkeson, counsel to Senate State and Local Government Committee, substantially contributed to this summary.

[1] Companion Bill SB 479 received a favorable report from Senate Finance Committee on 05-20-2009.

HOUSE BILL 566

Short Title:	Charlotte-Monroe Executive Airport Quicktake.	(Local)
Sponsors:	Representative Gibson.	
Referred to:	Local Government II, if favorable, Finance.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MONROE TO TAKE IMMEDIATE POSSESSION OF PROPERTY CONDEMNED FOR THE CHARLOTTE-MONROE EXECUTIVE AIRPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a)(1) reads as rewritten:

"(a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), ~~(6), or (7),~~ (6), (7), or (9), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

SECTION 2. This act applies only to the City of Monroe, for the taking of property for the Charlotte-Monroe Executive Airport.

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

HOUSE BILL 566:
Charlotte-Monroe Executive Airport Quicktake

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Gibson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***HB 566 Authorizes the City of Monroe to use the "quicktake" procedure when using eminent domain powers to acquire property for the Charlotte-Monroe Executive Airport.***

CURRENT LAW: Municipalities using eminent domain powers to acquire property for any purpose begin the action by filing a complaint together with a deposit estimated to be just compensation for the taking. If the condemnation is for airport purposes, the municipality is required to use the procedures set out in G.S. 40A-42(b). Using those procedures, title vests in the municipality and it is entitled to possession, when one of three actions occurs:

- The owner files an answer requesting only a determination of just compensation.
- The owner fails to file an answer within 120 days of service.
- Upon disbursement of the deposit, which can be disbursed as a deposit toward further claimed compensation.

BILL ANALYSIS: The bill allows the City of Monroe to use an alternate procedure of condemnation in which, unless an action for injunctive relief has been filed by the property owner, title vests in the municipality and it is entitled to possession immediately upon filing the complaint and making the deposit estimated to be just compensation for the taking.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND:

The following similar acts have been enacted:

- S.L. 1986-941 – Authorized Holly Springs to acquire property for its airport by the quick take procedure.
- S.L. 1993-608 – Authorized Duplin County to acquire property for its airport by the quick take procedure.
- S.L. 2001-73 – Authorized Halifax Regional Airport Authority to acquire property for its airport by the quick take procedure.

Municipalities have authority to operate certain public enterprises pursuant to G.S. 160A-311 (set out below). "Quicktake" is permitted for the enterprises listed in subdivisions (1), (2), (3), (4), (6), and (7). The other enterprises use the longer procedure set out in G.S. 40A-42(b) (set out below).

§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems.
(2) Water supply and distribution systems.
(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
(5) Public transportation systems.
(6) Solid waste collection and disposal systems and facilities.
(7) Cable television systems.
(8) Off-street parking facilities and systems.
(9) Airports.
(10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types.

§ 40A-42. Vesting of title and right of possession; injunction not precluded.

....

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

(1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or
(2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or
(3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

....

Steve Rose, counsel to House Local Government II, substantially contributed to this summary.

H566-SMTD-101(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 743

Short Title:	Wendell ETJ Extension Authorized.	(Local)
Sponsors:	Representative Jackson.	
Referred to:	Local Government I, if favorable, Finance.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF WENDELL TO EXTEND ITS EXTRATERRITORIAL JURISDICTION OVER A CERTAIN DESCRIBED AREA WITH THE APPROVAL OF THE BOARD OF COMMISSIONERS OF WAKE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Wendell may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes over any or all of the following area, with the approval of the Board of Commissioners of Wake County. All the provisions of G.S. 160A-360 shall apply, except the fact that some of the area lies more than one mile from the corporate limits:

Beginning at the southwest corner of Robertson Pond Road and Rolesville Road, go east 8830 feet along Robertson Pond Road to Edgemont Road. South 2238 feet, east 3538 feet, along the north border of Bridgegate Subdivision to Highway 97. South 2695 feet along the eastern boundary of Rothgeb Subdivision. West 2419 feet along the southern boundary of Wendell Middle School. South 558 feet to Wendell Boulevard. Cross Wendell Boulevard and continue south along the western and southern property lines of the Batchelor property (REID 04963). South 437 feet, west for 240 feet, southwest for 180 feet, southeast for 88 feet, southwest for 378 feet along the Danny Jeffrey's property, southeast for 422 feet, east for 315 feet, north for 481 feet, northeast for 674 feet, southeast for 86 feet, southeast for 641 feet, south for 930 feet, southwest for 1635 feet along the boundary of REID 0042184, go south for 2594 feet to the northeast corner of property owned by the Town of Wendell (REID 0308782), go west 1563 feet to the Norfolk southern RR., go south 1232 feet along the east boundary of the Roberts property (REID 120785), west 1174 feet to Eagle Rock Road, south along Eagle Rock Road for 5157 feet, east for 3271 feet to Wendell Country Club, south 1537 feet, 629 east, 950 feet south, 200 feet east, and 236 feet south following the northern and eastern boundaries of REID 0068475 to Old Nowell Rd, west 2522 feet to Eagle Rock Road, south along Eagle Rock Road for 1990 feet to Lake Myra Road, go west along Lake Myra Road 11285 feet to Martin Pond Road, go northwest along Marks Creek (Western Boundary of the Wendell Falls Satellite annexation) to the 64 Bypass, north along US 64 Bypass to Rolesville Road, 10838 feet north along the east side of Rolesville Road to Robertson Pond Road. Excluded from this description is any area in the corporate limits of the Town of Wendell.

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

HOUSE BILL 743:
Wendell ETJ Extension Authorized

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Jackson	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 743 authorizes the Town of Wendell to extend its extraterritorial planning and zoning jurisdiction (ETJ) to a described area, if approved by the Wake County Board of Commissioners.***

CURRENT LAW: Current law authorizes municipalities to automatically extend their planning and zoning jurisdiction (ETJ) one mile beyond their city limits, unless the county is regulating subdivisions, has adopted a zoning ordinance, and is enforcing the State Building Code. If the county has undertaken all three of these activities, then the city must get approval of the county commissioners prior to extension of planning and zoning jurisdiction. Cities may also extend their ETJ two or three miles, if they have a population of 10,000 or 25,000, respectively, and they gain county commissioner approval.

BILL ANALYSIS: House Bill 743 authorizes the Town of Wendell to extend its extraterritorial planning and zoning jurisdiction over an area described in the bill, if approved by the Wake County Board of Commissioners.

BACKGROUND: The population of Wendell in July, 2007 was 5,152, representing a population increase of 16.7% from the 2000 census data reporting the population as 4,247.

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

H743-SMRE-54(e1) v1

Giles Perry, counsel to House Local Government I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 886

Short Title:	Allow Dietetics/Nutrition Bd./Recover Costs.	(Public)
Sponsors:	Representatives Ross; and Lucas.	
Referred to:	Health, if favorable, Judiciary I, if favorable, Finance.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE BOARD OF DIETETICS/NUTRITION TO RECOVER COSTS INCURRED BY THE BOARD IN CONNECTION WITH DISCIPLINARY PROCEEDINGS OF THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-370. Costs.**

The Board may assess the costs of disciplinary actions against a licensee or person found to be in violation of this Article or rules adopted by the Board. Costs recovered pursuant to this section shall be the property of the Board."

SECTION 2. This act becomes effective October 1, 2009, and applies to acts or omissions committed on or after that date.

HOUSE BILL 886:
Allow Dietetics/Nutrition Bd./Recover Costs

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Ross	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 886 authorizes the Board of Dietetics/Nutrition to assess the costs associated with disciplinary proceedings against a licensee found to be in violation of the licensing statutes or rules and provides that the costs recovered are the property of the Board.

CURRENT LAW: The North Carolina Board of Dietetics/Nutrition licenses and regulates persons engaged in the practice of dietetics/nutrition in order to protect the public from being harmed by unqualified persons.[1] "Dietetics/nutrition" is defined as the integration and application of principles derived from the science of nutrition, biochemistry, physiology, food, and management, and from behavioral and social sciences to achieve and maintain a healthy status.

The Board has the authority to deny, refuse to renew, suspend, revoke, or impose probationary conditions upon a licensee after a hearing is held in accordance with Chapter 150B of the General Statutes.[2] The Board may make an application to any appropriate court for an order enjoining violations of Article 25 of Chapter 90 of the General Statutes.[3]

BILL ANALYSIS: House Bill 886 authorizes the North Carolina Board of Dietetics/Nutrition to assess the costs of disciplinary actions against persons found to be in violation of rules adopted by the Board or in violation of Article 25 of Chapter 90 of the General Statutes. The bill further provides that costs so recovered are property of the Board.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to acts or omissions committed after that date that result in the Board initiating disciplinary proceedings.

BACKGROUND:

Currently, a number of licensure boards have this authority and the following Boards utilize this same phraseology including the North Carolina Board of Nursing (G.S. 90-171.27), the North Carolina Psychology Board (G.S. 90-270.15), the North Carolina Board of Occupational Therapy (G.S. 90-270.80A), the North Carolina Board of Massage and Bodywork Therapy (G.S. 90-626), the North Carolina Respiratory Care Board (G.S. 90-666), the Perfusionist Advisory Committee of the North Carolina Medical Board (G.S. 90-693), and the North Carolina Interpreter and Transliterator Licensing Board (G.S. 90D-14).

H886-SMTD-96(e1) v2

Shawn Parker, Legislative Analyst to Senate Health substantially contributed to this summary.

[1] G.S. 90-351
[2] G.S. 90-363
[3] G.S. 90-367

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 886 (First Edition)

SHORT TITLE: Allow Dietetics/Nutrition Bd./Recover Costs.

SPONSOR(S): Representative Ross

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	***No Estimate Available.*** ***See Assumptions and Methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Dietetics/Nutrition

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

House Bill 886 enacts new GS 90-370 as the title indicates. Allows the Board to assess the cost of a disciplinary action against a licensee or person found to be in violation of Article 25 of GS Chapter 90 or of rules adopted by the Board. Effective October 1, 2009, and applies to acts or omissions committed on or after that date

Source: Bill Digest H.B. 886 (03/30/0200).

ASSUMPTIONS AND METHODOLOGY:

House Bill 886 allows the North Carolina Board of Dietetics/Nutrition to recover the costs of disciplinary action against a licensee. This will result in an increase in revenues for all fiscal years. According to the Board, the number and nature of disciplinary issues it will process each year cannot be predicted. Because the amount the Board is able to recover depends on the number and nature of the disciplinary issues it processes, the size of this revenue increase cannot be determined.

SOURCES OF DATA: North Carolina Board of Dietetics/Nutrition

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 12, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 308
Corrected Copy 2/27/09
PROPOSED COMMITTEE SUBSTITUTE S308-CSRBf-39 [v.6]

6/25/2009 11:44:59 AM

Short Title: Low Profit Limited Liability Company. (Public)

Sponsors:

Referred to:

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FORMATION OF A LIMITED LIABILITY COMPANY AS A LOW-PROFIT LIMITED LIABILITY COMPANY.

The General Assembly of North Carolina enacts:

SECTION . G.S. 57C-2-01 is amended by adding a new subsection to read:

"(d) L3C. – Formation and operation of a limited liability company as a low-profit limited liability company is a lawful purpose. A low-profit limited liability company is a limited liability company whose articles of organization state that the company is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with the requirements of this subsection. A company that operates in accordance with these requirements in considered a for-profit entity and not a charitable entity for all tax purposes. A company's failure to operate in accordance with these requirements does not affect its status as a limited liability company.

1. To accomplish of one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code, as defined in G.S. 105-228.90.
2. To operate so that no significant purpose of the company is the production of income or the appreciation of property. The fact that a company produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose to produce income or accumulate capital.
3. To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code, as defined in G.S. 105-228.90."

SECTION 2. G.S. 57C-2-21 reads as rewritten:

"**§ 57C-2-21. Articles of organization.**

(a) The articles of organization must set ~~forth:~~forth all of the following:

(1) A name for the limited liability company that satisfies the provisions of G.S. 55D-20 and ~~G.S. 55D-21;~~G.S. 55D-21.

(2) If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability ~~company;~~company.

(3) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an ~~organizer;~~organizer.

(4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that ~~address;~~address.

(4a) The street address, and the mailing address if different from the street address, of the limited liability company's principal office, if any, and the county in which the principal office, if any, is ~~located; and~~located.

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members.

(6) If the limited liability company is formed as a low-profit limited liability company, a statement that operation of the company must meet the charitable purpose requirements of G.S. 57C-2-01(d).

(b) The articles of organization may set forth any other provision, not inconsistent with law, including any other matter that under this Chapter is permitted to be set forth in an operating agreement.

(c) The articles of organization need not set forth any of the powers enumerated in this Chapter."

SECTION 3. G.S. 55D-20(a) is amended by adding the following subdivision to read:

"(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C"."

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

SENATE BILL 308:
Low-Profit Limited Liability Company

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2009
Introduced by:	Sen. Jacumin	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Second Edition S308-CSRBf-39		

SUMMARY: ***The proposed committee substitute for Senate Bill 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C). The PCS removes the provisions from the bill that would have provided enhanced tax incentives to an endangered manufacturer.***

BILL ANALYSIS: Chapter 57C provides for the formation of a limited liability company. A low-profit limited liability company is a limited liability company that is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with these three requirements:

- To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code.
- To operate so that no significant purpose of the company is the production of income or the appreciation of property.
- To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code.

Under current law, a limited liability company could choose to put these conditions on its operations by including them in its articles of organization and by operating in accordance with them. However, current North Carolina law does not provide a designation specific to a company that does so. **Senate Bill 308** would recognize the formation of a low-profit limited liability company and allow that company to use the designation "L3C". Like a limited liability company, a L3C is subject to federal and State tax and investments in a L3C are not tax deductible.

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

BACKGROUND: Vermont became the first state to recognize the L3C as an official legal structure in April 2008 and Michigan become the second state in January 2009. The formation of a L3C is designed to facilitate program-related investments (PRI) by private foundations. Private foundations must distribute at least 5% of their capital for charitable purposes to maintain their nonprofit status. Although foundations often expend these funds through grants, they may also meet the expenditure requirement with IRS-sanctioned PRIs. A PRI is an investment that supports charitable activities but may involve the potential return of capital. An example of a PRI is a loan, a loan guarantee, and an equity investment in a charitable organization.

Foundations do not usually make PRIs without an IRS private letter ruling that the investment meets the IRS requirements as an acceptable PRI. The expense of obtaining a private letter ruling deters foundations from this form of investment. The founders of the L3C designation hope that the IRS or Congress will choose to treat an investment in a L3C as a PRI without the need for a private letter ruling because the three requirements to form as a L3C mirror the IRS requirements for a PRI. Neither the IRS nor Congress has evidenced any movement on this issue.

SB 308 Low Profit Limited Liability Company

NC Quality Of Life(QOL) Foundation

Normal Grant Recipients: Museums, Libraries, Recreation

(PRI Approach)

Submit a PRI (Program Related Investment) Application

- PRI submitted to the IRS
- IRS application fee is $8,700
- Attorney fee (average) $50,000
- Total time is 12 to 24 months
- Total cost is $58,700

NC QOL Buys a Factory Building

- Renovates the building making it lean and green
- Leases to a business for 3%
- The 3% goes to NC QOL foundation
- The normal cost to lease would be 12 to 15 %
- If business is successful it can purchase the factory building
- The foundation can then repeat the process creating more jobs

NC Quality Of Life(QOL) Foundation

Normal Grant Recipients: Museums, Libraries, Recreation

(L3C Approach)

L3C

- Low profit limited liability company
- No IRS application fee
- No attorney application fee
- Total time 3 weeks
- Total cost is $750

L3C Buys a Factory Building

- Renovates the building making it lean and green
- Leases to a business for 3%
- 1% goes to L3C
- 2% goes to NC QOL Foundation
- A normal lease costs 12 to 15%
- If business is successful it can purchase the factory building

The Foundation and L3C can then repeat the process creating more jobs.

The Furniture Industry
(Case Goods)
The Future of the Industry
United States Versus China

Kenan-Flagler Business School Study

Production Cost Analysis

	US Factory	Chinese Factory
Wholesale Selling Price	$600	$600
	US Production Cost	Asian Production Cost
Raw Materials	$225	$282
Labor	$105	$30
Freight	--	$138
Overhead	$210	$60
Est. Operating Profit	$60	$90*

*50% more profit than USA factory

Production Cost Analysis with L^3C

	US Factory with L^3C	Chinese Factory
Wholesale Price	$600	$600
Raw Materials	$225	$282
Labor	$105	$30
Freight	--	$138
Overhead	$150	$60
Est. Operating Profit	$120*	$90

*33% more profit than China factory

Notes

The legislation for the L^3C (Low Profit Limited Liability Company) was developed by Washington attorney Mark Owens. Mr. Owens worked for the IRS for 25 years in the Exempt Organizations section. Mr. Owens headed up this section the last 10 years of his IRS career.

The L^3C legislation has been passed in the following states: Vermont, Michigan, The Crow Indian Nation, Illinois, Maine, Wyoming and Utah. It has been introduced in North Dakota, Oregon, Tennessee, Arkansas, Missouri and Montana.

Some of the projects in process include: 1. Re-equipping and renting manufacturing plants in Michigan to new companies, 2. Montana Food Bank Network Processing Plant, 3. An Infrastructure Company with a program to build wooden bridges using technology from Jay Rubino and others, 4. Broadband in the rural areas of several states, 5. A large church-based information and entertainment center to serve inner-city poor in Dallas, 6. Low income housing projects, 7. Elderly housing projects, 8. Newspapers including the Peoria Journal Star, 9. Hearing aid manufacturing for the poor in Africa, 10. PACE (aging in place) centers for the Volunteers of America. There are dozens and dozens of projects in process in addition to those listed above.

Foundations have more than $500 billion in assets. They have to give away 5% each year—that's $25 billion. Treating North Carolina as an average state, that would equate to approximately $500,000,000, part of which could be available to new and struggling businesses through the L^3C structure.

Low-Profit Limited Liability Company (L^3C)

The Act would recognize a new form of legal entity, the low-profit limited liability company or L^3C. The legislation creating the L^3C tracks exactly the federal tax law requirements for program-related investments. Set forth below is a summary of the key aspects of the L^3C.

1. **What is it?**

Generally: A limited liability company that generates modest profit while carrying on a business that has a charitable purpose.

North Carolina: Proposed state legislation would recognize the L^3C as a new legal entity. Under North Carolina law, an L^3C would be a business entity that:

- significantly furthers the accomplishment of a charitable or educational purpose,
- would not have been formed but for its relationship to the accomplishment of the charitable or educational purpose,
- does not have a significant purpose of income production or property appreciation, and
- does not seek to accomplish a political or legislative purpose.

2. **Who can invest in it?**

- Individuals, governments, and for-profit corporations can invest in L^3C s.
- Private foundations may also invest in L^3C s because the North Carolina statute under which they will be formed incorporates exactly the federal tax law requirements for program-related investments ("PRI").

3. **How will a private foundation's L^3C investment be treated?**

Because they satisfy the PRI requirements, investments in L^3C s are:

- qualifying distributions for purposes of the 5% payout requirement;
- not included in a foundation's asset base for purposes of calculating minimum investment return;
- not business holdings for purposes of the excess business holdings prohibition; and
- not considered jeopardizing investments.

4. **Why was the L^3C created?**

- The L^3C was born from a desire to save endangered jobs by saving endangered industries.
- It is intended to encourage investment in struggling industries such as the U.S. furniture and textile industries.
- The theory is that such businesses will be more likely to attract investors if they are structured as L^3C s because they will appeal to nonprofits, which will be willing to accept a lower rate of return than for-profit investors and can treat their investments as charitable distributions.
- The goal is to help struggling enterprises stay in business, thereby providing jobs and community benefits, by reducing the pressure to produce market-rate profit levels.

Marcus S. Owens, Attorney

February 19, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 30, 2009

TO: Senate Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to S308 v.2

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
EXPENDITURES:	$55,450	$16,336	$17,322	$18,366	$19,435

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State's Office

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: The proposed committee substitute for Senate Bill 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C). The PCS removes the provisions from the bill that would have provided enhanced tax incentives to an endangered manufacturer.

ASSUMPTIONS AND METHODOLOGY:
The proposed committee substitute provides that a low-profit limited liability (L3C) company is a limited liability company (LLC) under North Carolina law. Low-profit limited liability companies

(L3Cs) have been proposed as a means for encouraging investment in struggling business enterprises. Under this theory, non-profit organizations that are required to spend a certain percentage of their assets each year to maintain their non-profit status would invest in L3Cs that have some social purpose. If structured correctly, it is possible that the IRS could treat this investment as a program-related investment that would count towards the percentage that must be spent in order to maintain non-profit status. Because non-profits do not face the same pressures as for-profit investors, the theory states that non-profits would be willing to accept a lower rate of return than would be required for a for-profit investor. Struggling businesses might then be able to stay in business, providing jobs to employees and other community benefits, because the pressure to produce market-rate profit levels had been removed. One of the benefits of L3Cs is that no special legal structure, other than the LLC structure, is needed to establish an L3C.

Assumptions and Methodology

The Department of the Secretary of State estimates that they will incur $40,000 in one-time startup costs, including information technology, forms creation, training, and publicity, as a result of this bill. They also estimate that the new legislation would require a one-quarter time Accounting Technician. The position cost is $15,825 in FY 2009-10, increased for each year by standard Fiscal Research inflationary increases. Revenues from filing fees, Annual Report fees, and Articles of Amendment fees would total $375. These receipts have been subtracted from the estimated expenditures each year.

SOURCES OF DATA: Secretary of State's Office

TECHNICAL CONSIDERATIONS: None

SENATE BILL 807
Judiciary II Committee Substitute Adopted 6/8/09

Short Title: Public Safety Registration. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN CHARACTERISTICALLY WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 19B.**

"**Characteristically Wild Animals.**

"**§ 19B-1. Definitions.**

The following terms as used in this Chapter mean:

(1) "Animal control authority" means the agency designated by the city or county to administer ordinances regulating, restricting, or prohibiting the possession of characteristically wild animals. The animal control agency may be a municipal or county animal control agency, county sheriff, or other designated agency.

(2) "Characteristically wild animal" means one of the following types of animals of the order Carnivora, and any hybrids of these animals, unless otherwise specified:

a. Family Felidae – only lions, tigers, and leopards.

b. Family Ursidae – all bears that are not native to this State.

(3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(4) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, a characteristically wild animal.

(5) "Wildlife sanctuary" means a nonprofit organization that cares for animals defined as characteristically wild animals and within whose facilities none of the following activities occur:

a. Activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted.

b. Commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose.

c. Unescorted public visitations or direct contact occurs between the public and an animal.

d. Breeding of animals.

"**§ 19B-2. Exemptions.**

(a) The provisions of this Chapter do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).

(2) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing a characteristically wild animal at the written request of the animal control authority or acting under the authority of this Chapter.

(3) Federal or State wildlife enforcement officers acting under the scope of their authority.

(4) Animal control or law enforcement agencies or officers acting under the authority of this act.

(5) Veterinary hospitals, clinics, veterinarians, and persons employed at such facilities under the direction of a veterinarian who are actively treating a characteristically wild animal in their professional capacity as a veterinarian or employee of such facility.

(6) Any wildlife sanctuary as defined in G.S. 19B-1(5).

(7) A university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended.

(8) Circuses that are incorporated and hold a Class C license under the Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any regulated animal to the public as part of a carnival or for the purpose of (i) exhibition; or (ii) entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any regulated animal and a patron are in close contact with each other.

(9) Any person who possesses a valid United States Department of Agriculture Class A, B, or C license and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards on January 1, 2010, may acquire new characteristically wild animals after that date, and must do all of the following:

a. Register with the animal control authority as required by G.S. 19B-3(b)(1) and G.S. 19B-3(c) of this Chapter, as applicable.

b. Maintain a liability insurance policy in an amount not less than two hundred fifty thousand dollars ($250,000) with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property.

c. Not allow photo opportunities or direct contact between characteristically wild animals and members of the public or the possessor's family and friends with animals that are over the age of six months. "Direct contact" means any situation in which an individual may potentially touch or otherwise come into physical contact with a characteristically wild animal.

If a characteristically wild animal possessed pursuant to this subdivision dies of neglect or cruelty, is confiscated and not returned to the possessor pursuant to G.S. 19B-4, or if the possessor is involved in illegal activities,

the possessor shall no longer be permitted to acquire new characteristically wild animals.

(10) A person who does not reside in this State and is traveling through this State with a regulated species if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(11) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

"**§ 19B-3. Keeping of characteristically wild animals; conditions under which grandfathered animals may be kept.**

(a) Except as otherwise provided in this Chapter, it is unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a characteristically wild animal, including transactions conducted via the Internet.

(b) A person in legal possession of a characteristically wild animal prior to January 1, 2010, and who is the legal possessor of the animal, may keep possession of the animal for the remainder of the animal's life, subject to all of the following conditions:

(1) On or before January 1, 2010, the possessor of a characteristically wild animal shall register with the animal control authority for the city or county in which the animal is located. The registration shall include the person's name, address, telephone number, a complete inventory of each characteristically wild animal that the person possesses, a photograph or microchip number for each animal, the address for the site at which each animal is located, and the payment to the animal control authority of a one-time fee of one hundred dollars ($100.00) per site at which a characteristically wild animal is to be located and ten dollars ($10.00) per characteristically wild animal located at that site to cover the costs of enforcement of this Chapter. A possessor shall have a continuing obligation to promptly notify the animal control authority with jurisdiction of any material changes to the information required for registration.

(2) The possessor shall prepare and submit to the animal control authority at the time of payment of the fee required by subdivision (1) of this subsection a contingency plan to protect first responders by providing for the quick and safe recapture of the characteristically wild animal in the event of an escape.

(3) The possessor shall maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to January 1, 2010.

(4) The possessor shall present paperwork described in subdivision (3) of this subsection to an animal control or law enforcement authority upon request.

(5) The possessor shall comply with the basic standards for housing exotic animals and protecting the public under the federal Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended, and the regulations adopted pursuant to that act, and shall allow the animal control authority access to the animal's housing in order to ensure that the animal is properly cared for.

(6) Except as provided in subsection (c) of this section, a legally possessed characteristically wild animal shall not be traded or replaced by a person who does not have an exemption as established in G.S. 19B-2.

(7) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the characteristically wild animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a registered animal.

(8) A possessor of a characteristically wild animal shall notify local law enforcement and local fire departments about the types and numbers of characteristically wild animals the possessor has.

(9) The possessor shall comply with any and all applicable federal, State, or local law, rule, regulation, ordinance, permit, or other permission. Failure to comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Chapter.

(c) A person in legal possession of a characteristically wild animal prior to January 1, 2010, pursuant to this section, and who complies with the provisions of this Chapter during the animal's life, may replace the animal upon its death with an animal of the same species, so long as the animal's death was not the result of neglect or cruelty. A person replacing an animal pursuant to this subsection shall: (i) register the animal in the manner set forth in subdivision (1) of subsection (a) of this section; (ii) maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish the person is in legal possession of the animal, and present the paperwork to an animal control or law enforcement authority upon request; and (iii) otherwise comply with the requirements of this section.

"**§ 19B-4. Confiscation of characteristically wild animals.**

(a) An animal control authority or other person authorized to enforce the provisions of this Chapter may immediately confiscate a characteristically wild animal under any of the following circumstances:

(1) The animal control authority or other person designated under this Chapter has probable cause to believe that the animal was acquired or is being held in contravention of this Chapter.

(2) The animal poses a public safety or health risk.

(3) The animal is in poor health and condition as a result of the action or inaction of the possessor.

(b) A characteristically wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or law enforcement officer establishes that the possessor had legal possession of the animal pursuant to G.S. 19B-2 or G.S. 19B-3, the return does not pose a public safety or health risk, or the animal is determined not to be in poor health and condition as a result of the action or inaction of the possessor.

(c) The animal control authority or other persons authorized to enforce this Chapter under G.S. 19B-6 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(d) If a characteristically wild animal that is confiscated under this section is not returned to the possessor, the animal control authority or other persons designated under this Chapter may release the animal to a facility such as a wildlife sanctuary or a facility exempted pursuant to G.S. 19B-2.

(e) If a characteristically wild animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under this Chapter may exercise judgment in attempting to recapture the animal or in killing the animal.

"**§ 19B-5. City or county ordinances.**

A city or county may adopt an ordinance governing characteristically wild animals that is more restrictive than this Chapter. However, nothing in this Chapter requires a city or county to adopt an ordinance to be in compliance with this Chapter.

"**§ 19B-6. Enforcement of Chapter.**

(a) The animal control authority and its staff and agents, local law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this Chapter.

(b) The possessor of a characteristically wild animal shall, at all reasonable times, allow the animal control authority or other persons designated by this Chapter to enter the premises where the animal is being kept to ensure compliance with this Chapter.

"**§ 19B-7. Penalties.**

A person who violates this Chapter is liable for a civil penalty to be determined by the court.

"**§ 19B-8. Severability.**

If any part of this Chapter is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2010, and applies to acts committed on or after that date.

SENATE BILL 807:
Public Safety Registration

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 807 makes it unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, a characteristically wild animal (regulated animals), except in certain circumstances. A person violating the provisions of the bill would be liable for a civil penalty to be determined by a court. The bill also authorizes animal control authorities and other law enforcement personnel to confiscate a regulated animal kept in contravention of the provisions of the act.***

The provisions of the bill become effective January 1, 2010, and apply to acts occurring on or after that date.

BILL ANALYSIS: Senate Bill 807 creates a new Chapter 19B of the General Statutes that does all of the following:

- Makes it unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State a regulated wild animal, except in certain circumstances.
  - Regulated animals: Lions, tigers, leopards, and all bears that are not native to the State.
  - Exemptions to the prohibition include: Institutions accredited by the American Zoo and Aquarium Association; certain nonprofit animal protection organizations housing a regulated animal at the written request of the animal control authority; federal or State wildlife enforcement officers; animal control or law enforcement agencies or officers; licensed veterinary hospitals or clinics; wildlife sanctuaries; universities, colleges, laboratories, or other research facilities licensed under federal law; circuses licensed under federal law that are temporarily in the State, a non-resident of the State in the State with a regulated animal for not more than 72 hours; and indigenous species regulated by the Wildlife Resources Commission. United States Department of Agriculture Class A, B, or C licensees would also be exempt provided that they: (i) register regulated animals with the appropriate animal control authority, (ii) maintain a liability insurance policy of not less that $250,000; and (iii) prohibit direct contact between regulated animals and the public and family members with animals over the age of six months.
  - Grandfathered possession of characteristically wild animals, under certain circumstances: A person in legal possession of a regulated animal prior to January 1, 2010 may keep possession of the animal for the remainder of the animal's life, subject to the following conditions: (1) timely registration of the animal with the animal control authority and payment of a one-time fee of $100 per site where regulated animals are kept and $10 per regulated animal at the site; (2) preparation and submittal of a contingency plan to protect first responders if a regulated animal escapes; (3) maintenance of certain records to be presented to animal control or law enforcement authorities upon request; (4) compliance with basic standards for housing exotic animals provided under federal law; (5) immediate notification of animal control or law enforcement authorities upon discovery

that the animal has escaped; (6) the animal must not be traded or replaced; (7) notification to local law enforcement and fire departments of the types and numbers of regulated animals kept; and (8) compliance with any applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions. A person in legal possession of a regulated animal and who is in compliance with these provisions during the animal's life may replace the animal upon its death, provided that the animal's death was not the result of neglect or cruelty.

- Confiscation of characteristically wild animals by authorities: An animal control or law enforcement authority may confiscate an animal if: (1) it has probable cause to believe that the animal was acquired or held in contravention of Chapter 19B; (2) the animal poses a public safety or health risk; or (3) the animal is in poor health and condition as a result of the owner's actions or inaction.

  This section includes procedures for notice of the confiscation; return of the animal based on certain findings, and if not returned then procedures for placement or euthanasia; and discretion of authorities to act in response to release or escape of a regulated animal.
- Penalties: A person violating the provisions of the PCS would be liable for a civil penalty to be determined by a court.

EFFECTIVE DATE: This bill becomes effective January 1, 2010, and applies to acts occurring on or after that date.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

S807-SMTD-102(e2) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 807

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

S807-ARI-19 [v.1]

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

Date _____,2009

Senator Nesbitt

moves to amend the bill on page 4, line 30,
by rewriting that line to read:

"G.S. 19B-3, the return does not pose a public safety or health risk, and the animal is determined".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 460*
Commerce Committee Substitute Adopted 5/4/09
PROPOSED COMMITTEE SUBSTITUTE S460-CSTD-59 [v.7]

6/30/2009 9:59:41 AM

Short Title: Puppy Mill Bill. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE PUPPY MILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-21 reads as rewritten:

"**§ 19A-21. Purposes.**

The purposes of this Article are (i) to protect the owners of dogs and cats from the theft of such pets; (ii) to prevent the sale or use of stolen pets; (iii) to insure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, commercial breeding, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, breeding, buying, or selling them for such use; (iv) to insure that animals confined in commercial breeding operations, pet shops, kennels, animal shelters and auction markets are provided humane care and treatment; (v) to prohibit the sale, trade or adoption of those animals which show physical signs of infection, communicable disease, or congenital abnormalities, unless veterinary care is assured subsequent to sale, trade or adoption."

SECTION 2. G.S. 19A-23 reads as rewritten:

"**§ 19A-23. Definitions.**

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

...

(5b) "Commercial breeder" means any person who owns or maintains 15 or more intact female dogs of breeding age and 30 or more puppies for the purpose of sale. Nothing in this Article shall apply to those kennels or establishments operated for the purpose of boarding or training hunting, sporting, herding, show, or working dogs.

(5c) "Commercial breeding operation" means the physical location or facility at which a commercial breeder breeds or maintains intact female dogs of breeding age and puppies."

SECTION 3. G.S. 19A-24(a) reads as rewritten:

"(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or

both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(1a) Establish standards for the care of animals at commercial breeding operations. The standards adopted shall include provisions for adequate daily exercise, adequate veterinary care, appropriate housing for intact female dogs of breeding age, females with litters and weaned puppies, and record keeping. The standards applicable to animal shelters shall apply to commercial breeding facilities unless otherwise established.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

SECTION 4. G.S. 19A-30 reads as rewritten:

"**§ 19A-30. Refusal, suspension or revocation of certificate or license.**

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any commercial breeder, public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

(1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;

(2) Willful disregard or violation of this Article or any rules issued pursuant thereto;

(3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

(3a) Failure to comply with the statutes and rules governing commercial breeding operations.

(4) Allowing one's license under this Article to be used by an unlicensed person;

(5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;

(6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, commercial breeding operation, pet shop, or dealer;

(7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;

(8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before- suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this -Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect."

SECTION 5. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.1. License required for commercial breeder; penalty.**

(a) No commercial breeder shall operate in the State without first obtaining a commercial breeders license. Application for a license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be fifty dollars ($50.00) for each license period or part thereof, beginning with the first day of the fiscal year.

(b) Acting as a commercial breeder without first obtaining a license as set forth in subsection (a) of this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor. Animals found in the possession or custody of an unlicensed commercial breeder who has been convicted of acting as an unlicensed commercial breeder within the past 5 years, shall be subject to immediate seizure and impoundment and shall be subject to sale or euthanasia in the discretion of the Director."

SECTION 6. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.2. Additional standards of care for commercial breeders; inspections.**

(a) Commercial breeders shall provide adequate veterinary care to the intact female dogs of breeding age and any puppies in their care and custody. An intact female dog of breeding age shall not be bred without an examination from a licensed veterinarian that the dog is in suitable health for breeding.

(b) Commercial breeding operations shall be subject to inspection by duly appointed employees of the Department unless otherwise requested by a local animal control officer and authorized by the Department. In conducting such inspections, the Department employee or

local animal control officer may inspect the records of the commercial breeder, the premises where animals are bred and maintained, and any animal used in the breeding program or any puppies in their care and custody. Denial of access to the commercial breeding operation shall be grounds for revocation of the commercial breeders license."

SECTION 7. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.3. Penalties for commercial breeder failing to provide adequate care for animals; disposition of animals.**

The failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession shall constitute a Class 3 misdemeanor, and the commercial breeder shall be subject to a fine of not less than fifty dollars ($50.00) per animal or more than a total of one thousand dollars ($1,000.00). The failure to meet the standards of care for the animals in the commercial breeder's custody or possession shall also constitute grounds for revocation of the commercial breeder's license. The animals in the possession or custody of the commercial breeder may be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director. Prior to seizure, the Director shall consult with the county in which the animals are located. At the discretion of the Director, a county may accept custody of the animals."

SECTION 8. This act becomes effective May 1, 2010, and applies to the commercial breeding of dogs on or after that date.

SENATE BILL 460: Puppy Mill Bill.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Sen. Davis	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S460-CSTD-59		

SUMMARY: ***The proposed committee substitute to Senate Bill 460 would require persons who are engaged in the commercial breeding of dogs to obtain a license from the Department of Agriculture and Consumer Services (DACS) and to operate in compliance with standards of care to be adopted by the Department.***

[As introduced, this bill was identical to H460, as introduced by Reps. Jeffus, Dickson, Harrison, which is currently in Rules, Calendar, and Operations of the House.]

CURRENT LAW:

Article 3 of Chapter 19A of the General Statutes is the Animal Welfare Act. The act requires persons who operate boarding kennels, public auctions, and pet shops or who act as an animal dealer, to obtain a license from the DACS. Persons operating animal shelters are required to obtain a certificate of registration. In addition, those persons operating kennels, public auctions, pet shops, and animal shelters must comply with rules adopted by the Board of Agriculture which provide standards of care, including recordkeeping and transportation, for the animals kept at these facilities. Failure to obtain a license for the operation of a pet shop, kennel, or public auction is a Class 3 misdemeanor with a penalty of no less than $5 and no more than $25. Failure to obtain a license to act as a dealer is a Class 2 misdemeanor. Failure to adequately house, feed, and water animals is a Class 3 misdemeanor and the person shall be subject to a fine of not less than $5 per animal with a total cap of $1,000. In addition, the Department may assess a civil penalty of not more than $5,000 for a violation of the provisions of the article. The Department must consider the degree and extent of harm caused by the violation in assessing the penalty.

BILL ANALYSIS:

Senate Bill 460 adds commercial dog breeders to those operations which are required to obtain a license from DACS and provides that they must operate consistent with standards of care adopted by the Department.

1. G.S. 19A-23 is amended to add definitions of commercial breeder and commercial breeding operation. A commercial breeder is a person, who during any 12 month period, maintains *more than 15 intact female dogs of breeding age and more than 30 puppies* for the primary purpose of the sale of their offspring as companion animals. A commercial breeding operation is the physical location or facility at which a commercial breeder breeds or maintains intact female dogs and their offspring.

2. G.S. 19A-24 is amended to require the Board of Agriculture to establish standards of care for animals at a commercial breeding operation. The standards are to take into consideration the particular needs of the dogs used in such an operation and include provisions for adequate daily exercise, veterinary care, housing for intact females, females with litters, and housing for weaned puppies. The standards that apply to animal shelters will apply to commercial breeding facilities unless other rules are established.

3. New G.S. 19A-29.1 sets the fee for a commercial breeder's license at $50. Failure to obtain a license is a Class 2 misdemeanor. Animals found in the custody of an unlicensed commercial breeder shall be subject to immediate seizure and impoundment, and on conviction, shall become subject to sale or euthanasia in the discretion of the Director of the Animal Welfare Division.

4. In addition to the standards of care adopted pursuant to G.S. 19A-24, new G.S. 19A-29.2 provides that intact female dogs of breeding age shall not be bred without a certification from a veterinarian that the dog is in suitable health for breeding. Commercial breeding operations will be subject to inspections by employees of the Department or by local animal control officers. Denial of access to the operation is grounds for the revocation of the license.

5. Failure to comply with the statutes and rules governing commercial breeders may result in the refusal to issue, suspension, or revocation of a commercial breeder's license. Failure to obtain a license is a Class 2 misdemeanor and animals in the possession of an unlicensed commercial breeder may be seized and impounded, and if the commercial breeder is convicted, sold or euthanized in the discretion of the Director. Failure to meet the standards of care is a Class 3 misdemeanor and the commercial breeder shall be subject to a fine of not less than $50 per animal or more than a total of $1,000. Failure to meet standards of care also constitutes grounds for revocation of the breeder's license. The animals may also be seized and impounded, and, if the commercial breeder is convicted, may be sold or euthanized in the discretion of the Director. The Director must consult with the County where the animals are located. At the discretion of the Director, a county may take custody of the animals.

EFFECTIVE DATE: The act becomes effective May 1, 2010 and applies to the commercial breeding of dogs on or after that date.

Barbara Riley, counsel to the House Agriculture committee, and Karen Cochrane-Brown counsel to Senate Commerce, substantially contributed to this summary.

S460-SMTD-104(CSTD-59) v8

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

REVISED

BILL NUMBER: Senate Bill 460 (Second Edition)

SHORT TITLE: Commercial Dog Breeders.

SPONSOR(S): Senator Davis

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Ag & Cons. Services	**$4,123**	**$5,173**	**$7,673**	**$10,173**	**$12,173**
Fees & Forfeitures	**$828**	**$828**	**$828**	**$828**	**$828**
EXPENDITURES					
Ag & Cons. Services	**$248,313**	**$425,772**	**$443,949**	**$431,609**	**$444,804**
Fees & Forfeitures	**$0**	**$0**	**$0**	**$0**	**$0**
Correction			**Indeterminate fiscal impact**		
Judicial			**Indeterminate fiscal impact**		
POSITIONS (cumulative):					
Ag & Cons. Services	**6**	**6**	**6**	**6**	**6**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Department of Agriculture and Consumer Services
Department of Public Instruction
Department of Correction
Judicial Branch

EFFECTIVE DATE: December 1, 2009

BILL SUMMARY:
S.B. 460 amends G.S. 19A. The bill requires the Board of Agriculture to establish standards for the care of animals at commercial breeding operations, including provisions for adequate daily exercise, adequate veterinary care, appropriate housing and record keeping. It also requires commercial dog breeders to obtain a commercial breeders license before commencing operations; failure to obtain a license is a Class 2 misdemeanor. The bill gives the Department of Agriculture and Consumer Services (DACS), or local animal control, the right to inspect commercial breeding operations.

S.B. 460 prohibits commercial breeders from breeding females less than 18 months or more than 8 years old, requires an annual certification that a female dog is healthy enough for breeding; and requires that veterinary care be provided to all dogs and their offspring. The bill establishes penalties (fines of at least $50 per animal up to a total of $1,000, Class 3 misdemeanor) for failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care or otherwise meet the standards of care for their animals.

BACKGROUND
In 1966, the U.S. Congress passed the Animal Welfare Act (USAWA), which outlines specific minimum standards of care for dogs (and other animals) bred for commercial resale. Under the USAWA, certain large-scale commercial breeders are required to be licensed and regularly inspected by the United States Department of Agriculture. Only "wholesale" facilities that breed animals for resale – for example, to pet stores – are subject to the USAWA; operations that sell directly to the public are not required to adhere to USAWA or any federal humane care standards.

S.B. 460 requires the Department of Agriculture and Consumer Services (DACS) to develop standards of care, license, and inspect all commercial dog breeders who maintain 15 or more adult female dogs, in a 12-month period, for the primary purpose of the sale of their puppies. DACS already has standards of care in place for animal shelters, boarding kennels, pet shops, and public auctions. In addition, DACS licenses, or issues certificates of registration, and inspects these facilities.

DACS' Animal Welfare Section (AWS) estimates that there are at least 200 commercial breeders operating in North Carolina; of these, 79 are known to have more than 15 female dogs. AWS stresses the fact that this is most likely a very conservative estimate of the actual number of commercial dog breeders; because the industry is unregulated, it is essentially a hidden industry, making an accurate estimate of the number of breeders, at best, an educated guess.

While regulation may cause some commercial breeders to shut down, AWS expects the number of known breeders to grow to 240 within five years. This growth is due to three main factors:

- Increased attention to the industry by DACS will uncover additional breeders;
- Inspected facilities will inform on their non-regulated competitors; and
- Increased public awareness of commercial dog breeding standards will increase the number of public complaints about commercial breeding facilities.

ASSUMPTIONS AND METHODOLOGY:

Developing Standards

Housing situations (long-term & short-term) at commercial dog breeding operations are sufficiently different from those in currently regulated facilities that new rules would have to be developed to accommodate the different goals of operation. Many other states, and the federal government have rules that could serve as a model for North Carolina. Because S.B. 460 only includes dogs, developing the rules should be less involved than if other species were included.

It is anticipated that the development of these rules will be controversial. The American Kennel Club and other organizations that promote ethical breeding are expected to object. Assuming little to no controversy, new regulation could be implemented in approximately six months. However, because of the expected controversy, it could take a year or more to pass the rules. As an example, development of the euthanasia rules began in June, 2006, but the rules have yet to be adopted.

Expected Revenue

There are two sources of revenue under S.B. 460 – license revenue and fines. All commercial breeding facilities would be required to purchase a license to operate. Failure to obtain a license is a Class 2 misdemeanor, and continuing to operate without a license can result in the immediate seizure and impoundment of the animals upon conviction. The license fee is $50. Assuming all commercial breeders purchase a license, DACS would receive $3,950 in revenue in the first year. This revenue is expected to increase to $12,000 per year by FY 2013-14 due to the expected increase in the number of regulated facilities.

Fines & Forfeitures

S.B. 460 allows AWS to assess penalties on breeders who fail to provide adequate care for their animals. The failure to properly care for the animals (house, exercise, feed, water, provide veterinary care, etc) is a Class 3 misdemeanor; for this offense, the breeder could also be subject to a fine of not less than $50 per animal, up to $1,000. Pursuant to Article IX, Section 7(b) of the Constitution, the proceeds of all civil penalties that are collected due to S.B. 460 will deposited in the Civil Penalty and Forfeiture Fund. The proceeds may be diminished only by the actual costs of collection. The DACS' administrative withholding rate is 17.25%.

AWS does not expect significant revenue from fines. Their policy is to work with non-compliant facilities to bring them into compliance with the regulation. AWS can escalate their requests for cooperation by issuing a "Cease and Desist" order and, ultimately, taking over the facility. Businesses recognize that failure to comply with the regulations puts their livelihood at risk and that there are substantial legal costs associated with a challenge to AWS regulation. Thus, AWS has found that their cooperative approach has been effective in bringing organizations into compliance and keeping businesses open.

AWS provided historical information on fines collected from 1996 until 2004. Over this period, AWS collected eight fines, for revenue of $4,100, or less than $500 per year. For the purpose of this fiscal note, annual fine revenue of $1,000 has been assumed, reflecting AWS' expectation that at least one commercial breeding facility will be taken over. Takeovers will typically result in fines to the operators of no less than $50 per animal up to $1,000 per breeder.

Table 1: Expected Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Licenses					
Registered Breeders	79	100	150	200	240
License Revenue	$ 3,950	$ 5,000	$ 7,500	$ 10,000	$ 12,000
Fines	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000
Total Revenue	$ 4,950	$ 6,000	$ 8,500	$ 11,000	$ 13,000

Per G.S. 115C-457.2, the clear proceeds of the $1,000 fine revenue will go to the Civil Penalty and Forfeiture Fund; DACS will retain its cost of collection based on its 17.5% administrative withholding rate. Table 2 shows the breakdown of the fine by recipient.

Table 2: Allocation of Fine Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Fines to DACS	$ 173	$ 173	$ 173	$ 173	$ 173
Fines to Civil Penalty & Forfeiture Fund	$ 828	$ 828	$ 828	$ 828	$ 828
Total Fine Revenue	**$ 1,000**	**$ 1,000**	**$ 1,000**	**$ 1,000**	**$ 1,000**

Expected Costs

Department of Agriculture and Consumer Services

S.B. 460 will require AWS to inspect commercial dog breeders. It is expected that the number of inspections needed for each commercial breeding facility will exceed the number needed at currently licensed facilities. Currently, facilities that are required to be licensed under North Carolina's Animal Welfare Act (NCAWA) have a 30% failure rate, despite being subject to inspection for several years. Historically, when taken under NCAWA regulations, facilities have a near 100% inspection failure rate for the first several years. For instance, in 2005, public animal shelters were required to meet the standards of the NCAWA; few passed initial inspection and, as a result, were inspected up to five times per year.

AWS currently employs five Animal Health Technicians who inspect over 640 facilities across the State. Given the 30% failure rate, these five inspectors performed more than 1,000 inspections and travelled over 120,000 miles in 2008. Thus, facilities are inspected, on average, 1.6 times per year and each inspector is responsible for over 200 inspections every year. Regulating the commercial dog breeding industry will require three additional inspectors for at least the first five years. At first glance, if each facility only required one inspection, it appears that these new inspectors will only be inspecting 29 facilities each in the first year, increasing to 80 each in the fifth year. However, AWS assumes that each facility will be inspected at least three times and need additional support from inspectors to understand and comply with the new regulations.

Inspectors will also be needed to identify "hidden" commercial dog breeding facilities and investigate the large number of calls that are expected following the implementation of the new regulations. Finally, AWS expects to takeover at least one facility per year for the first several

years. Takeovers are staff intensive; one recent takeover required over 750 hours of a field inspectors time. AWS anticipates that the number of additional inspectors could be reduced as facilities come into compliance or close.

AWS will also require an administrative assistant, an attorney, and a paralegal to handle the increased administrative and legal work associated with the new regulations. AWS expects a number of legal challenges from the newly regulated operations; the current attorney is at capacity and will not be able to handle the additional work. Table 3 provides a breakdown of staff duties.

Table 3: New Staff Duties, Hours

Duty	Hours	% of Time
Inspector		
Conducting Inspections and Compliance Activities	1,710	95%
Investigating Complaints	72	4%
Searching for Unknown Facilities	18	1%
Administrative Assistant		
Routing Complaints & Handling Information Requests	1,170	65%
Coordinating Inspections & Posting Inspections Online	540	30%
Handling and Documenting Fees	90	5%
Attorney		
Providing Legal Advice to AWS	1,080	60%
Drafting Legal Correspondence Requiring Adherence to AWA	540	30%
Representing AWS in Court	180	10%
Paralegal		
Researching Court Opinions/ Decision	1,080	60%
Drafting Discovery, Correspondence Documents	360	20%
Managing Documents	270	15%
Assisting Attorneys in Trial Preparation	90	5%

Table 4 provides a detailed account of the costs associated with the new staff.

Table 4: Expected Salary & Benefit Costs, FY 2009-10 Dollars

	Field Inspector	Attorney I	Paralegal I	Office Assistant	Total
# of Positions	3	1	1	1	
Salary Grade	63	79	67	63	
Base Pay	$ 29,502	$ 74,323	$ 43,490	$ 29,502	
Total Base Pay	*$ 88,506*	*$ 74,323*	*$ 43,490*	*$ 29,502*	*$ 235,821*
Hospitalization	$ 12,471	$ 4,157	$ 4,157	$ 4,157	$ 24,942
Social Security	$ 6,771	$ 5,686	$ 3,327	$ 2,257	$ 18,040
Retirement	$ 7,204	$ 6,050	$ 3,540	$ 2,401	$ 19,196
Fringe Benefits	*$ 26,446*	*$ 15,893*	*$ 11,024*	*$ 8,815*	*$ 62,178*
Total Pay	**$ 114,952**	**$ 90,216**	**$ 54,514**	**$ 38,317**	**$ 297,999**

Operating expenses associated with the new inspection duties would total $27,313 in the six months of FY 2009-10 that the new regulation would be in place. This figure includes on-going operating expenses of $23,213 as well as $7,100 in start-up expenses for computers and inspection equipment. The FY 2010-11 operating expenses are expected to be $41,022. The increase is due to several factors including the increase in known commercial breeders and vehicle expenses, which are based on 2,000 miles driven per month at a vehicle rental rate of $0.52 per mile. Table 4 provides a summary of all expected expenses.

During the initial years of regulation, it is possible that involuntary facility closure will be required. Costs associated with closure can be significant. It is important to consider the possible costs arising from a "takeover" of a facility. An AWS "takeover" of a small private animal shelter in Hendersonville cost the State over $50,000 in staff time. This figure was for only one week of on-site care for approximately 150 animals, which is considerably smaller than recent actions against puppy mills by county officials working with the Humane Society of the United States.

In the Hendersonville case, the owners agreed to sign over the animals and allow AWS to use their facility to provide care; this is uncommon. If an owner decides to contest the takeover, the animals must be held until the appeal is concluded. A recent case in Lee County took three years before the courts declared the breeder was no longer the legal owner of the animals. The standard cost to board and feed one dog is eight dollars per day. In the Lee County case, 40 animals were held for three years, at a cost exceeding $345,000, not including veterinary care.

AWS estimates that a takeover will occur twice per year for the first three years until breeders are convinced that action can, and will, be taken. For the purpose of this analysis, Fiscal Research has assumed that, for the first three years, AWS will takeover two 50 dog facilities per year, and that AWS must board the dogs for three months (90 days). Beginning in FY 2012-13, it was assumed that one facility per year will require takeover. This results in an expected takeover cost, exclusive of staff time, of $72,000 per year for the first three years and $36,000 per year after that. Based on the examples provided by AWS, this is a very conservative estimate of the possible cost of takeover.

Table 5: Total Expected Expenses by Fiscal Year

	2009-10	2010-11	2011-2012	2012-13	2013-14
Salary	$ 117,911	$ 247,494	$ 261,255	$ 275,127	$ 289,214
Fringe	$ 31,089	$ 65,256	$ 68,884	$ 72,542	$ 76,256
Salaries & Fringe Total	*$ 149,000*	*$ 312,750*	*$ 330,139*	*$ 347,669*	*$ 365,470*
On-going Operating Expenses					
Postage	$ 35	$ 44	$ 69	$ 92	$ 115
Supplies	$ 108	$ 112	$ 119	$ 125	$ 131
Motor Vehicles	$ 18,720	$ 38,118	$ 38,823	$ 39,494	$ 40,190
Equipment	$ 1,350	$ 2,749	$ 2,800	$ 2,848	$ 2,898
On-Going Expense Total	$ 20,213	$ 41,022	$ 41,810	$ 42,560	$ 43,334

Start-Up Costs					
Inspection Equipment	$ 2,000				
Computers	$ 5,100			$ 5,380	
Start-Up Costs Total	*$ 7,100*			*$ 5,380*	
Involuntary Closure Expenses	$ 72,000	$ 72,000	$ 72,000	$ 36,000	$ 36,000
Total Expenditures	**$ 248,313**	**$ 425,772**	**$ 443,949**	**$ 431,609**	**$ 444,804**

Department of Correction – Division of Prisons

Section 5

Section 5 enacts G.S. 19A-29.1 subsection (b) which makes it a Class 2 misdemeanor to operate as a commercial dog breeder in North Carolina without first obtaining a commercial breeders license. Subsection (b) provides that continued illegal operation after conviction is a separate offense.

Because the proposed Section 5 creates a new offense, the NC Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2007-08, 20% of Class 2 misdemeanors convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this proposed offense would not be expected to have significant impact on the prison population.* The impact on local jail populations is not known.

Proposed G.S. 19A-23(5b) defines "Commercial breeder" as an individual who, during any 12 month period, maintains at least 15 adult female dogs for the primary purpose of the sale of their offspring as companion animals. A subset of the individuals who would qualify as commercial breeders under G.S. 19A-23(5b) are already subject to licensure as dealers. Subsection 7 of G.S. 19A-23 defines a "Dealer" as any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility. A "Dealer" who maintains at least 15 adult female dogs primarily for selling their offspring as companion animals falls within the proposed definition of "commercial breeder." It is currently a Class 2 misdemeanor under G.S. 19A-34 to act as a "dealer" without a license. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 19A-34. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Section 7:

Section 7 enacts G.S. 19A-29.3, making it a Class 3 misdemeanor for a commercial dog breeder to fail to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession.

Because the proposed Section 7 creates a new offense, the NC Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2007-08, 24% of Class 3 misdemeanors convictions resulted in

active sentences. The average estimated time served for Class 2 misdemeanor convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, *convictions for this proposed offense would not be expected to have significant impact on the prison population.* The impact on local jail populations is not known.

As noted above, some portion of "commercial breeders" under the proposed law are already subject to licensure as "dealers." Under G.S. 19A-35, it is currently a Class 3 misdemeanor for any person subject to licensure to fail to adequately house, feed, and water animals in his possession or custody. Therefore, a portion of the potential offender pool for the new offense is already subject to prosecution for a Class 3 misdemeanor under G.S. 19A-35. AOC currently does not have a specific offense code for violations of G.S. 19A-35. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

The new offense would also cover certain acts by "commercial breeders" which are currently covered by general animal cruelty laws. Animal cruelty offenses typically require a showing of intentional conduct. They are also classified more highly than the proposed Class 3 misdemeanor. (For example, under subsection (a) of G.S. 14-360, it is a Class 1 misdemeanor to intentionally, *inter alia*, deprive any animal of necessary sustenance.) *The proposed offense would not appear to result in any prison impact vis-à-vis the acts that are covered by these more serious offenses.*

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, Fiscal Research does not assume deterrent effects for any criminal penalty bill.

Judicial Branch

The Administrative Office of the Courts (AOC) has no data from which to determine the number of new Class 2 and Class 3 misdemeanor charges under this bill. Some individuals who would be considered "commercial breeders" under this bill already qualify as "dealers" under G.S. 19A-23. It is currently a Class 2 misdemeanor to operate as a dealer without a license (G.S. 19A-34) and a Class 3 misdemeanor for any person subject to licensure to fail to adequately care for animals in his possession or custody. *AOC does not know the number of defendants charged with these misdemeanors in the past, nor the additional number of people who would come under the new licensing requirements of this bill.*

To the extent that this legislation broadens the number of people charged with Class 2 and Class 3 misdemeanors, there will be an impact on the court system. Because commercial breeders by definition are responsible for multiple dogs, it is possible that offenders charged under this bill would face multiple charges, which could add to the complexity of the cases and increase costs. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

The new Class 3 misdemeanor offense would also cover some acts by commercial breeders that are already covered as higher-level misdemeanors under animal cruelty statutes. In 2008, there were 502 defendants charged with misdemeanor cruelty to animals (Class 1 misdemeanor), which

includes intentionally depriving an animal of necessary sustenance, and 33 defendants were charged with abandonment of an animal (Class 2 misdemeanor). To the extent that commercial breeders are already charged at a higher offense level under existing statutes, the Class 3 misdemeanor in this bill would have no impact.

AOC provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

SOURCES OF DATA:
Administrative Office of the Courts
Department of Agriculture and Consumer Services
North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

1) The effective date of this bill may be difficult to meet due to expected controversy surrounding the adoption of rules to regulate the commercial dog breeding industry.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lanier McRee

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 29, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE FINANCE COMMITTEE
Wednesday, July 1, 2009 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on July 1, 2009, in Room 544 of the Legislative Office Building. Thirty-two members of the committee were present. Senator David Hoyle presided.

H.B. 67 – License Plate Frame/State Name Visible.

Representative Cole was recognized to explain the bill. Senator Clodfelter moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS prohibits the covering of the State Name, year sticker, or month sticker on a State license plate by a license plate frame and directs the Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee to study the authorization of special registration plates. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 205 – Lottery Act Changes.

Representative Owens was recognized to explain the bill, which makes various changes to the North Carolina State Lottery Act. Senator Weinstein moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 746 – Amend Professional Counselors Act/Fees.

Representative Insko was recognized to explain the bill which amends the Licensed Professional Counselors Act and authorizes the North Carolina Board of Licensed Professional Counselors to increase certain fees. Senator Tillman and Senator Goodall moved for favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 447 – Extend IDS Copy Exemption.

Representative Goodwin was recognized to explain the bill. It extends the exemption from statutory copy costs to prisoner legal services and other attorneys working under contract with the Office of Indigent Defense Services. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 215 – Property Tax Certification – Catawba and Alexander.

Representative Setzer was recognized to explain the bill, which authorizes Catawba and Alexander counties to require the payment of delinquent property taxes before recording deeds conveying property. Senator Berger moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1105 – Amend Laws/Refrigeration Contractors.

Representative Martin was recognized to explain the bill, which amends the laws regulating refrigeration contractors. Senator Goss moved for a favorable report and the motion carried. A copy of the bill, the fiscal note, and the summary is attached.

H.B. 1101 – Raleigh Stormwater Assessment.

Senator Blue was recognized to explain the bill which provides for assessments by the City of Raleigh to owners of stormwater facilities. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 3 – Smoky Mountains National Park Plate Changes.

Senator Queen was recognized to explain the bill. The bill allows the use of fees collected from the Friends of the Great Smoky Mountains National Park Special State Attraction Plate to be used for ordinary administrative and operating expenses. Cindy Avrette, a staff attorney with the Research Division, was recognized to answer questions. Senator Foriest moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 852 – Defer Tax on Builders' Inventory.

Senator Rand was recognized to explain the bill, which defers a portion of the property tax due on real property held for sale by a builder. Jim Blackburn, representing the NC Association of County Commissioners, was recognized. He stated that the Association was opposed to the original version, but was in favor of the current version of the bill. Ray Woodall, a Johnston County Commissioner, was recognized to speak in opposition to the bill and answer questions. Lisa Martin, a lobbyist for the NC Home Builders Association, was recognized to speak in favor of the bill. Pat Goddard, Director of the Johnston County Tax Administration Office, was recognized to speak in opposition to the bill and answer questions. Cindy Avrette was recognized to answer questions. Senator Allran moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 860 – Student Protection Fund/Proprietary Schools.

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS establishes a student protection fund for proprietary school students. Senator Hartsell moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 116 – Stowe Botanical Gardens Special Plate.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS authorizes the Division of Motor Vehicles to issues various special registration plates. Senator Queen offered an amendment which was ruled out of order. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS, the amendment, the summary, and a petition for the Girl Scouts special plate is attached.

S.B. 580 – Life Sciences Revenue Bonds.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS creates the North Carolina Life Science Loan Fund. Norris Tolson, President and CEO of the NC Biotechnology Center, was recognized to speak in favor of the bill and to answer questions. Senator Queen moved for a favorable report and the motion carried. A copy of the PCS and the fiscal note is attached.

The meeting adjourned at 2:15 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 1, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 67	License Plate Frame/State Name Visible.	Representative Cole
HB 215	Tax Certification - Add Catawba & Alexander	Representative Hilton Representative Setzer Representative Warren
HB 447	Extend IDS Copy Exemption.	Representative Jackson Representative Goodwin
HB 746	Amend Professional Counselors Act/Fees.	Representative Insko
HB 1011	Raleigh Stormwater Assessment.	Representative Blue
HB 1105	Amend Laws/Refrigeration Contractors.	Representative Martin
SB 116	Stowe Botanical Gardens Special Plate.	Senator Hoyle
SB 580	N.C. Life Science Development Corp. Act.	Senator Hoyle

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, July 1, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 67	License Plate Frame/State Name Visible.	Rep. Cole
HB 148	Congestion Relief/Intermodal Transport Fund.	Rep. Carney Rep. Ross Rep. Allen Rep. McGee
HB 205	Lottery Act Changes.	Rep. Owens
HB 215	Tax Certification - Add Catawba & Alexander	Rep. Hilton Rep. Setzer Rep. Warren
HB 447	Extend IDS Copy Exemption.	Rep. Jackson Rep. Goodwin
HB 746	Amend Professional Counselors Act/Fees.	Rep. Insko
HB 852	Defer Tax on Builders' Inventory.	Rep. Brubaker Rep. Holliman Rep. Dickson Rep. Wainwright
HB 1011	Raleigh Stormwater Assessment.	Rep. Blue
HB 1105	Amend Laws/Refrigeration Contractors.	Rep. Martin
SB 3	Smoky Mountains National Park Plate Changes.	Sen. Snow
SB 116	Stowe Botanical Gardens Special Plate.	Sen. Hoyle
SB 580	N.C. Life Science Development Corp. Act.	Sen. Hoyle
SB 860	Student Protection Fund/Proprietary Schools.	Sen. Clodfelter

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Brooks	University Health Systems
Alice Garland	NCEL
Pamela Walker	NCEL
Bill Rustin	ALP
Dianne Taylor Dunphy	Licensed Professional Counselors Assoc. of NC
Debbie Parkinson	Everett Gaskins
[illegible]	NCBLPC
Charlene Barham	NCBLPC
[illegible]	NCCCS
John Pettitt	NCCCS

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Villani	Hwy 17 Assoc of NC
John Palisano	NCBDA
Charlie Dietl	NCTA
Marc Finlayson	Highway 17 Association
BERRY Jenkins	CAROLINAS AGC
Jon Blackburn	NC Association of County Commissioners
Jeff Maynard	gpm; a xerox
S Smith	NXGA
Addis Watkins	SEANC
Farrah Qubain	SEANC
[illegible]	NCFB

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
LAWLESS POLAN	CITY OF WILMINGTON
	WCSR
Betsy Bailey	PENC
Ed Gaskins	N.C. Biotechnology Center
OSIRI'S DUMONDE	YATB
	MWC
DANIEL BALM	K&L GATES
Andrew Cagle	NLC + Assoc.
	NCSTA
	JD, AL, PA

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ginny Upchurch	NC Dept of Revenue
Sean Quinn	Sierra Club
Dan Conrad	NCCN
Will Culpepper	Moore + Van Allen
W. Ray Woodall	JOHNSTON CO. COMMISSIONER
Pat Goldsmith	Johnston County / NCAAO
Michelle Frazier	MFTS
Michael Brown	NC DOR
Kevin Davis	TPC
Amy Simms	DENR
Karen Rindge	WakeUP Wake County

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

July 1, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Portia Marley	DMV
Kay Hatch	DMV
Conor Brockett	NCSBA
Matt Bosse	Wake County Govt.
Margaret Webb	Girl Scouts
Thomas Maher	JDS
Penny Griffin	School of Gov.
Mia Bailey	Election Citizen of NC, Inc
Jami Fitzgerald	CAL
	RANC
Fred Baggett	Smith Moore Leatherwood
R Hoffman	NC Psychiatric Assoc.

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sam Taylor	NCBIO
Cody Thomas	NCAR
[illegible]	Bridgeway of NC
Lisa Martin	NC Home Builders
Frank Wiesner	Olde South Homes Inc.
Suzanne Harris	HBA-RWC
John Goodman	NC CHAMBER

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
	RJRC
	NCBC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, July 02, 2009

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

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

S.B. **116** Stowe Botanical Gardens Special Plate.

Draft Number:	75286
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **580** N.C. Life Science Development Corp. Act.

Draft Number:	55459
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **860** Student Protection Fund/Proprietary Schools.

Draft Number:	35355
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **67** License Plate Frame/State Name Visible.

Draft Number:	80484
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:
H67 – Sen. Jenkins

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 01, 2009

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

FAVORABLE

S.B. **3** Smoky Mountains National Park Plate Changes.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

H.B.(CS #2) **205** Lottery Act Changes.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **215** Tax Certification - Add Catawba & Alexander
Sequential Referral: None
Recommended Referral: None

H.B. **447** Extend IDS Copy Exemption.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #1) **746** Amend Professional Counselors Act/Fees.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **852** Defer Tax on Builders' Inventory.
Sequential Referral: None
Recommended Referral: None

H.B. **1011** Raleigh Stormwater Assessment.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1105** Amend Laws/Refrigeration Contractors.
Sequential Referral: None
Recommended Referral: None

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

S.B. **308** Endangered Manufacturing and Jobs Act.

Draft Number:	75283
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **460** Commercial Dog Breeders.

Draft Number:	75282
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 10

Committee Clerk Comments:
H205 – Sen. Rand
H215 – Sen. Goss
H447 – Sen. Tillman
H746 – Sen. Purcell
H852 – Sen. Rand
H1011 – Sen. Blue
H1105 - ?

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 67
Committee Substitute Favorable 3/19/09
Committee Substitute #2 Favorable 4/15/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H67-CSRB-50 [v.1]

7/1/2009 11:25:46 AM

Short Title: License Plate Frame/State Name Visible/Study. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE COVERING OF THE STATE NAME, YEAR STICKER, OR MONTH STICKER ON A STATE LICENSE PLATE BY A LICENSE PLATE FRAME AND TO DIRECT THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE AND THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE AUTHORIZATION OF SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who covers the State name, year sticker, or month sticker on a registration plate with a license plate frame commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that are not designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras."

SECTION 2. The Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, must study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the

issuance of special registration plates with a design that is not a "First in Flight" design. As part of its study, the Division of Motor Vehicles must report to the Committee the special registration plates that have been authorized but for which the Division has not received the minimum 300 applications. It is the intent of the General Assembly to repeal the authorization for a special plate that has not received at least 300 applications within two years of its authorization.

SECTION 3. Section 1 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. During the period from December 1, 2009, to November 30, 2010, an operator of a motor vehicle who violates this act shall be given a warning of violation only. The remainder of this act is effective when it becomes law.

HOUSE BILL 67:
License Plate Frame/State Name Visible

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2009
Introduced by:	Rep. Cole	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 67 would prohibit the use of a license plate frame that covers the State name, year sticker, or month sticker on a license plate. The proposed Senate committee substitute adds a study provision to the bill.***

CURRENT LAW: Under current law, it is a Class 2 misdemeanor or an infraction to cover or obscure a license plate, depending on the circumstances as specified in G.S. 20-63(g) (*see text below*). Assuming no prior convictions, the penalty for a Class 2 misdemeanor is a maximum of 30 days of community punishment and/or a fine up to $1,000. The penalty for an infraction is a fine up to $100.

BILL ANALYSIS: House Bill 67 would make covering the State name, year sticker, or month sticker on a license plate with a license plate frame an infraction punishable by a penalty not to exceed $100.

The proposed Senate committee substitute directs the Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, to study the authorization for special registration plates and the issuance of special registration plates with a design that is not a "First in Flight" design. The provision directs the Division of Motor Vehicles to report to the Committees on the special registration plates that have been authorized but for the Division has not received the minimum 300 applications, with the stated intent to repeal the authorization for a special plate that has not received the requisite applications within two years of its authorization.

EFFECTIVE DATE: Section 1 of the act would become effective December 1, 2009, and would apply to offenses committed on or after that date. However, a person violating this act would only receive a warning of violation from December 1, 2009, to November 30, 2010.

H67-SMRB-40(e3) v1

HOUSE BILL 205

Committee Substitute Favorable 2/25/09
Committee Substitute #2 Favorable 4/22/09
Fourth Edition Engrossed 4/28/09

Short Title: Lottery Act Changes. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA STATE LOTTERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-114(a)(8), (10), and (11) read as rewritten:

"(a) The Commission shall have the following powers and duties:

...

(8) To charge a fee of lottery ~~vendors~~ potential contractors and contractors not to exceed the cost of the criminal record check of the lottery ~~vendor.~~ potential contractors and contractors.

...

(10) To determine the incentives, if any, for any lottery employees, lottery ~~vendors,~~ retailers, lottery contractors, or electronic computer terminal operators.

(11) To specify the authority, compensation, and role of the Director, and to specify the authority, selection, and role of the other employees of the Commission. All of the following apply to all employees of the Commission:

a. No employee of the Commission may have a financial interest in any lottery ~~vendor~~ potential contractor or lottery contractor, other than an interest as part of a mutual fund.

b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or ~~vendor~~ potential contractor with whom the employee has a financial interest.

c. No employee of the Commission who leaves the employment of the Commission may represent any ~~vendor~~ contractor, potential contractor, or retailer before the Commission for a period of one year following termination of employment with the Commission.

d. A background investigation shall be conducted on each applicant for employment with the Commission.

e. The Commission shall bond all employees with access to lottery funds or revenue or security.

...."

SECTION 2. The title of Article 6 of Chapter 18C of the General Statutes reads as rewritten:

"Article 6.

Lottery ~~Vendors~~ Potential Contractors and Lottery Contractors."

SECTION 3. G.S. 18C-151 reads as rewritten:

"**§ 18C-151. Contracts.**

(a) Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars ($90,000) or more may be awarded by the Commission only after the following have occurred:

(1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
   a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
   b. The time and place for opening of the proposals.
   c. A statement reserving to the Commission the right to reject any or all proposals.

(2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.

(3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.

(4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.

(5) The Commission may not award a contract to a lottery ~~vendor~~ potential contractor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

(6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery ~~vendors.~~potential contractors.

(7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.

(8) The Commission shall award the contract to the responsible lottery ~~vendor~~ potential contractor or lottery supplier who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor or lottery supplier with whom the Commission has previously contracted for the same purposes.

(c) Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

(1) The ~~vendor~~ potential contractor to whom the contract is to be awarded.

(2) Any parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.

(3) All shareholders with a five percent (5%) or more interest in the ~~vendor~~ potential contractor or parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.

(4) All officers and directors of the ~~vendor~~ potential contractor or parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery system ~~vendor nor any applicant for a contract~~ contractor, potential contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

SECTION 4. G.S. 18C-152 reads as rewritten:

"**§ 18C-152. Investigation of lottery ~~vendors.~~ potential contractors.**

(a) Lottery ~~vendors~~ potential contractors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures of information required to be disclosed under subsection (c) of this section by lottery ~~vendors~~ potential contractors to ensure that the ~~vendors~~ potential contractors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery ~~vendors.~~ potential contractors. Information shall be disclosed for the following:

(1) If the ~~vendor~~ potential contractor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.

(2) If the ~~vendor~~ potential contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.

(3) If the ~~vendor~~ potential contractor is an association, the members, officers, and directors.

(4) If the ~~vendor~~ potential contractor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(5) For any ~~vendor,~~ potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor.~~ potential contractor. For any ~~vendor,~~ potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor.~~ potential contractor.

(c) For purposes of this subsection, the term ~~"vendor"~~ "potential contractor" shall include the ~~vendor~~potential contractor and each of the persons applicable under subsection (b) of this section. At a minimum, the ~~vendor~~ potential contractor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

(1) Disclose the ~~vendor's~~potential contractor's name, phone number, and address.

(2) Disclose all the states and jurisdictions in which the ~~vendor~~ potential contractor does business and the nature of the business for each state or jurisdiction.

(3) Disclose all the states and jurisdictions in which the ~~vendor~~ potential contractor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.

(4) Disclose all the states and jurisdictions in which the ~~vendor~~ potential contractor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.

(5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the ~~vendor~~ potential contractor for any felony or any other criminal offense other than a minor traffic violation.

(6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the ~~vendor.~~ potential contractor.

(7) If at least twenty-five percent (25%) of the cost of a ~~vendor's~~potential contractor's contract is subcontracted, the ~~vendor~~ potential contractor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a ~~vendor.~~potential contractor.

(8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

(d) All documents compiled by the Director in conducting the investigation of the lottery ~~vendors~~ potential contractors shall be held as confidential information under Chapter 132 of the General Statutes."

SECTION 5. G.S. 18C-103 reads as rewritten:

"**§ 18C-103. Definitions.**

As used in this Chapter, unless the context requires otherwise:

(1) "Commission" means the North Carolina State Lottery Commission.

(2) "Commissioner" means a member of the Commission.

(3) "Director" means the person selected by the Commission to be the chief administrator of the North Carolina State Lottery.

(4) "Game" or "lottery game" means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).

(5) "Lottery" means any lottery game or series of games established and operated pursuant to this Chapter.

(6) "Lottery contractor" means a person other than a lottery retailer with whom the Commission has contracted for the purpose of providing goods or services to the ~~Commission.~~Commission on an ongoing basis.

(6a) "Lottery supplier" means a person, other than a lottery retailer, with whom the Commission has contracted for the purpose of providing goods or services to the Commission for an individual purchase which may include a maintenance program.

(7) "Person" means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.

(7a) "Potential contractor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission on an ongoing basis.

(8) "Retailer", "lottery retailer", or "lottery game retailer" means a person with whom the Commission has contracted to sell tickets or shares in lottery games.

(9) "Share" means any method of participation in a lottery game, other than by a ticket purchased on an equivalent basis with a ticket.

(10) "Ticket" means any tangible evidence authorized by the Commission to demonstrate participation in a lottery game.

~~(11) "Vendor" or "lottery vendor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission.~~"

SECTION 6. G.S. 18C-113 is amended by adding a new subsection to read:

"(d) Only the following information concerning a lottery winner is a public record: (i) name, (ii) city and state of residence, (iii) game played, (iv) amount won, and (v) date won. For purposes of this subsection, amount won means the nominal prize amount, the cash payment if different from the nominal prize amount, and the cash payment after taxes are withheld."

SECTION 7. G.S. 18C-120(b) reads as rewritten:

"(b) The Director shall have the following powers and duties, under the supervision of the Commission:

(1) To provide for the reporting of payment of lottery game prizes to State and federal tax authorities and for the withholding of State and federal income taxes from lottery game prizes as provided in State and federal law.

(2) To conduct a background investigation, including a criminal history record check, of applicants for employment with the Commission, lottery retailers, and lottery potential contractors, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(3) To set the salaries of all Commission employees, subject to the approval of the Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

(4) To enter into contracts with lottery ~~retailers and~~ retailers, lottery ~~contractors~~ contractors, or lottery suppliers upon approval by the Commission.

(5) To provide for the security and accuracy in the operation and administration of the Commission and the Lottery, including examining the background of all prospective employees, ~~lottery vendors,~~ lottery potential contractors, lottery contractors and lottery retailers.

(6) To coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

(7) To confer with the Commission on the operation and administration of the Lottery and make available for inspection by the Commission all books, records, files, documents, and other information of the Lottery.

(8) To study the operation and administration of other lotteries and to collect demographic and other information concerning the Lottery and make recommendations to improve the operation and administration of the Lottery to the Commission, to the Governor, and to the General Assembly.

(9) To provide monthly financial reports to the Commission of all lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds.

(10) To enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter and upon the approval of the Commission."

SECTION 8. G.S. 18C-132(h) reads as rewritten:

"(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid ~~to the estate of a deceased prizewinner or~~ to a person designated pursuant to a court order. Any prize or portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the prize winner or as designated in the deceased prize winner's will, living trust, or other prepared legal instrument if a copy of the trust document or instrument has been filed with the Director, and no written notice of revocation has been received by the Director prior to the prize winner's death."

SECTION 9. G.S. 18C-134(b) reads as rewritten:

"(b) Notification. – A claimant agency ~~seeking to attempt collection of a debt through setoff must notify the Commission in writing and supply information necessary to identify the debtor. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Commission in writing when a debt has been paid or is no longer owed the agency. A local agency may not submit a debt for collection under this section until it has met the requirements of G.S. 105A-5, and it must submit the debt to the Commission through one of the entities listed in G.S. 105A-3(b1).~~is automatically enrolled in the Commission's debt set-off program if it is enrolled in the Department of Revenue debt set-off program. To provide for more efficient operations, the Department of Revenue shall provide to the Commission on a periodic basis all updates to its debt set-off program as soon as practicable."

SECTION 10. G.S. 18C-134(e) reads as rewritten:

"(e) Confidentiality. – Notwithstanding any confidentiality statute of a claimant agency, the exchange of information among the Commission, the Department of Revenue, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this section is lawful. The information an agency or organization obtains from the Commission in accordance with the exemption in this subsection may be used by the agency or organization only in the pursuit of its debt collection duties and practices."

SECTION 11. G.S. 18C-142 reads as rewritten:

"**§ 18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be seven percent (7%) of the ~~retail price~~ face value of the tickets or shares sold for each lottery game. The Commission shall require submission of reports and remission of lottery revenues to the Commission on a timely basis."

SECTION 12. G.S. 18C-162(a)(4) reads as rewritten:

"(a) The Commission shall allocate revenues to the North Carolina State Lottery Fund in order to increase and maximize the available revenues for education purposes, and to the extent practicable, shall adhere to the following guidelines:

...

(4) No more than seven percent (7%) of the ~~total annual revenues,~~ face value of tickets or shares, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers."

SECTION 13. G.S. 18C-143 is amended by adding a new subsection to read:

"(f) All lottery proceeds minus applicable retailer commissions are held in trust by lottery retailers until such time as they are received by the Commission. A lottery retailer shall have a fiduciary duty to preserve and account for lottery proceeds including any unsold tickets."

SECTION 14. G.S. 18C-132(a) reads as rewritten:

"(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among ~~entries,~~entries including second chance drawings where the value of the prize is five thousand dollars ($5,000) or more, or a drawing among finalists, all of the following conditions shall be met:

(1) The drawings shall be open to the public.

(2) The drawings shall be witnessed by an independent certified public ~~accountant.~~accountant or by an auditor employed by a certified public accounting firm.

(3) Any equipment used in the drawings shall be inspected by the independent certified public accountant or auditor employed by a certified public accounting firm and an employee of the Commission both before and after the drawings.

(4) Audio and visual records of the drawings and inspections shall be made.

If a lottery game uses a drawing among entries for (i) a second chance drawing or (ii) any other promotion conducted by the lottery, where the value of the prize is less than five thousand dollars ($5,000) in value, the requirements of subdivisions (2) and (3) of this subsection do not apply."

SECTION 15. G.S. 18C-122 reads as rewritten:

"**§ 18C-122. Independent audits.**

(a) ~~At the beginning of each~~ Biennially, at the beginning of the calendar year, the Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, in addition to the audits required by G.S. 18C-116 and by subsection (a) of this section, beginning in 2010, the Commission shall engage

an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

SECTION 16. This act is effective when it becomes law.

HOUSE BILL 205:
Lottery Act Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Owens	**Prepared by:**	Heather Fennell
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 205 would make various changes to the statutes that govern the Lottery in North Carolina. The current version of the bill was given a favorable report in House Judiciary III.

CURRENT LAW: Chapter 18C of the General Statutes (the North Carolina State Lottery Act) establishes the North Carolina Lottery Commission and regulates the operation of the Lottery in North Carolina. The Act was passed by the General Assembly in 2005.

BILL ANALYSIS: House Bill 205 makes the following changes to the North Carolina Lottery Act:

- *Change the term "vendor" to "potential contractor"* – The term "vendor" currently appears throughout Chapter 18C and is defined as a person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission. Although it is a defined term, some confuse vendors with retailers or contractors. **House Bill 205** would change the term "vendor" to "potential contractor" throughout the Chapter to eliminate confusion. The definition would remain the same.

- *Add new definition for "lottery supplier"* – The law currently sets out contracting requirements for the Commission in procuring goods and services, which include extensive background checks of potential contractors. **House Bill 205** would add a definition for "lottery supplier" in order to differentiate between a contractor who provides goods and services on an ongoing basis and a person from whom the Commission makes an individual purchase with no long term contractual obligations. Background checks would not be required for lottery suppliers.

- *Clarify what information about a lottery winner is public record* – **House Bill 205** would specify that the only information about a lottery winner that is considered a public record is the person's name, city and state of residence, game played, amount won, and date won.

- *Clarify how prizes are paid after death of a prize winner* – Current law states that a prize may be paid to the estate of a deceased prize winner. **House Bill 205** clarifies that the prize remaining unpaid at the time of the prize winner's death could be paid to the estate or the trustee of a trust established by the prize winner or as designated by the prize winner in a prepared legal instrument. The trust document or instrument should be filed with the Director prior to the death of the winner.

- *Conform statutory provisions pertaining to debt set-off program to current practice* – Current law requires the Commission to establish a debt set-off program by which lottery prize payments may be used to satisfy a debt owed to a claimant agency.[1] The Commission currently uses the Department of Revenue debt set-off program[2] in order to avoid requiring agencies to register with both the Department and the Commission. **House Bill 205** clarifies this process in the statutes and authorizes

[1] A claimant agency includes a State agency and the following local agencies: county, municipality, water and sewer authority, regional joint agency created by interlocal agreement, public health authority, metropolitan sewerage district, sanitary district

[2] The Setoff Debt Collection Act under Chapter 105A of the General Statutes authorizes State and local agencies to collect debts by diverting part or all of an individual's income tax refund to pay a debt the individual owes to a particular agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund.

the Commission and the Department to share information to the extent necessary to implement the debt set-off program.

- *Clarify that commissions paid to retailers are based on face value of tickets* – The law allows for compensation of lottery retailers for sales of lottery tickets at 7% of the price of the tickets. **House Bill 205** amends the language used in two statutory sections dealing with the 7% to make clear that it is 7% of the face value of the tickets sold.
- *Require retailers to hold lottery proceeds in trust* – By contract, lottery retailers are required to place lottery proceeds into a bank account held in trust for the Lottery. **House Bill 205** would add a statutory provision to require retailers to hold the proceeds, minus any applicable commissions, in trust until they are received by the Commission.
- *Allow drawings where prize is less than $5,000 to be conducted without an independent accountant/auditor present* – Currently, a game that involves a drawing must meet the following conditions: (i) must be open to the public, (ii) must be witnessed by an independent certified public accountant, (iii) equipment must be inspected before and after by the accountant and a Commission employee, and (iv) audio and visual recordings must be made of the drawings and inspections. **House Bill 205** would differentiate between drawings involving prizes of $5,000 or more and those where the prize is less than $5,000. If the prize is less than $5,000, the drawing would not have to be independently witnessed, and the equipment would not have to be inspected. If the prize is $5,000 or more, all of the conditions would apply, but **House Bill 205** would also allow an auditor employed by a certified public accounting firm to witness the drawing and do the inspections.
- *Alter the schedule for security and performance audits* – Currently, the Commission is required to undergo security audits every year and performance audits every two years. **House Bill 205** would amend the law to require security audits every two years and performance audits beginning in 2010. The bill also clarifies that the performance audits are in addition to the security audits conducted every year.

EFFECTIVE DATE: The act would be effective when it becomes law.

Wendy Graf Ray, counsel to House Judiciary III, and Martha Walston, counsel to House Finance, substantially contributed to this summary.

H205-SMTD-103(e4) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 215
Committee Substitute Favorable 4/2/09

Short Title: Tax Certification - Add Catawba & Alexander. (Local)

Sponsors:

Referred to:

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CATAWBA AND ALEXANDER COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

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

HOUSE BILL 215:
Tax Certification - Add Catawba & Alexander

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Reps. Setzer, R. Warren, Hilton	**Prepared by:**	Judy Collier Research Assistant
Analysis of:	Second Edition		

SUMMARY: ***House Bill 215 is a local bill that adds Catawba County and Alexander County to the list of counties that have authority to require tax certification of a deed prior to registration.***

CURRENT LAW: G.S. 161-31 provides that in certain counties, the board of county commissioners may adopt a resolution to require the register of deeds to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. However, G.S. 161-31 also provides that if a board of county commissioners adopts a resolution to require the register of deeds to refuse to register a deed without the certification of the county tax collector, the register of deeds must still accept an uncertified deed that is submitted for registration under the supervision of a closing attorney and containing the statement, "*This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.*"

This provision applies to the following 65 counties: Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties.

In addition to G.S. 161-31, the General Assembly has enacted similar laws that prohibit a register of deeds from registering deeds unless the tax collector has certified that no delinquent taxes are due. These provisions apply to the following local governments: Avery County (1963); Mitchell County (1987); Ashe County (1993); the Towns of Newland and Spruce Pine (1997); the Town of Banner Elk (1998); the Town of Bakersville (1999); and the towns in Ashe County and Alleghany County (2005).

In a county or local government where G.S. 161-31 and other similar State laws do not apply, the register of deeds registers deeds submitted for registration regardless of whether delinquent taxes are due on the property.

BILL ANALYSIS: House Bill 215 would add Catawba County and Alexander County to the list of counties that have the authority to require tax certification of a deed prior to registration.

EFFECTIVE DATE: The bill is effective when it becomes law

H215-SMRE-55(e2) v1

Martha Walston, counsel to House Finance Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 447

Short Title:	Extend IDS Copy Exemption.	(Public)
Sponsors:	Representatives Goodwin, Jackson (Primary Sponsors); Bryant, Hughes, Mackey, and Parmon.	
Referred to:	Judiciary I, if favorable, Finance.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE EXEMPTION FROM STATUTORY COPY COSTS TO PRISONER LEGAL SERVICES AND OTHER ATTORNEYS WORKING UNDER CONTRACT WITH THE OFFICE OF INDIGENT DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308(b1) reads as rewritten:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed or who is under contract with the Office of Indigent Defense Services to represent an indigent person at State expense, if the request is made in connection with the appointed case or the contract and during the duration of the ~~appointment.~~ appointment or the contract."

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

HOUSE BILL 447:
Extend IDS Copy Exemption

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2009
Introduced by:	Reps. Goodwin, Jackson	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 447 would extend the exemption from payment of court copying fees for attorneys appointed to represent indigent persons to attorneys under contract with the Office of Indigent Services.***

CURRENT LAW: G.S. 7A-308 sets various fees to be collected by the clerk of superior court. The fees go to support the General Court of Justice. The fee for preparation of copies is set at $2 for the first page of each document copied, and 25¢ for each additional page or fraction thereof. The statute exempts from the copying fees any "attorney who has been appointed to represent an indigent person at State expense, if the request is made in connection with the appointed case and during the duration of the appointment."

The Office of Indigent Defense Services (IDS) was established in 2000 to oversee the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. There are numerous instances where NC statutes give people the right to legal services, both criminal and civil. IDS seeks to meet its duties through contracting with attorneys.

Officials at IDS believe that, in most instances, the attorneys they contract with to provide those services would be court appointed, and would therefore be entitled to the copy fee exemption under the current version of GS 7A-308. The one instance they think is not covered is Prisoner Legal Services (PLS). PLS is a nonprofit that provides legal services to inmates. G.S. 7A-498.3 requires IDS to oversee the provision of legal services in cases "in which the State is legally obligated to provide legal assistance and access to the courts to inmates . . ." That obligation is derived from court decisions dating back to the 1970s. IDS contracts with PLS to provide those services, and it thinks the PLS attorneys under contract do not fit the "attorney who has been appointed to represent an indigent persion" profile necessary under current law to qualify for the copy fee exemption.

BILL ANALYSIS: HB 447 would extend the copying fee exemption from court-appointed attorneys to attorneys under contract with the Office of Indigent Defense Services.

EFFECTIVE DATE: July 1, 2009.

William R. Gilkeson, counsel to House Judiciary I, substantially contributed to this summary.

H447-SMTD-106(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 746*

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/20/09
Senate Commerce Committee Substitute Adopted 6/17/09

Short Title: Amend Professional Counselors Act/Fees. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LICENSED PROFESSIONAL COUNSELORS ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-330 reads as rewritten:

"**§ 90-330. Definitions; practice of ~~marriage and family therapy.~~counseling.**

(a) Definitions. – As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(2a) A "licensed professional counselor associate" is a person engaged in the supervised practice of counseling who holds a license as a licensed professional counselor associate issued under the provisions of this Article.

(2b) A "licensed professional counselor supervisor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor and is approved by the Board to provide clinical supervision under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. – Assisting individuals, groups, and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. – Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. – Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. – Identifying problems requiring referral to other specialists.

e. Research Activities. – Designing, conducting, and interpreting research with human subjects.

The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

(4) A "supervisor" means any licensed professional counselor supervisor or, when one is inaccessible, a licensed professional counselor or an ~~equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience~~equivalently and actively licensed mental health professional, as determined by the Board, who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No person licensed as a licensed professional counselor or licensed professional counselor associate under the provisions of this Article shall be allowed to hold himself or herself out to the public as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law."

SECTION 2. G.S. 90-331 reads as rewritten:

"**§ 90-331. Prohibitions.**

It shall be unlawful for any person who is not licensed under this Article to engage in the practice of counseling, use the title ~~"licensed professional counselor",~~"Licensed Professional Counselor Associate," "Licensed Professional Counselor," or "Licensed Professional Counselor Supervisor," use the letters "LPCA," ~~"LPC",~~ "LPC," or "LPCS," use any facsimile or combination of these words or letters, abbreviations, or insignia, or indicate or imply orally, in writing, or in any other way that the person is a licensed professional counselor."

SECTION 3. G.S. 90-332.1 reads as rewritten:

"**§ 90-332.1. Exemptions from licensure.**

(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

(1) Lawyers licensed under Chapter 84, doctors licensed under Chapter 90, and any other person registered, certified, or licensed by the State to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(2) Any school counselor certified by the State Board of Education while counseling within the scope of employment by a board of education or private school.

(3) Any student intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher learning or training institution, if the intern or trainee is a designated "counselor intern" and the activities and services constitute a part of the supervised course of study.

~~(4) Any person counseling as a supervised counselor in a supervised professional practice under G.S. 90-336(b)(2).~~

(4a) Any person counseling within the scope of employment ~~at a local community college.~~ at: (i) a local community college as defined in

G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) a private higher education institution as defined in G.S. 116-22(1).

~~(4b) Any person counseling within the scope of employment at a private higher education institution as defined in G.S. 116-22(1).~~

(5) Any ordained minister or other member of the clergy while acting in a ministerial capacity who does not charge a fee for the service, or any person invited by a religious organization to conduct, lead, or provide counseling to its members when the service is not performed for more than 30 days a year.

(6) Any nonresident temporarily employed in this State to render counseling services for not more than 30 days in a year, if the person holds a license or certificate required for counselors in another state.

(7) Any person employed by State, federal, county, or municipal government while counseling within the scope of employment.

~~(8) Any person performing counseling solely as an employee of an area facility, as defined in G.S. 122C-3(14)a., if both of the following apply:~~

~~a. The services are provided by (i) a qualified professional as defined in G.S. 122C-3(31) and subject to the rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, or (ii) an employee supervised by a qualified professional as defined in G.S. 122C-3(31);~~

~~b. The area facility has obtained written verification from the following boards that the employee has not had his or her license, registration, or certification revoked, rescinded, or suspended: the North Carolina Board of Licensed Professional Counselors, the North Carolina State Board of Examiners of Practicing Psychologists, the North Carolina Social Work Certification and Licensure Board, and the North Carolina Marriage and Family Therapy Licensure Board;~~

~~(9) Any person performing counseling as an employee of a hospital or other health care facility licensed under Chapter 131D, 131E, or 122C who is performing this counseling under the supervision of a qualified professional as defined in G.S. 122C-3(31); and~~

~~(10) Any employee assistance professional providing core specific employee assistance program (EAP) activities, as defined by the Employee Assistance Professionals Association Standards for Employee Assistance Programs Part II: Professional Guidelines (1988).~~

(b) Persons who claim to be exempt under subsection (a) of this section are prohibited from advertising or offering themselves as "licensed professional counselors".

(c) Persons licensed under this Article are exempt from rules pertaining to counseling adopted by other occupational licensing boards.

(d) Nothing in this Article shall prevent a person from performing substance abuse counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter."

SECTION 4. G.S. 90-333 reads as rewritten:

"**§ 90-333. North Carolina Board of Licensed Professional Counselors; appointments; terms; composition.**

(a) For the purpose of carrying out the provisions of this Article, there is hereby created the North Carolina Board of Licensed Professional Counselors which shall consist of seven members appointed by the Governor in the manner hereinafter prescribed. Any State or nationally recognized professional association representing professional counselors may submit recommendations to the Governor for Board membership. The Governor may remove any

member of the Board for neglect of duty or malfeasance or conviction of a felony or other crime of moral turpitude, but for no other reason.

(b) At least five members of the Board shall be licensed professional counselors except that initial appointees shall be persons who meet the educational and experience requirements for licensure as licensed professional counselors under the provisions of this Article; and two members shall be public-at-large members appointed from the general public. Composition of the Board as to the race and sex of its members shall reflect the ~~composition of the~~ population of the State and each member shall reside in a different congressional district.

(c) At all times the Board shall include at least one counselor primarily engaged in counselor education, at least one counselor primarily engaged in the public sector, at least one counselor primarily engaged in the private sector, and two licensed professional counselors at large.

(d) All members of the Board shall be residents of the State of North Carolina, and, with the exception of the public-at-large members, shall be licensed by the Board under the provisions of this Article. Professional members of the Board must be actively engaged in the practice of counseling or in the education and training of students in counseling, and have been for at least three years prior to their appointment to the Board. The engagement in this activity during the two years preceding the appointment shall have occurred primarily in this State.

(e) The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, three shall be appointed for terms of one year, two for terms of two years, and two for terms of three years. No member shall serve more than two consecutive three-year terms.

(f) Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term. Appointees to the Board shall continue to serve until a successor is appointed and qualified.

(g) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(h) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board."

SECTION 5. G.S. 90-334 reads as rewritten:

"**§ 90-334. Functions and duties of the Board.**

(a) The Board shall administer and enforce the provisions of this Article.

(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for licenses under this Article, and shall issue a license or renewal of license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Article from ~~the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year.~~fees paid to the Board pursuant to this section. No State appropriations shall be subject to the administration of the Board.

(f) The Board shall establish and receive fees not to exceed ~~one~~ two hundred dollars ~~($100.00)~~($200.00) for initial or renewal ~~application, not to exceed one hundred dollars ($100.00) for examination,~~application and not to exceed ~~twenty-five~~seventy-five dollars

~~($25.00)~~($75.00) for late renewal, maintain Board accounts of all receipts, and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Article.

(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for licensure and license renewal, including but not limited to the power to adopt or use examination materials and accreditation standards of any recognized counselor accrediting agency and the power to establish reasonable standards for continuing counselor education.

(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purposes of this Article, including but not limited to the power to adopt ethical and disciplinary standards.

(i) The Board shall establish the criteria for determining the qualifications constituting "supervised professional practice".

(j) The Board may ~~examine counselor applicants,~~examine, approve, issue, deny, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Article, and conduct hearings in connection with these actions.

(k) The Board shall investigate, subpoena individuals and records, and take necessary appropriate action to properly discipline persons licensed under this Article and to enforce this Article."

SECTION 6. G.S. 90-336 reads as rewritten:

"**§ 90-336. Title and qualifications for licensure.**

(a) Each person desiring to be a licensed professional counselor associate, licensed professional ~~counselor~~ counselor, or licensed professional counselor supervisor shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee.

(b) The Board shall issue a license as ~~"licensed professional counselor"~~a "licensed professional counselor associate" to an applicant who meets all of the following criteria:

(1) ~~Has earned one of the following:~~

~~a. A masters degree in counseling from a regionally accredited institution of higher education, which includes a minimum of 48 semester hours.~~

~~b. A graduate degree in a related field supplemented with courses that the Board determines to be substantially equivalent.~~

Has earned a minimum of 48 semester hours or 72 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2009; a minimum of 54 semester hours or 81 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2013, but after June 30, 2009; or a minimum of 60 semester hours or 90 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program after June 30, 2013.

~~(2) Has had no less than two years of masters or post-masters counseling experience, or of both, in a professional setting, including a minimum of 2,000 hours of supervised professional practice as defined by the Board.~~

(3) Has passed an examination ~~as~~ in accordance with rules adopted by the Board.

(c) The Board shall issue a license as a "licensed professional counselor" to an applicant who meets all of the following criteria:

(1) Has met all of the requirements under subsection (b) of this section.

(2) Has completed a minimum of 3,000 hours of supervised professional practice as determined by the Board.

(d) A licensed professional counselor may apply to the Board for recognition as a "licensed professional counselor supervisor" and receive the credential "licensed professional counselor supervisor" upon meeting all of the following criteria:

(1) Has met all of the requirements under subsection (c) of this section.

(2) Has one of the following:

a. At least five years of full-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact;

b. At least eight years of part-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact; or

c. A combination of full-time and part-time professional counseling experience, including a minimum of 2,500 hours of direct client contact as determined by the Board.

(3) Has completed minimum education requirements in clinical supervision as approved by the Board.

(4) Has an active license in good standing as a licensed professional counselor approved by the Board."

SECTION 7. G.S. 90-338 reads as rewritten:

"**§ 90-338. Exemptions.**

Applicants holding certificates of registration as Registered Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of ~~G.S. 90-336(b).~~G.S. 90-336(c). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselor associates or licensed professional counselors and shall be licensed upon passing the Board examination and meeting the experience requirements:

(1) An applicant who was engaged in the practice of counseling before July 1, 1993, and who ~~applies~~ applied to the Board prior to January 1, 1996.

(2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

SECTION 8. G.S. 90-340 reads as rewritten:

"**§ 90-340. Protection of the public.**

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the license~~deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Article on one or more of the following grounds:

(1) ~~Conviction of a misdemeanor under this Article.~~Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude,

misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling, or a misdemeanor charge reflecting the inability to practice professional counseling with due regard to the health and safety of clients or patients.

(3) ~~Gross unprofessional conduct, dishonest practice or incompetence in the practice of counseling.~~Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) ~~Procuring or attempting to procure a license by fraud, deceit, or misrepresentation.~~Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of professional counseling, the offer of professional counseling services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of professional counseling.

(5) ~~Any fraudulent or dishonest conduct in counseling.~~Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of professional counseling to the public, any individual, the Board, or any other organization.

(6) ~~Inability of the person to perform the functions for which a license has been issued due to impairment of mental or physical faculties.~~Has had a license or certification for the practice of professional counseling in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article.

(7) ~~Violations of any of the provisions of this Article or rules of the Board.~~Has violated any provision of this Article or any rules adopted by the Board.

(8) ~~Violations of the American Counseling Association Ethical Standards adopted by the Board.~~Has aided or abetted the unlawful practice of professional counseling by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Counseling Association. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced professional counseling in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice professional counseling with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced professional counseling outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal

advantage or gratification of the licensed professional counselor associate, licensed professional counselor, or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(17) Has a finding listed on the Division of Health Service Regulation of the Department of Health and Human Services Health Care Personnel Registry.

(b) The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of professional counseling deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the professional counseling services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of professional counseling provided by the applicant or licensee with respect to the extent, nature, or location of the professional counseling services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this section.

In addition, the Board may impose conditions of probation or restrictions on continued practice of professional counseling at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing professional counseling with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant

or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as otherwise provided in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 9. Article 24 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-345. Criminal history record checks of applicants for licensure as professional counselors.

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

(1) Applicant. – A person applying for licensure as a licensed professional counselor associate pursuant to G.S. 90-336(b) or licensed professional counselor pursuant to G.S. 90-336(c).

(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant or licensee's criminal history record check."

SECTION 10. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.26. Criminal record checks of applicants for licensure as professional counselors.**

The Department of Justice may provide to the North Carolina Board of Licensed Professional Counselors from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 24 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 11. Licensed professional counselors who are approved by the North Carolina Board of Licensed Professional Counselors as qualified clinical supervisors before July 1, 2012, shall have until July 1, 2014, to meet the licensed professional counselor supervisor requirements of G.S. 90-336(d), as enacted in Section 6 of this act.

SECTION 12. This act becomes effective October 1, 2009.

HOUSE BILL 746:
Amend Professional Counselors Act/Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2009
Introduced by:	Rep. Insko	**Prepared by:**	Heather Fennell
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 746 would amend the Licensed Professional Counselors Act and authorize the North Carolina Board of Licensed Professional Counselors to increase certain fees. The bill also authorizes the Department of Justice to charge a fee to offset the cost incurred in conducting a criminal record check for applicants for licensure or reinstatement of a license.

[As introduced, this bill was identical to S956, as introduced by Sen. Nesbitt, which is currently in Senate Ref to Health Care. If fav, re-ref to Finance.]

CURRENT LAW: Article 24 of Chapter 90 of the General Statutes is the Licensed Professional Counselors Act. This Act states that the public policy of the State is to regulate the activities of persons who provide counseling services to the public to insure protection of public health, safety, and welfare.

BILL ANALYSIS:

Section 1: Amends G.S. 90-330 in the following ways:

- Rewrites the catch line of G.S. 90-330 to read *Definitions; practice of counseling.*
- Changes the following definitions:
  - The term "counseling" to apply to offering assistance through the counseling relationship by evaluating and treating mental disorders and other conditions.
  - The term "supervisor" to include a licensed professional counselor supervisor (LPCS) and to provide that when a LPCS is unavailable that "supervisor" applies to a licensed professional counselor (LPC) or an equivalently and actively licensed mental health professional as determined by the NC Board of Licensed Professional Counselors (Board).
- Adds definitions for the following terms:
  - "Licensed professional counselor associate."
  - "Licensed professional counselor supervisor."
- Provides that a person who is a LPC or a licensed professional counselor associate (LPCA) under the provisions of the Licensed Professional Counselors Act would not be permitted to identify themselves as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law.

Section 2: Makes it unlawful for anyone who is not licensed under the Licensed Professional Counselors Act to engage in the practice of counseling or to use in any way the titles and acronyms Licensed Professional Counselor Associate, Licensed Professional Counselor, Licensed Professional Counselor Supervisor, LPC, LPCA, or LPCS to indicate or imply that the person is a licensed professional counselor.

Section 3: Amends the section of the Licensed Professional Counselors Act pertaining to exemptions from licensure in the following ways:

- Clarifies that any person counseling within the scope of employment at a private institution of higher education in addition to a public institution of higher education or a community college would be exempt.
- Removes from the list of exemptions any person (i) counseling as a supervised counselor in a supervised professional practice for a specified period of time, (ii) performing counseling solely as an employee of an area facility that is operated by or under contract with mental health, developmental disabilities, and substance abuse authority if certain conditions apply, (iii) performing counseling as an employee of a licensed hospital or other health care facility who is performing this counseling under the supervision of a qualified professional, and (iv) any employee assistance professional providing core specific employee assistance program activities.

Section 4: Clarifies that (i) any State or nationally recognized professional association representing professional counselors may make recommendations to the Governor for membership on the North Carolina Board of Licensed Professional Counselors (Board), and (ii) appointees to the Board would continue to serve until a successor is appointed and qualified.

Section 5: Deletes the requirement that the Board expenditures may not exceed revenues during any fiscal year and raises the fees collected by the Board as follows:

- Raises the cap on fees for initial or renewal applications from $100 to $300.
- Raises the cap on the late renewal fee from $25 to $150.

These fees were last raised from $75 to $100 and $15 to $25, respectively, in 1993 (S.L. 1993-514). The license renewal fee is a biennial fee.

Section 6: Amends G.S. 90-336 by adding the qualifications for licensure for licensed professional counselor associate and licensed professional counselor supervisor and modifying licensure and qualifications for licensed professional counselor in terms of education requirements, exam requirements, hours of supervised professional practice, and hours of professional experience.

Section 7: Provides exemptions for applicants who are Registered Practicing Counselors and in good standing with the Board, and exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for certain individuals who meet specified experience requirements.

Section 8: Rewrites G.S. 90-340 to do all of the following:

- Makes substantial changes to the Board's authority to deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Act, and provide detailed acts or omissions that would constitute grounds for the board to take action against a person licensed under this Act such as:
    - Conviction of a felony or entering a plea of guilty or nolo contendere to any felony charge under federal or state law.
    - Conviction of or entering a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling.
    - Engaging in fraud or deceit in securing or attempting to secure or renew a license.

- Practicing professional counseling in such a manner as to endanger the welfare of clients.
- Harassing or abusing, sexually or otherwise, a client, patient, student, supervisee, or trainee.
- Refusing to appear before the Board after having been ordered to do so in writing by the chair.
- Violation of any provision of this Act or any rules adopted by the Board.

- Provides additional disciplinary action that the Board may take in lieu of denial, suspension, or revocation including issuing a formal reprimand, placing an applicant on probation, and requiring supervision of the professional counseling services provided by the applicant or licensee.
- Authorizes the Board to assess the costs of disciplinary action against an applicant or licensee and to petition a court of competent jurisdiction to order an applicant or licensee whose physical or mental competence is in question to submit to a psychological or physical evaluation or both.
- Requires the Board to provide the opportunity for a hearing under specified circumstances.
- Provides guidelines regarding a hearing.
- Provides that information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records. However, any notice or statement of charges against any applicant or licensee or any notice to a licensee or applicant of a hearing in any proceeding or any decision made in connection with a hearing in any proceeding is a public record.
- Allows a person whose license has been denied or revoked to reapply to the Board for licensure after one calendar year from the date of the denial or revocation.
- Allows a licensee to voluntarily relinquish his or her license at any time.
- Authorizes the Board to adopt rules deemed necessary to interpret and implement this section.

Section 9: Sets out the definitions and procedure providing for criminal history record checks for applicants for licensure as professional counselors. The Board would have limited immunity from civil liability provided the Board acted in good faith and in compliance with this section.

Section 10: Authorizes the Department of Justice to provide the criminal history of any applicant for licensure or reinstatement of a license under the Act and to charge a fee to offset the cost incurred in conducting the criminal record check.

Section 11: Provides licensed professional counselors who are approved by the Board as qualified clinical supervisors before July 1, 2012 until July 1, 2014 to meet the new licensed professional counselor supervisor requirements.

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

Shirley Iorio, Ph D, legislative analyst to House State Government/State Personnel, Martha Walston, Counsel to House Finance Committee, and Kory Goldsmith, Counsel to Senate Commerce substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 746 (Fourth Edition)

SHORT TITLE: Amend Professional Counselors Act/Fees.

SPONSOR(S): Representative Insko

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Board of Licensed Professional Counselors	**$33,500**	**$33,500**	**$0**	**$0**	**$0**
Department of Justice	**$6,400+**	**$6,400+**	**$6,400+**	**$6,400+**	**$6,400+**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Licensed Professional Counselors, Department of Justice

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

Sections 5 and 11 of HB 746 make the following fee changes to the Licensed Professional Counselors Act:

Section 5 deletes the requirement that the Board expenditures may not exceed revenues during any fiscal year and raises the fees collected by the Board as follows:

- Raises fees for initial or renewal applications from "not to exceed $100" to "not to exceed $200".
- Raises late renewal fee from "not to exceed $25" to "not to exceed $75".

Section 10 authorizes the Department of Justice to provide the criminal history of any applicant for licensure or reinstatement of a license under the Act and to charge a fee to offset the cost incurred in conducting the criminal record check.

The remaining sections of House Bill 746 make the following changes:

Section 1 would amend all of the following definitions in G.S. 90-330:

- the catch line of G.S. 90-330 to read *Definitions; practice of counseling*
- the term "counseling" to apply to offering assistance through the counseling relationship by evaluating and treating mental disorders and other conditions; and
- the term "supervisor" to include a licensed professional counselor supervisor (LPCS) and to provide that when a LPCS in unavailable that "supervisor" applies to a licensed professional counselor (LPC) or an equivalently and actively licensed mental health professional as determined by the NC Board of Licensed Professional Counselors (Board).

Would add definitions for the following terms:

- "licensed professional counselor associate"; and
- "licensed professional counselor supervisor".

Would provide that a person who is a LPC or a licensed professional counselor associate (LPCA) under the provisions of the Licensed Professional Counselors Act would not be permitted to identify themselves as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law.

Section 2 would make it unlawful for anyone who is not licensed under the Licensed Professional Counselors Act to engage in the practice of counseling or to use in any way the titles and acronyms Licensed Professional Counselor Associate, Licensed Professional Counselor, Licensed Professional Counselor Supervisor, LPC, LPCA, or LPCS to indicate or imply that the person is a licensed professional counselor.

Section 3 would amend the section of the Licensed Professional Counselors Act pertaining to exemptions from licensure by:

- Clarifying that any person counseling within the scope of employment at a private institution of higher education in addition to a public institution of higher education or a community college would be exempt; and
- Removing from the list of exemptions any person (i) counseling as a supervised counselor in a supervised professional practice for a specified period of time, (ii) performing counseling solely as an employee of an area facility that is operated by or under contract with mental health, developmental disabilities, and substance abuse authority if certain conditions apply, (iii) performing counseling as an employee of a licensed hospital or other health care facility who is performing this counseling under the supervision of a qualified professional, and (iv) any employee assistance professional providing core specific employee assistance program activities.

Section 4 would clarify that (i) any State or nationally recognized professional association representing professional counselors may make recommendations to the Governor for membership on the North Carolina Board of Licensed Professional Counselors (Board), and (ii) appointees to the Board would continue to serve until a successor is appointed and qualified.

Section 6 would amend G.S. 90-336 by adding the qualifications for licensure for licensed professional counselor associate and licensed professional counselor supervisor and modifying licensure and qualifications for licensed professional counselor in terms of education requirements, exam requirements, hours of supervised professional practice, and hours of professional experience.

Section 7 provides for exemptions for applicants who are Registered Practicing Counselors and in good standing with the Board, and exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for certain individuals who meet specified experience requirements.

Section 8 would rewrite G.S. 90-340 to do all of the following:

Make substantial changes to the Board's authority to deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Act, and would provide detailed acts or omissions that would constitute grounds for the board to take action against a person licensed under this Act such as:

- Being convicted of a felony or entering a plea of guilty or nolo contender to any felony charge under federal law or any state law;
- Being convicted of or entering a plea of guilty or nolo contender to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling;
- Having engaged in fraud or deceit in securing or attempting to secure or renew a license;
- Having practiced professional counseling in such a manner as to endanger the welfare of clients;
- Having harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.
- Refusing to appear before the Board after having been ordered to do so in writing by the chair; and
- Having violated any provision of this Act or any rules adopted by the Board.

Provide additional disciplinary action that the Board may take in lieu of denial, suspension, or revocation including issuing a formal reprimand, placing an applicant on probation, and requiring supervision of the professional counseling services provided by the applicant or licensee;

Authorize the Board to assess the costs of disciplinary action against an applicant or licensee and to petition a court of competent jurisdiction to order an applicant or licensee whose physical or mental competence is in question to submit to a psychological or physical evaluation or both;

Require the Board to provide the opportunity for a hearing under specified circumstances;

Provide guidelines regarding a hearing;

Provide that information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records. However, any notice or statement of charges

against any applicant or licensee or any notice to a licensee or applicant of a hearing in any proceeding or any decision made in connection with a hearing in any proceeding is a public record;

Allow a person whose license has been denied or revoked to reapply to the Board for licensure after one calendar year from the date of the denial or revocation;

Allow a licensee to voluntarily relinquish his or her license at any time; and

Authorizes the Board to adopt rules deemed necessary to interpret and implement this section.

Section 9: Sets out the definitions and procedure providing for criminal history record checks for applicants for licensure as professional counselors. The Board would have limited immunity from civil liability provided the Board acted in good faith and in compliance with this section.

Source: Adopted from the Bill Analysis done by Committee Counsel to the Senate Finance Committee 06/30/2009

ASSUMPTIONS AND METHODOLOGY:

House Bill 746 amends the Professional Counselors Act to increase the maximum fee that may be charged for new licensure or renewal as a counselor from $100 to $200 and increases the fee for late applications from $25 to $75. According to the North Carolina Board of Licensed Professional Counselors, there are typically 2,000 applications for renewal and 400 applications for a new license each year. Of these applications, 100 are late. The Board does not plan to increase its fees within the foreseeable future. Therefore, the fee changes will have no fiscal impact. Should the Board, however, choose to impose a higher fee up to the $200 maximum allowed by this bill, it will result in an increase in revenues as high as $205,000 annually.

House Bill 746 alters and clarifies the positions regulated by the North Carolina Board of Licensed Professional Counselors. The qualifications of certain positions are altered; however, the bill provides exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for individuals who meet certain experience requirements and are in good standing with the Board. These individuals are encouraged to apply for relicensing within the next two years and will be exempted from renewal fees. This situation applies to board professionals who seek to become relicensed as professional counselor associates under the new standards. These individuals were previously exempted from fees. There are currently 335 board professional applicants who seek relicensing as counselor associates. The Board emphasizes that this number is variable and that it is uncertain how this number will change in the future. This analysis assumes that in 2010 there will also be 335 applicants for relicensing and that most people will relicense within the first two years of the qualification changes. Since the Board does not plan on increasing application fees to their statutory maximum, the fiscal impact from relicensing will be the number of board professional applicants multiplied by the current application fee. This results in a $33,500 increase in revenues for Fiscal Year 2009-10. Should the Board, however, impose a higher fee up to the $200 maximum allowed by this bill, the increase could be as high as $67,000. These changes are not expected have an additional impact.

Finally, House Bill 746 grants the Board of License Professional Counselors increased authority in disciplining and investigating the individuals they license. While these powers were not explicitly listed before, they were already practiced by the Board. The bill, however, gives the Board new

authority to levy penalties against applicants or licensees to recoup the costs of disciplinary action. This will result an increase in revenues. Because the Board has not yet determined what the penalties will be, the size of this increase cannot be determined.

Department of Justice

The Department of Justice (DOJ) reports that a fee of $38 is charged to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of NC databases and $2 is used for the processing cost associated with the request. All individuals applying for a new license or for reinstatement of a license would be subject to this background check. Using the information provided by the NC Board of Licensed Professional Counselors, there are 400 applications for a new license each year. These 400 background checks are expected to provide a total annual receipt of $6,400 for DOJ.

The proposed bill gives the NC Board of Licensed Professional Counselors the authorization to request background checks on licensees under investigation by the Board. The number of requests cannot be determined with the information provided, however, these additional background checks will result in an increase in receipts for DOJ. In addition, the number of requests for background checks for individuals seeking to reinstate a license cannot be determined, but any background check requested for this purpose will also result in an increase in DOJ receipts.

SOURCES OF DATA: NC Board of Licensed Professional Counselors, Department of Justice

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford, Danielle Seale

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 30, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1105
Committee Substitute Favorable 5/6/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Amend Laws/Refrigeration Contractors. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice making appliances connected by means of attachment plug in devices to suitable receptacles which have been permanently installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes.~~ This Article shall not apply to any of the following:

(1) The installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or replacement of lamps, fuses, and door gaskets.

(2) The installation and servicing of domestic household self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently installed and do not require the opening of service valves.

(3) ~~employees~~ Employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices.

(4) ~~The provisions of this Article shall not apply to any~~ Any person, firm or corporation engaged in the business of selling, repairing and installing any comfort cooling devices or systems."

SECTION 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of

installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the ~~months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination.~~Board's office by appointment."

SECTION 3. G.S. 87-59(b) reads as rewritten:

"(b) The Board shall adopt and publish ~~guidelines,~~rules and regulations, consistent with the provisions of this ~~Article,~~Article and Chapter 150B of the General Statutes, governing the suspension and revocation of licenses."

SECTION 4. G.S. 87-59(d) reads as rewritten:

"(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the Board a penalty not to exceed one thousand dollars ($1,000). The funds derived from the penalty shall be ~~deposited into the General Fund.~~remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 5. G.S. 87-61 reads as rewritten:

"**§ 87-61. Violations made misdemeanor; employees of licensees excepted.**

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class ~~2~~ 3 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this Article, shall not be construed to have engaged in the business of refrigeration contracting."

SECTION 6. G.S. 87-61.1 reads as rewritten:

"**§ 87-61.1. Board may seek injunctive ~~relief.~~relief; retain counsel.**

(a) Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

(b) The Board may employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3."

SECTION 7. Article 5 of Chapter 87 of the General Statutes is amended by adding the following new section to read:

"**§ 87-63.1. Ownership of real property; equipment; liability insurance.**

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

SECTION 8. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes the examination, the examination fee shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. Effective January 1, 2012, the Board may require, as a prerequisite to the annual renewal of a license, that licensees complete continuing education courses in subjects related to refrigeration contracting to ensure the safe and proper installation of commercial and transport refrigeration work and equipment. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows the license to lapse may be reinstated by the Board upon payment of a fee not to exceed seventy-five dollars ($75.00). Any person who fails to renew a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

SECTION 9. Section 3 of this act becomes effective October 1, 2009. Section 5 of this act becomes effective December 1, 2009, and applies to offenses occurring on or after that date. Section 8 of this act becomes effective January 1, 2012. The remainder of this act is effective when it becomes law.

HOUSE BILL 1105:
Amend Laws/Refrigeration Contractors

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Heather Fennell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1105 would amend the laws regulating refrigeration contractors.

CURRENT LAW: Article 5 of Chapter 87 of the General Statutes deals with refrigeration contractors. It creates the State Board of Refrigeration Examiners and requires that persons and corporations apply to the Board and get a license before engaging in refrigeration business or contracting. The Article also provides for revocation or suspension of licenses for cause. A violation of the Article is currently a Class 2 misdemeanor, and the Board may also seek injunctive relief when appropriate.

BILL ANALYSIS: House Bill 1105 would amend Article 5 of Chapter 87 in the following ways:

Section 1 would provide that the definition of "refrigeration trade business" does not include either of the following:

- The installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or the replacement of lamps, fuses, and door gaskets.
- The installation and servicing of domestic household self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently installed and do not require the opening of service valves.

Section 2 would provide that regular examinations for licensing in refrigeration are to be given in the office of the Board by appointment (currently, exams are given in the months of April and October annually and additionally as the Board deems necessary).

Section 3 would require the Board to adopt and publish rules and regulations consistent with the provisions of Article 5 and Chapter 150B (currently, the Board must adopt guidelines consistent with Article 5). This section would become effective October 1, 2009.

Section 4 would provide that when the Board accepts an offer to compromise a charge against a licensee where the accused pays a penalty to the Board, the penalty funds are to be remitted to the Civil Penalty and Forfeiture Fund (was the General Fund).

Section 5 would change the penalty for violations of Article 5 from a Class 2 misdemeanor to a Class 3 misdemeanor. This section would become effective December 1, 2009, and would apply to offenses occurring on or after that date.

Section 6 would authorize the Board to employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3, which requires agencies of the State to obtain written permission from the Attorney General prior to employing private counsel.

Section 7 would authorize the Board to own or otherwise deal with real property in the same manner as a private person or a corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance would be limited to the assets, income, and revenues of the Board. This section would also provide that the Board may rent or purchase equipment and supplies, and purchase insurance to cover its activities, operations, or employees.

ection 8 would allow the Board to require, as part of the renewal of a license, that licensees complete continuing education in subjects related to refrigeration contracting. This section would become effective January 1, 2012.

EFFECTIVE DATE: Except as otherwise indicated, this act would be effective when it becomes law.

Brad Krehely, counsel to House Commerce, Small Business, and Entrepreneurship, and Trina Griffin, counsel to House Finance, contributed to this summary.

H1105-SMTD-108(e3) v1

HOUSE BILL 1011

Short Title:	Raleigh Stormwater Assessment.	(Local)
Sponsors:	Representative Blue.	
Referred to:	Water Resources and Infrastructure, if favorable, Finance.	

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ASSESSMENTS BY THE CITY OF RALEIGH TO OWNERS OF STORMWATER FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-459(c) reads as rewritten:

"(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law. Any ordinance enacted pursuant to this section may contain a provision allowing the city to assess the owners of stormwater facilities for repairs to damaged or failed controls that were required to be constructed or implemented by the provisions of an ordinance enacted pursuant to this section. Any ordinance containing such an assessment provision shall establish a notice and cure provision which must be given to the owner of the failed or damaged facility before the city can commence a repair project. Any assessment made pursuant to such an ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c)."

SECTION 2. This act applies to the City of Raleigh only.

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

HOUSE BILL 1011:
Raleigh Stormwater Assessment

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Judy Collier
Analysis of:	First Edition		Research Assistant

SUMMARY: House Bill 1011 would authorize the City of Raleigh to enact an ordinance that would provide for the assessment of owners of stormwater facilities for repairs to damaged or failed controls that were required to be constructed. The ordinance would be required to afford the owner an opportunity to make the repairs prior to being assessed.

CURRENT LAW: G.S. 160A-459 provides that a city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. This section further provides that a city may implement post-construction runoff controls through an ordinance or other regulatory mechanism.

BILL ANALYSIS: House Bill 1011 would apply only to the City of Raleigh and would provide that a stormwater ordinance enacted pursuant to G.S. 160A-459 may contain a provision to allow the City to assess the owners of stormwater facilities for repairs to damaged or failed controls that were required to be constructed or implemented by ordinance. Any ordinance that contains an assessment provision must establish a notice and cure provision which must be given to the owner of the failed or damaged facility before the City can commence a repair project. Any assessment made must have the same priority and be collected in the same manner as special assessments pursuant to G.S. 160A-233(c), which provides for foreclosure on assessment liens.

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

H1011-SMRE-56(e1) v1

Trina Griffin, counsel to House Finance Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 3

Short Title:	Smoky Mountains National Park Plate Changes.	(Public)
Sponsors:	Senators Snow; and Queen.	
Referred to:	Finance.	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF FEES COLLECTED FROM THE FRIENDS OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK SPECIAL STATE ATTRACTION PLATE TO BE USED FOR ORDINARY ADMINISTRATIVE AND OPERATING EXPENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-81.12(b2) (1c) reads as rewritten:

"(1c) Friends of the Great Smoky Mountains National Park. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and ~~operating expenses of the Great Smoky Mountains National Park~~related administrative and operating expenses."

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

SENATE BILL 3:
Smoky Mountains National Park Plate Changes

2009-2010 General Assembly

Committee:	Senate Ref to Finance. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 30, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Judy Collier Research Assistant
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 3 would amend the statute authorizing the Friends of the Great Smoky Mountains National Park special State attraction plate in order for the additional fees collected from this plate to be used for administrative expenses.***

CURRENT LAW: The Friends of the Great Smoky Mountain National Park special plate may be issued for a motor vehicle upon payment of the regular registration fee ($28) plus an additional fee of $30 by the registered owner. Ten dollars of the additional fee is credited to the Special Registration Plate Account[1] and the remaining $20 of the additional fee is transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Park located in North Carolina and operating expenses of the Park.

BILL ANALYSIS: Senate Bill 3 would allow the revenue transferred to the Friends of the Great Smoky Mountains National Park, Inc. to also be used for related administrative expenses. This entity has provided the following examples of administrative expenses for which they would like to use the revenue generated from the additional fee:

- Staff time in sending out thank-you letters and information to those who buy a tag.
- Staff time for data entry and inquiries.
- Printing supplies.

The General Assembly has also authorized the use of fees for 'administrative expenses" for the Friends of the Appalachian Trail Plate.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: The special State attraction plate for the Friends of the Great Smoky Mountain National Park was authorized by the General Assembly in 1997, and is one of several State attraction plates available in North Carolina. The Division of Motor Vehicles must receive 300 or more applications for a State attraction plate before the plate may be developed. As of July 1, 2008, there were 14,780 active Friends of the Great Smoky Mountain National Park plates.

S3-SMRE-57(e1) v1

Martha Walston, counsel to House Finance Committee, substantially contributed to this summary.

[1] After deducting the cost of the plates from the Special Registration Account, $1 million is annually appropriated to provide operating assistance for ten Visitor Centers. The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties. The remaining revenue in the Account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%) and the Department of Health and Human Services to promote travel accessibility for disabled persons (17%).

HOUSE BILL 852
Committee Substitute Favorable 6/4/09
Committee Substitute #2 Favorable 6/24/09

Short Title: Defer Tax on Builders' Inventory. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFER A PORTION OF THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273 is amended by adding a new subdivision to read:

"(3a) "Builder" means a taxpayer licensed as a general contractor under G.S. 87-1 and engaged in the business of buying real property, making improvements to it, and then reselling it."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1D. Inventory property tax deferral.**

(a) Classification. – A residence owned and constructed by a builder is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement, other than remodeling, renovating, rehabilitating, or refinishing, by a builder to real property that is intended to be sold and used as an individual's residence, that is unoccupied, and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – A builder may defer the portion of tax imposed on real property that represents the increase in value of the property attributable solely to improvements resulting from the construction by the builder of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earliest of (i) when the builder transfers the residence, (ii) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (iii) five years from the time the improved property was first subject to being listed for taxation by the builder, or (iv) three years from the time the improved property first received the property tax benefit provided by this section. On or before September 1 of each year, the collector shall notify each builder to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the builder subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a

mortgage, deed of trust, or other agreement that prohibits the builder from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 3. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(2a) G.S. 105-277.1D, the inventory property tax deferral."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2013. Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.

HOUSE BILL 852:
Defer Tax on Builders' Inventory

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Reps. Dickson, Brubaker, Holliman, Wainwright	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 852 creates a property tax deferral program to defer for a maximum of three years the portion of taxes on an unoccupied, unsold residence attributable to the construction of the residence by a builder.

CURRENT LAW: North Carolina currently has six property tax deferral programs: (i) historic district property held as future site of historic structures[1], (ii) the circuit breaker tax deferral program[2], (iii) nonprofit property held as future site of low- or moderate-income housing[3], (iv) present-use value (PUV) property[4], (v) working waterfront property[5], and (vi) historic property.[6] Uniform tax provisions for all deferral programs include the following:

- Taxes that are deferred under one of these programs become a lien on the property, which is extinguished when the taxes are paid.
- The deferred taxes are due and payable on the day the property loses its eligibility for deferral as a result of a disqualifying event.
- Interest accrues during the deferral period as of the date the taxes would have originally become due without the deferral program.
- Upon disqualification, the tax for a year in which a disqualifying event occurs is computed without the benefit of the deferral program.

BILL ANALYSIS: House Bill 852 adds an additional property tax deferral program for an occupant-ready residence constructed[7] and owned by a general contractor for resale on a parcel of real property. The amount of property tax liability that could be deferred is the portion of tax that represents the increase in the property value resulting from the construction of the residence on the property. For example, if the land value of unimproved real estate was $100,000, and the value of the property, as improved by the construction of a residence, was $400,000, the builder would be required to pay the property tax on the land value ($100,000) but could defer the property tax liability for the value of the improvement ($300,000).

The deferred taxes would be carried forward in the records of the county and, if applicable, city in which the property is located until the occurrence of one of the following disqualifying events: (1) the builder transfers the residence; (2) the residence is occupied by the builder or another with the builder's consent; (3) five years from the time the improved property was first subject to being listed for taxation by the builder, or (4) three years from the date the improved property first received the property tax benefit

[1] G.S. 105-275(29a).
G.S. 105-277.1B.
G.S. 105-278.6(e).
[4] G.S. 105.277.4(c).
[5] G.S. 105-277.14.
[6] G.S. 105-278(b).
[7] Construction activities limited to renovating, refinishing, rehabilitating, or remodeling do not qualify.

provided by this deferral program. The uniform provisions for deferral programs would apply to this inventory tax deferral program. Applications should be filed within the regular listing period and may be filed later if the board of equalization and review determines there is good cause for the lack of timely filing.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010, and is repealed for taxes imposed for taxable years beginning on or after July 1, 2013.

H852-SMTD-107(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 860*
Education/Higher Education Committee Substitute Adopted 6/17/09
PROPOSED COMMITTEE SUBSTITUTE S860-CSTD-62 [v.5]

7/1/2009 12:46:47 PM

Short Title: Student Protection Fund/Proprietary Schools. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STUDENT PROTECTION FUND FOR PROPRIETARY SCHOOL STUDENTS.

The General Assembly of North Carolina enacts:

SECTION . G.S. 115-93(c) is amended by adding two subdivisions to read:

"(10) That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.

(11) That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund."

SECTION 1. G.S. 115D-95 reads as rewritten:

"**§ 115D-95. Bonds required.**

(a) Requirement. – An applicant for a license must comply with the bond requirements in this section. The bond covers the potential loss by students of the school of prepaid tuition and other payments made by them that could occur if the school fails, for any reason, to fulfill its obligations to them to provide instruction, services, or goods for which the students have paid tuition and other charges. Reasons for failure include the suspension, revocation, or nonrenewal of the school's license, bankruptcy, foreclosure, or termination of operations. ~~A guaranty bond is required for each school that is licensed to operate: Provided, however, a school that is unable to secure a bond may, with the consent of the State Board of Community Colleges, provide an alternative to a guaranty bond, as provided in subsection (c) of this section.~~

(b) Amount. – An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

(1) Initial licensure. – For an applicant for initial licensure of a school, the bond amount is the amount determined by the Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related

expenses paid to the school. A bond amount shall be at least twenty-five thousand dollars ($25,000).

(2) First four renewals. – For a school that has been licensed for one year but less than six years, the bond shall be in an amount equal to the greatest amount of unearned paid tuition in the school's possession at anytime during the prior fiscal year. The bond amount shall be evaluated by the school quarterly and reported to the State Board or its representative. A quarterly evaluation requiring an increase of five percent (5%) or more in the amount of the bond held by the school shall require an immediate increase in the bond amount. Bond amounts shall also be evaluated pursuant to this subdivision and the rules of the State Board at the time of the school's annual license renewal and increased if necessary regardless of the amount of the change.

(2) Schools in operation more than five years. – A guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:

a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal multiplied by the percentage amount the fund is deficient.

b. If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any bond amount required by sub-subdivision a. of this subdivision, the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Fund catastrophic loss amount.

~~(1) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate.~~

~~(2) The bond shall be in an amount determined by the State Board of Community Colleges to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars ($10,000).~~

~~Each application for a license shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the State Board. If the State Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the State Board may require the applicant to provide an additional bond.~~

~~(3) The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the State Board of Community Colleges. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.~~

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may ~~file with the clerk of the superior court of the county in which the school will be located,~~obtain in lieu of a bond:

(1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the State Board of Community Colleges; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

(2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section."

SECTION 2. G.S. 115D-96 reads as rewritten:

"**§ 115D-96. Operating school without license or bond made misdemeanor.**

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary business school, a proprietary technical school, a proprietary trade school, or a correspondence school, without first having obtained the license herein required, and without first having executed the ~~bond required,~~bond, paid the assessments into the Student Protection Fund, or both, as required by law, shall be guilty of a Class 3 misdemeanor, and each day ~~said~~ the school continues to be open and operated shall constitute a separate offense."

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

"**§ 115D-95.1. Student Protection Fund.**

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

(1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars ($1,000,000).

(2) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The amount is one million five hundred thousand dollars ($1,500,000).

(b) Student Protection Fund. – The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund is credited to the Fund. The State Board of Community Colleges administers the Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school licensed under

this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate.

(c) Student Protection Fund Advisory Committee. – The President of the North Carolina Community College System shall appoint a Student Protection Fund Advisory Committee. Members of the Committee shall be appointed for terms of three years. The Committee shall advise the State Board of Community Colleges on matters related to the Fund, including, but not limited to, the adjustment of the catastrophic loss amount and fund cap amount.

The Committee shall consist of seven members as follows:

(1) Three professional staff members of the Community Colleges System Office.

(2) An owner/director of a proprietary school with less than 100 students, or the owner/director's designee.

(3) An owner/director of a proprietary school with between 100 and 750 students, or the owner/director's designee.

(4) An owner/director of a proprietary school or group of proprietary schools with more than 750 students, or the owner/director's designee.

(5) An owner/director of a proprietary school appointed at large, or the owner/director's designee.

(d) Initial Payment. – Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars ($1,250) into the Fund.

(e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay annually into the Fund an amount based on its annual gross tuition revenue generated in the State as follows:

Annual Gross Tuition Revenue	Amount of Assessment
$1.00 – $25,000	$200.00
$25,001 – $50,000	$250.00
$50,001 – $100,000	$300.00
$100,001 – $200,000	$400.00
$200,001 – $300,000	$500.00
$300,001 – $400,000	$600.00
$400,001 – $500,000	$700.00
$500,001 – $750,000	$1,000
$750,001 – $1,000,000	$1,250
$1,000,001 – $1,500,000	$1,500
$1,500,001 – $2,000,000	$2,000
Greater than $2,000,000	$2,000 plus one-twentieth of one percent .05% of annual gross tuition revenue over $2,000,000

(f) Suspension of Payments. – If the Student Protection Fund balance is equal to or exceeds the Fund cap amount, the State Board of Community Colleges shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The State Board shall require schools to resume payments into the Fund if the balance of the Fund is less than the catastrophic loss amount.

(g) Catastrophic Assessments. – If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Community Colleges may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund.

The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (e) of this section. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board shall develop a method of allocating funds among claims.

(h) Payment Required for Proprietary School Licensure. – The full and timely payment into the Fund pursuant to this section is a condition of licensure.

(i) Payments Nonrefundable. – No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(j) Student Repayment. – A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Article by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate, may qualify for repayments under the Student Protection Fund. The Board must first issue repayment from the bonds issued under G.S. 115D-95.1. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board must develop a method of allocating funds among claims."

SECTION 4. In addition to the payments required under G.S. 115D-95.1, as a condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay into the Student Protection Fund an amount based on its total enrollment for the previous calendar year as follows:

Number of Students	Amount of Assessment
0-49	$500
50-99	$1,000
100-499	$2,000
500-999	$3,000
1,000-1,499	$4,000
More than 1,500	$5,000.

Total enrollment equals the number of students enrolled on January 1, 2009, plus new starts during the calendar year plus students reentering from a period of nonattendance during the calendar year.

SECTION 5. This act becomes effective July 1, 2010.

SENATE BILL 860:
Student Protection Fund/Proprietary Schools

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 30, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S860-CSTD-60		

SUMMARY: ***The proposed committee substitute to Senate Bill 860 would modify the bonding requirements for proprietary schools and create the Student Protection Fund to compensate students enrolled in a proprietary school that terminates a program or ceases operation before the students have completed their course of study.***

[As introduced, this bill was identical to H980, as introduced by Rep. Gibson, which is currently in House Education, if favorable, Finance.]

CURRENT LAW: Article 8 of Chapter 115D regulates private schools operated for profit, known as proprietary schools. These include proprietary business schools, proprietary trade schools, proprietary technical schools, and correspondence schools. G.S. 115D-89 directs the State Board of Community Colleges (State Board) to administer and enforce the Article and to grant and issue licenses to proprietary schools.

G.S. 115D-95 requires a guaranty bond for each proprietary school licensed to operate. If a proprietary school cannot secure a bond, it may, with the State Board's consent, provide an alternative to a guaranty bond. Failure to maintain the bond or bond alternative if grounds for license revocation by the State Board.

Bond requirements: Bonds must be filed with the clerk of superior court in the county where the school will be located when the license application is made. The bond must be in favor of the students, and must be executed by the applicant as principal and by a bonding company authorized to do business in the State.

Purpose: The bond should provide indemnification to any student, parent, or guardian who has suffered a loss of tuition and fees due to failure of the school to offer or complete student instruction, academic services, or other items related to course enrollment for any reason, including suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or cessation of the school to operate.

Amount: The bond amount is determined by the State Board in an amount adequate to provide indemnification to any student, or parent or guardian, under the terms of the bond. The amount of the bond must be at least $10,000 and cover the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The school must include detailed calculations as to the computation of the bond amount under State Board rules in its license application and the State Board may require an additional bond if such terms are inadequate.

Cancellation: The bond remains in force until cancelled by the guarantor, who may cancel the bond upon 30 days notice to the State Board. Cancellation does not affect liability incurred prior to the termination of the notice period.

G.S. 115D-96 provide that operation of a proprietary school without obtaining the required license and executing the required bond is a Class 3 misdemeanor, with each day of operation constituting a separate offense.

BILL ANALYSIS: The PCS for SB 860 would do the following:

Modified Bond Requirements (G.S. 115D-95)

Bond required – Clarifies that all schools must obtain a bond or a bond alternative approved by the Board. The Bonds will be issued in the name of the State Board of Community Colleges and shall be used to reimburse students of proprietary schools that have failed to offer or complete student instruction.

Amount of bonds required:

1. **Initial Licensure:** For the first year of licensure the amount of the bond shall be determined by the Board. The bond shall be at least $25,000 and in an amount sufficient to provide indemnification for the students.
2. **First four renewals:** During the first four years of renewal, a school must file a bond equal to the greatest amount of unearned paid tuition in the school's possession during the prior fiscal year. The bond amount must be evaluated quarterly and reported to the State Board. An increase of 5% or more in the amount of tuition held by the school would require an immediate increase in the bond amount. The State Board may also increase the amount of the bond at the time of the school's annual license renewal.
3. **More than 5 Years of Operation:** Schools continuously licensed to operate for more than 5 years would be required to file a bond under 2 circumstances:

   1) If the Fund balance is below the catastrophic loss amount, the school must file a bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year, multiplied by the percentage amount the fund is deficient.

   2) If the school holds prepaid tuition in excess of the Fund catastrophic loss amount during the prior fiscal year, the school must file a bond equal to the amount of excess tuition held above the catastrophic loss amount.

Establishment of the Student Protection Fund (G.S. 115D-95.1)

Purpose: The Student Protection Fund (the Fund) is created to compensate students enrolled in proprietary schools licensed under Article 8 who suffer a loss of tuition, fees, or other instructional related expenses by failure of the school to offer or complete student instruction. The Fund is established in the Department of State Treasurer and administered by the State Board of Community Colleges (State Board).

Advisory Committee: An Advisory Committee of seven members appointed by the President of the Community Colleges System and representing the System Office and proprietary schools would advise the State Board on adjustments to fund amounts.

Defined Fund Amounts:

Catastrophic loss amount – Set at $1 million.

Fund cap amount – Set at $1.5 million.

Fund Payments: Payment into the Fund is a condition of licensure for proprietary schools.

Initial Payments: New proprietary schools would be required to pay a fee of $1,250 prior to the first year of operation in the State. Section 4 of the bill provides that existing proprietary schools would be required to pay a one-time assessment in 2010-2011 as a condition of license renewal.

The assessment amount would be based on the number of enrolled students in the school, and would range from $500 to $5,000.

Annual Payments: All proprietary schools would be required to annually pay into the fund an assessment based on the school's annual gross tuition revenue, ranging from $200.00 to $2,000 plus 0.0005% of annual gross revenue over $2,000,000.

Suspension of Payments: If the Fund balance is equal to or exceeds the Fund cap amount, the State Board must suspend payments into the Fund for all schools continuously licensed for more than 8 years. Payments must be resumed when the balance of the Fund is less than the catastrophic loss amount.

Catastrophic Assessments: If claims against the Fund exceed the catastrophic loss amount, the State Board may assess additional fees to the extent necessary to cover qualified student claims. The catastrophic assessment cannot exceed one-half of the annual payment required of schools. If the Fund amount is still insufficient to cover claims, the State Board must develop a method of allocating the funds among claims.

Payments Nonrefundable: Payments into the Fund would not be refundable in the event of a rejection, suspension, or revocation of a license.

Student Repayment: The Board must first issue repayment to students from the required bonds, or bond alternatives. If the Fund is insufficient to cover claims, the Board must develop a method of allocating funds among claims.

Class 3 Misdemeanor: G.S. 115D-96 is amended to make failure to pay the assessments required under the Student Protection Fund a Class 3 misdemeanor.

EFFECTIVE DATE: The PCS for SB 860 would become effective July 1, 2010.

Kara McCraw, counsel to Senate Education, substantially contributed to this summary.

S860-SMTD-105(CSTD-60) v6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 116
PROPOSED COMMITTEE SUBSTITUTE S116-CSRBf-43 [v.4]

7/1/2009 10:54:01 AM

Short Title: Authorize Various Special Plates. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(10b) Armed Forces Expeditionary Medal Recipient. – Issuable to a recipient of the Armed Forces Expeditionary Medal. The plate shall bear the phrase "Armed Forces Expeditionary Medal" and a representation of the Armed Forces Expeditionary Medal. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(14d) Boy Scouts of America. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Boy Scouts of America" and an emblem representing the Boy Scouts of America.

...

~~(14a)~~(14f) Brain Injury Awareness. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Brain Injury Awareness" and the logo of the nonprofit group Brain Injury Association of North Carolina, Inc.

...

(18b) Carolinas Golf Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.81. The plate shall bear the phrase "Carolinas Golf Association" and an emblem of the Carolinas Golf Association.

...

(34c) Daniel Stowe Botanical Garden. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Daniel Stowe Botanical Garden' with a logo designed by the Daniel Stowe Botanical Garden Foundation, Inc.

...

(45b) First in Turf. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "First in Turf".

...

(49a) Girl Scouts. – Issuable to the owner of a registered vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Girl Scouts" with an emblem representing the Girl Scouts of the U.S.A.

...

(49c) Gold Star Lapel Button. – Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star".

...

(53c) High Point Furniture Market 100th Anniversary. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "High Point Furniture Market 100th Anniversary" and the emblem of the High Point Market. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

~~(54) Gold Star Lapel Button. – Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star".~~

...

(56c) Home of American Golf. --- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Home of American Golf" and include the Pinehurst logo and a representation relating to golf.

...

(60c) Jaycees. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Jaycees" and a logo designed by the North Carolina Jaycees.

...

(72c) Mayor. – Issuable to the mayor of a municipality in this State. The plate shall bear the phrase "Mayor" and the letter "M" followed by a number that indicates the municipality the mayor serves. The number of a municipality is the order of the municipality in an alphabetical list of municipalities that assigns number one to the first municipality in the list. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(77c) Municipal Council. -- Issuable to a municipal council member, commissioner, or alderman of a municipality in this State. The plate shall bear the words "Council Member," "Commissioner," or "Alderman," followed first by a number representing the council member's municipality and then by a letter or number that distinguishes plates issued to council members of the same municipality. The number of a municipality shall be the order of the municipality in an alphabetical list of municipalities that assigns number one to the first municipality in the list. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(85b) NC Horse Council. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Horse Council" and a logo designed by the North Carolina Horse Council, Inc.

...

~~(85a)~~(85d) NC Tennis Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Play Tennis" and the image of an implement of the tennis sport.

...

(86c) NC Wildlife Federation. – Issuable in the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo designed by the North Carolina Wildlife Federation, Inc.

...

(88c) North Carolina Master Gardener. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the letters "MG" with a logo representing the North Carolina Master Gardeners.

...

(95b) P.E.O. Sisterhood. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "P.E.O." and a logo designed by P.E.O. International.

...

(96c) Phi Beta Sigma Fraternity. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Phi Beta Sigma Fraternity" and the logo of the Phi Beta Sigma Fraternity, Inc.

...

(108c) School Board. -- Issuable to a school board member in this State. The plate shall bear the words "School Board" followed first by a number representing the school board and then by a letter or number that distinguishes plates issued to members of the same board. The number of a school board shall be the order of the school board in an alphabetical list of school boards that assigns number one to the first school board in the list. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(119b) S.T.A.R. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "For the Love of Horses" and a logo depicting a horse raring up on its hind legs.

...

(123c) Support NC Education. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Support NC Education" with a picture of a mortar board hat and a diploma.

...

(124b) Support Soccer. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Support Soccer" and a logo designed by the North Carolina Soccer Hall of Fame, Inc.

...

(128b) Town of Oak Island. – Issuable to the registered owner of a motor vehicle. The plate shall bear the seal of the Town of Oak Island and the letters "OKI". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(129b) Travel and Tourism. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "www.visitnc.com".

...."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Back Country Horsemen of NC	$30.00
Boy Scouts of America	$30.00
Carolinas Golf Association	$30.00
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Girl Scouts	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
Home of American Golf	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
P.E.O. Sisterhood	$30.00
Personalized	$30.00
Share the Road	$30.00
S.T.A.R.	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support NC Education	$30.00
Support Our Troops	$30.00
Travel and Tourism	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
First in Turf	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00

NC Children's Promise	$25.00
NC Coastal Federation	$30.00
Nurses	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Support Soccer	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
Harley Owners' Group	$20.00
Jaycees	$20.00
Juvenile Diabetes Research Foundation	$20.00
~~Harley Owners' Group~~	~~$20.00~~
Litter Prevention	$20.00
March of Dimes	$20.00
NC Horse Council	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Federation	$20.00
NC Wildlife Habitat Foundation	$20.00
North Carolina Master Gardener	$20.00
Omega Psi Phi Fraternity	$20.00
Phi Beta Sigma Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00

Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
AIDS Awareness	$10	$15	0	0
Alpha Phi Alpha Fraternity	$10	$10	0	0
ALS Association, Jim "Catfish" Hunter Chapter	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Back Country Horsemen of NC	$10	$20	0	0
Be Active NC	$10	$10	0	0
Boy Scouts of America	$10	$20	0	0
Brain Injury Awareness	$10	$10	0	0
Breast Cancer Earlier Detection	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Carolinas Golf Association	$10	$20	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daniel Stowe Botanical Garden	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
First in Turf	$10	$15	0	0
Girl Scouts	$10	$20	0	0
Goodness Grows	$10	$15	0	0
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0

1	High School Insignia	$10	$15	0	0
2	Historical Attraction	$10	$20	0	0
3	Home Care and Hospice	$10	$20	0	0
4	Home of American Golf	$10	$20	0	0
5	HOMES4NC	$10	$20	0	0
6	Hospice Care	$10	$20	0	0
7	In God We Trust	$10	$20	0	0
8	In-State Collegiate Insignia	$10	$15	0	0
9	Jaycees	$10	$10	0	0
10	Juvenile Diabetes Research				
11	Foundation	$10	$10	0	0
12	Kids First	$10	$15	0	0
13	Leukemia & Lymphoma Society	$10	$5	0	0
14	Litter Prevention	$10	$10	0	0
15	Lung Cancer Research	$10	$5	0	0
16	Maggie Valley Trout Festival	$10	$20	0	0
17	March of Dimes	$10	$10	0	0
18	National Kidney Foundation	$10	$20	0	0
19	National Multiple Sclerosis				
20	Society	$10	$15	0	0
21	National Wild Turkey Federation	$10	$15	0	0
22	NC Agribusiness	$10	$15	0	0
23	NC Children's Promise	$10	$15	0	0
24	NC Coastal Federation	$10	$20	0	0
25	NC 4-H Development Fund	$10	$20	0	0
6	NC Horse Council	$10	$10	0	0
7	NC Tennis Foundation	$10	$10	0	0
28	NC Trout Unlimited	$10	$10	0	0
29	NC Wildlife Federation	$10	$10	0	0
30	~~North Carolina Libraries~~	~~$10~~	~~$20~~	~~0~~	~~0~~
31	NC Wildlife Habitat Foundation	$10	$10	0	0
32	North Carolina Libraries	$10	$20	0	0
33	North Carolina Master Gardener	$10	$10	0	0
34	Nurses	$10	$15	0	0
35	Olympic Games	$10	$15	0	0
36	Omega Psi Phi Fraternity	$10	$10	0	0
37	Out-of-state Collegiate Insignia	$10	0	$15	0
38	P.E.O. Sisterhood	$10	$20	0	0
39	Personalized	$10	0	$15	$5
40	Phi Beta Sigma Fraternity	$10	$10	0	0
41	Prince Hall Mason	$10	$10	0	0
42	Rocky Mountain Elk Foundation	$10	$15	0	0
43	Save the Sea Turtles	$10	$10	0	0
44	Scenic Rivers	$10	$10	0	0
45	School Technology	$10	$10	0	0
46	SCUBA	$10	$10	0	0
47	Shag Dancing	$10	$5	0	0
48	Share the Road	$10	$20	0	0
49	Soil and Water Conservation	$10	$10	0	0
50	Special Forces Association	$10	$10	0	0
51	Special Olympics	$10	$15	0	0

S.T.A.R.	$10	$20	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support NC Education	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Support Soccer	$10	$15	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
Travel and Tourism	$10	$20	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 4 G.S. 20-81.12(b2) reads as rewritten:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Blue Ridge Parkway Foundation. – The revenue derived from the special plate shall be transferred quarterly to Blue Ridge Parkway Foundation for use in promoting and preserving the Blue Ridge Parkway as a scenic attraction in North Carolina. A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcycle. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division must receive a minimum of 300 applications to develop a special registration plate for a motorcycle.

~~(1c)~~(3) Friends of the Great Smoky Mountains National Park. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

~~(1g)~~(5) Friends of the Appalachian Trail. – The revenue derived from the special plate shall be transferred quarterly to The Appalachian Trail Conference to be used for educational materials, preservation programs, trail maintenance, trailway and viewshed acquisitions, trailway and viewshed easement acquisitions, capital improvements for the portions of the Appalachian Trail and connecting trails that are located in North Carolina, and related administrative and operating expenses.

~~(1i)~~(7) North Carolina State Parks. – One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15.

(9) "Old Baldy", Bald Head Island Lighthouse. – The revenue derived from the special plate shall be transferred quarterly to the Old Baldy Foundation, Inc., for its programs in support of the Bald Head Island Lighthouse.

~~(1j)~~(11)) The North Carolina Aquariums. – The revenue derived from the special plate shall be transferred quarterly to the North Carolina Aquarium Society, Inc., for its programs in support of the North Carolina Aquariums.

~~(1m)~~(13) The North Carolina Arboretum. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

~~(1p)~~(15) The North Carolina Maritime Museum. – The revenue derived from the special plate shall be transferred quarterly to Friends of the Museum, North Carolina Maritime Museum, Inc., to be used for educational programs and conservation programs and for operating expenses of the North Carolina Maritime Museum.

~~(1t)~~(17) The North Carolina Museum of Natural Sciences. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum.

~~(2)~~(20) The North Carolina Zoological Society. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro."

SECTION 5. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b73) Daniel Stowe Botanical Garden. – The Division must receive 300 or more applications for the Daniel Stowe Botanical Garden plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Daniel Stowe Botanical Garden plates to the Daniel Stowe Botanical Garden Foundation, Inc., to provide funding for the Daniel Stowe Botanical Garden outreach program.

(b74) NC Wildlife Federation. – The Division must receive 300 or more applications for the NC Wildlife Federation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Wildlife Federation plates to the North Carolina Wildlife Federation, Inc., to provide funding for a grassroots program to involve anglers, hunters, and wildlife enthusiasts in conservation issues affecting North Carolina.

(b75) North Carolina Master Gardener. – The Division must receive 300 or more applications for the North Carolina Master Gardener plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of North Carolina Master Gardener plates to the Master Gardener's Endowment fund maintained by the Agricultural Foundation of North Carolina State University, to be used for educational programs by trained volunteers who work in partnership with their county Cooperative Extension offices to extend information in consumer horticulture.

(b76) Support NC Education. – The Division must receive 300 or more applications for the Support NC Education plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support NC Education plates to the University of North Carolina Board of Governors to be used to provide scholarship funding at the 16 constituent universities of The University of North Carolina.

(b77) Phi Beta Sigma Fraternity. – The Division must receive 300 or more applications for the Phi Beta Sigma Fraternity plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Phi Beta Sigma Fraternity plates to the Phi Beta Sigma Fraternity, Inc., to provide funding for scholarships, education and professional development, or similar programs. None of the proceeds from this special plate may be distributed to any board member as compensation or as an honorarium.

(b78) Travel and Tourism. – The Division must receive 300 or more applications for the Travel and Tourism plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Travel and Tourism plates to the Division of Tourism, Film, and Sports Development to be used for programs in support of travel and tourism in North Carolina.

(b79) Home of American Golf. – The Division must receive 300 or more applications for the Home of American Golf plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Home of American Golf plates to the Given Memorial Library, Inc., to provide funding for the Given Memorial Library – The Tufts Archives.

(b80) Carolinas Golf Association. – The Division must receive 300 or more applications for the Carolinas Golf Association plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolinas Golf Association plates to the Carolinas Golf Association to be used to promote amateur golf in North Carolina.

(b81) NC Horse Council. – The Division must receive 300 or more applications for the NC Horse Council plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Horse Council plates to the North Carolina Horse Council, Inc., to promote and enhance the equine industry in North Carolina.

(b82) Support Soccer. -- The Division must receive 300 or more applications for the Support Soccer plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Soccer plates to the North Carolina Soccer Hall of Fame, Inc. to provide funding to promote the sport of soccer in North Carolina.

(b83) Jaycees. – The Division must receive 300 or more applications for the Jaycees plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Jaycees plates to the North Carolina JCI Senate, Inc., to be used to support and underwrite Jaycee activities in North Carolina.

(b84) First in Turf. – The Division must receive 300 or more applications for the First in Turf plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of First in Turf plates to the Center for Environmental Turfgrass Research at North Carolina State University for its programs.

(b85) Boy Scouts of America. -- The Division must receive 300 or more applications for the Boy Scouts of America plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Boy Scouts of America plates to the Old Hickory Council of the Boy Scouts of America, where the proceeds will be divided equally among the Boy Scouts of America Councils in this State to be used for educational programs, preservation programs, capital improvements on facilities located in this State, and related administrative and operating expenses.

(b86) Girl Scouts. -- The Division must receive 300 or more applications for the Girl Scouts plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Girl Scouts plates to the Girl Scouts North Carolina Coastal Pines, where the proceeds will be divided equally among the officially chartered Girl Scout Councils in this State to be used for educational programs, preservation programs, capital improvements on facilities located in this State, and related administrative and operating expenses.

(b87) S.T.A.R. – The Division must receive 300 or more applications for the S.T.A.R. plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of S.T.A.R. plates to Save the Animals Rescue, Inc., to provide funding to rescue distressed horses.

(b88) P.E.O. Sisterhood. – The Division must receive 300 or more applications for the P.E.O. Sisterhood plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of P.E.O. Sisterhood plates to P.E.O. International to be used for scholarships for young women."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 116

Short Title:	Stowe Botanical Gardens Special Plate.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO PRODUCE A DANIEL STOWE BOTANICAL GARDEN SPECIAL REGISTRATION PLATE FOR THE DANIEL STOWE BOTANICAL GARDEN FOUNDATION, INC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.

(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Daniel Stowe Botanical Garden."

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(34c) Daniel Stowe Botanical Garden. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Daniel Stowe Botanical Garden' with a logo designed by the Daniel Stowe Botanical Garden Foundation, Inc.

...."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Back Country Horsemen of NC	$30.00
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00

1	Kids First	$25.00
2	Olympic Games	$25.00
3	National Multiple Sclerosis Society	$25.00
4	National Wild Turkey Federation	$25.00
5	NC Agribusiness	$25.00
6	NC Children's Promise	$25.00
7	NC Coastal Federation	$30.00
8	Nurses	$25.00
9	Rocky Mountain Elk Foundation	$25.00
10	Special Olympics	$25.00
11	Surveyor Plate	$25.00
12	The V Foundation for Cancer Research Division	$25.00
13	University Health Systems of Eastern Carolina	$25.00
14	Alpha Phi Alpha Fraternity	$20.00
15	ALS Association, Jim "Catfish" Hunter Chapter	$20.00
16	Animal Lovers	$20.00
17	ARC of North Carolina	$20.00
18	Audubon North Carolina	$20.00
19	Autism Society of North Carolina	$20.00
20	Be Active NC	$20.00
21	Brain Injury Awareness	$20.00
22	Breast Cancer Earlier Detection	$20.00
23	Buddy Pelletier Surfing Foundation	$20.00
24	Daughters of the American Revolution	$20.00
25	Ducks Unlimited	$20.00
6	Greyhound Friends of North Carolina	$20.00
7	Guilford Battleground Company	$20.00
28	Juvenile Diabetes Research Foundation	$20.00
29	Harley Owners' Group	$20.00
30	Litter Prevention	$20.00
31	March of Dimes	$20.00
32	NC Tennis Foundation	$20.00
33	NC Trout Unlimited	$20.00
34	NC Wildlife Habitat Foundation	$20.00
35	Omega Psi Phi Fraternity	$20.00
36	Prince Hall Mason	$20.00
37	Save the Sea Turtles	$20.00
38	Scenic Rivers	$20.00
39	School Technology	$20.00
40	SCUBA	$20.00
41	Soil and Water Conservation	$20.00
42	Special Forces Association	$20.00
43	Support Public Schools	$20.00
44	US Equine Rescue League	$20.00
45	Wildlife Resources	$20.00
46	Zeta Phi Beta Sorority	$20.00
47	Carolina's Aviation Museum	$15.00
8	Leukemia & Lymphoma Society	$15.00
9	Lung Cancer Research	$15.00
50	Shag Dancing	$15.00
51	Active Member of the National Guard	None

100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
AIDS Awareness	$10	$15	0	0
Alpha Phi Alpha Fraternity	$10	$10	0	0
ALS Association, Jim "Catfish" Hunter Chapter	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Back Country Horsemen of NC	$10	$20	0	0
Be Active NC	$10	$10	0	0
Brain Injury Awareness	$10	$10	0	0
Breast Cancer Earlier Detection	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daniel Stowe Botanical Garden	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
Home Care and Hospice	$10	$20	0	0
HOMES4NC	$10	$20	0	0
Hospice Care	$10	$20	0	0
In God We Trust	$10	$20	0	0

In-State Collegiate Insignia	$10	$15	0	0
Juvenile Diabetes Research Foundation	$10	$10	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
Maggie Valley Trout Festival	$10	$20	0	0
March of Dimes	$10	$10	0	0
National Kidney Foundation	$10	$20	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$20	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Tennis Foundation	$10	$10	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b73) Daniel Stowe Botanical Garden. – The Division must receive 300 or more applications for the Daniel Stowe Botanical Garden plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Daniel Stowe Botanical Garden plates to the Daniel Stowe Botanical Garden Foundation, Inc., to provide funding for the Daniel Stowe Botanical Garden outreach program."

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

SENATE BILL 116:
Stowe Botanical Gardens Special Plate

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S116-CSRBf-43		

SUMMARY: ***The proposed committee substitute for Senate Bill 116 authorizes the Division of Motor Vehicles to issue various new special license plates. All of the plates authorized by this bill require at least 300 applications for the plate before it may be designed and issued and all of the plates must be designed on a "First in Flight" background.***

CURRENT LAW: The Division of Motor Vehicles is authorized to issue more than 165 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee.[1] The Division may issue one free registration plate to a recipient of the Legion of Valor[2] award, a 100% disabled veteran, or an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee of $28[3] and the additional special registration plate fee of $10.

The $10 special registration plate fee is credited to the Special Registration Plate Account. After educting the cost of the plates from this account, $1,000,000 is annually appropriated to provide perating assistance for ten Visitor Centers.[4] The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.[5] The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

BILL ANALYSIS: The PCS for Senate Bill 116 would authorize the following special plates, effective when it becomes law:

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[1] Aside from the three plates available free of charge, four special registration plates are exempt from the $10 special plate ee: active member of the National Guard, Purple Heart Recipient, Silver Star Recipient, and a Gold Star lapel pin recipient. The Legion of Valor plate is issuable to a recipient of one of the following: Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, or Air Force Cross.

[3] G.S. 20-87.

[4] There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.

[5] Each Visitor's Center receives $100,000.

Bill	Plate	Sponsor	Fee	Entity to Receive Additional Revenue
S24	Home of American Golf	Blake	$30	Given Memorial Library, Inc.
S51	Old Baldy	Soles	$30	
S116	Botanical Gardens	Hoyle	$30	Daniel Stowe Botanical Garden Foundation, Inc., for its outreach program.
S121	Horse Council	Weinstein	$20	NC Horse Council, Inc., to promote and enhance the equine industry in NC
S124	Support Soccer	Dorsett	$25	North Carolina Soccer Hall of Fame, Inc., to promote soccer
S128	Carolinas Golf Association	Brown	$30	Carolinas Golf Association to promote amateur golf
S132	High Point Furniture Market	Vaughan	-	
S184	Jaycees	Brunstetter	$20	North Carolina JCI Senate, Inc., so support Jaycee activities
S250	Mayors, Council Members, & School Board Members	Davis	-	
S422	First in Turf	Rouzer	$25	Center for Environmental Turfgrass Research at NCSU
S436	Town of Oak Island	Soles	-	
S502	Old Hickory Boy Scout	Brunstetter	$30	Old Hickory Council of the Boy Scouts of America for educational programs, and other expenses
S507	Travel and Tourism	Swindell	$30	Division of Tourism, Film, and Sports Development for programs in support of travel and tourism in NC
S578	NC Wildlife Federation	Hoyle	$20	North Carolina Wildlife Federation, Inc. for a grassroots program to involve anglers, hunters, and wildlife enthusiasts.
S582	Armed Forces Expeditionary Medal	Preston	-	
S620	PEO Sisterhood	Snow	$30	P.E. O. International to be used for scholarships for young women
S630	Master Gardener	Stevens	$20	Master Gardener's Endowment fund to train volunteers

S638	Girl Scouts	Stevens	$30	Girl Scouts North Carolina Coastal Pines for educational programs and other expenses
S745	STAR	Queen	$30	Save the Animals Rescue, Inc. to provide funding to rescue distressed horses
S825	Support NC Education	Jenkins	$30	UNC Board of Governors for scholarships
S951	Phi Beta Sigma	Malone	$20	Phi Beta Sigma Fraternity, Inc., for scholarships and educational development

S116-SMRB-38(CSRBf-43) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 1, 2009

TO: Senator Hoyle

FROM: Marjorie Rutherford
Fiscal Research Division

RE: PCS to Senate Bill 116 (First Edition)

FISCAL IMPACT

Yes ( ) **No ()** **No Estimate Available (X)**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
		No Estimate Available			
REVENUES:		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:
The PCS to Senate Bill 116 authorizes certain special plates provided the Division receives 300 or more application for a particular plate. The PCS authorizes the following special plates:

- The Armed forces Expeditionary Medal Recipient Plate
- The Boy Scouts of America Plate
- The Carolinas Golf Associate Plate
- The Daniel Stowe Botanical Garden Plate
- The First in Turf Plate
- The Girl Scouts Plate

- The High Point Furniture Market 100th Anniversary Plate
- The Home of American Golf Plate
- The Jaycees Plate
- The NC Horse Council Plate
- The NC Wildlife Federation Plate
- The NC Master Gardener Plate
- The P.E.O. Sisterhood Plate
- The Phi Beta Sigma Fraternity Plate
- The S.T.A.R. Plate
- The Support NC Education Plate
- The Support Soccer Plate
- The Town of Oak Island Plate
- The Travel and Tourism Plate
- The "Old Baldy" Plate
- The Mayors, Council Members, & School Board Members Plate

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated within the PCS.

ASSUMPTIONS AND METHODOLOGY:

The PCS to Senate Bill 116 authorizes certain special plates provided the Division receives 300 or more application for a particular plate. The additional fees for the following plates are not specified: The "Old Baldy" plate, the Armed Forces Expeditionary Medal Recipient plate, and The Mayors, Council Members, & School Board Members plate. The "Old Baldy" plate qualifies as a State Attraction plate. Therefore, according to G.S. 20-79.7, the additional fee for this plate will be $30 per plate. The other two plates would be considered other special plates. Therefore, according to G.S. 20-79.7, the additional fee for these plates would be $10 per plate. The remainder of the special plate fees are specified in the bill. The chart below summarizes these fees.

Special Registration Plates: Fees Specified in PCS to SB 116

Boy Scouts of America	$30.00	Support Soccer	$25.00
Daniel Stowe Botanical Garden	$30.00	Jaycees	$20.00
Girl Scouts	$30.00	NC Horse Council	$20.00
Home of American Golf	$30.00	NC Wildlife Federation	$20.00
P.E.O. Sisterhood	$30.00	North Carolina Master Gardener	$20.00
S.T.A.R.	$30.00	Phi Beta Sigma Fraternity	$20.00
Old Baldy	$30.00	Zeta Phi Beta Sorority	$20.00
Support NC Education	$30.00	Gold Star Lapel Button	None
Travel and Tourism	$30.00	First in Turf	$25.00

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated

within the PCS. Fiscal Research cannot estimate how many applications for each of the authorized plates will be received. Therefore the impact to the Special Registration Plate Account and the Collegiate Cultural Attraction Plate Account cannot be estimated.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 116

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

S116-ARBf-27 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
CSRBf-43

Date _____,2009

Senator Queen

moves to amend the bill on page 1, line 5, by inserting a new section between those lines to read:

"**SECTION 1.** G.S. 20-63(b) reads as rewritten:

'(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.

(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Friends of Camp Daniel Boone.
(27) Mountains-to-Sea Trail.
(28) Native Brook Trout.
(29) NC Civil War.";

And by renumbering the remaining sections accordingly;

And on page 2, line 4, by inserting the following:
"(47b) Friends of Camp Daniel Boone. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Friends of Camp Daniel Boone" and a logo provided by the Daniel Boone Council of the Boy Scouts of America.";

And on page 2, line 39, by inserting the following:
"(77b) Mountains-to-Sea Trail. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Mountains-to-Sea Trail" with a background designed by the Friends of the Mountains-to-Sea Trail, Inc.";

And on page 2, line 50, by inserting the following:
"(82a) Native Brook Trout. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Native Brook Trout" and a picture of a Brook Trout native to North Carolina in the background.

...

(84b) NC Civil War. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Freedom-Sacrifice-Memory" and a logo provided by the North Carolina Department of Cultural Resources.";

And on page 4, lines 20 and 21, by inserting the following between those lines:
"Friends of Camp Daniel Boone $30.00";

And on page 4, lines 28 and 29, by inserting the following between those lines:
"Mountains-to-Sea Trail $30.00";

And on page 4, lines 29 and 30, by inserting the following between those lines:
"Native Brook Trout $30.00
NC Civil War $30.00";

And on page 6, lines 45 and 46 , by inserting the following between those lines:

"Friends of Camp Daniel Boone	$10	$20	0	0";

And on page 7, lines 17 and 18 , by inserting the following between those lines:

"Mountains-to-Sea Trail	$10	$20	0	0";

And on page 7, lines 21 and 22 , by inserting the following between those lines:

"Native Brook Trout	$10	$20	0	0";

And on page 7, lines 25 and 26, by inserting the following between those lines:

"NC Civil War	$10	$20	0	0";

And on page 11, lines 16 and 17 , by adding the following new subsections to read:

"(b89) Friends of Camp Daniel Boone. – The Division must receive 300 or more applications for the Friends of Camp Daniel Boone plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Friends of Camp Daniel Boone plates to the Daniel boone Council of the Boy Scouts of America to be used to support Camp Daniel Boone's programs and to pay administrative and operating expenses.

(b90) Mountains-to-Sea Trail. -- The Division must receive 300 or more applications for the Mountains-to-Sea Trail plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Mountains-to-Sea Trail plates to the Friends of the Mountains-to-Sea Trail, Inc., to be used to fund trail projects and related administrative and operating expenses.

(b91) Native Brook Trout. -- The Division must receive 300 or more applications for the Native Brook Trout plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Native Brook Trout plates to the North Carolina Wildlife Resources Commission to be used to fund public access to, and habitat protection of, Brook Trout waters.

(b92) NC Civil War. -- The Division must receive 300 or more applications for the NC Civil War plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Civil War plates to the North Carolina Department of Cultural Resources, Division of Archives and History, to provide funding to acquire, interpret, and preserve North Carolina's Civil War history.".

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

S116-ARBf-27 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Girl Scouts

Girl Scouts – North Carolina Coastal Pines
P.O. Box 91649
Raleigh, NC 27675-1649
T 919 782 3021 800 284 4475
F 919 782 2083
www.nccoastalpines.org

June 30, 2009

The Honorable David Hoyle
The Honorable Daniel Clodfelter
The Honorable Clark Jenkins
Co-Chairs
NC Senate Finance Committee
300 N. Salisbury Street
Raleigh, NC 27603-5925

Dear Sirs:

It is with deep respect and great pride that I present to you and your fellow members of the Senate Finance Committee a letter of support for legislation authorizing a special license plate honoring Girl Scouts and Girl Scouting in North Carolina.

This letter has been **signed by 1,149 Girl Scouts** and other friends of Girl Scouting throughout the state of North Carolina.

A special license plate will allow us to proudly show our support for Girl Scouting and our belief in an organization that brings so much to North Carolina and its citizens.

Thank you for your consideration of this legislation so important to the more than 90,000 Girl Scouts within our great state.

Sincerely,

Rusine Mitchell Sinclair

Rusine Mitchell Sinclair
Chief Executive Officer

A PETITION
FROM
GIRL SCOUTS
THROUGHOUT NORTH CAROLINA

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

1.	RUSINE MITCHELL SINCLAIR	Rusine Mitchell Sinclair	(Name)	
	WAKE	(County)	4/25/2009	(Date)
2.	JOHN P. BRAUN	J P Braun	(Name)	
	WAKE	(County)	4.25.09	(Date)
3.	Deanna Welker	Deanna Welker	(Name)	
	Wake	(County)	4/25/09	(Date)
4.	Courtney Diaz	Courtney Diaz	(Name)	
	Wake	(County)	4.25.09	(Date)
5.	Robin Smith	Robin Smith	(Name)	
	Wake	(County)	4/25/09	(Date)
6.	B. PASSARETTI	B. Passaretti	(Name)	
	WAKE	(County)	4-24-09	(Date)
7.	Lisa England	Lisa England	(Name)	
	WAKE	(County)	4.24.09	(Date)
8.	Valerie McDevitt	Valerie McDevitt	(Name)	
	Wake	(County)	4/24/09	(Date)
9.	Amelia Vitale	AVS	(Name)	
	Wake	(County)	4/24/09	(Date)
10.	Jonathan Marshall	[illegible]	(Name)	
	Wake	(County)	4/24/09	(Date)
11.	Shawna Peaks	Shawna Peaks	(Name)	
	Durham	(County)	4/25/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

12.	Cathy Stipe	Cathy Stipe	(Name)	
	Wake	(County)	3/23/09	(Date)
13.	Angela L. Bullock	Angela L. Bullock	(Name)	
	Wake	(County)	4/24/09	(Date)
14.	Joshua Erickson		(Name)	
	Wake	(County)	4/24/2009	(Date)
15.	[illegible]	[illegible]	(Name)	
	[illegible]	(County)	4/24/09	(Date)
16.	Nancy J Henry	Nancy J Henry	(Name)	
	Lee	(County)	4/24/09	(Date)
17.	Susan B[illegible]		(Name)	
	Wake	(County)	4/25/09	(Date)
18.	[illegible]		(Name)	
	Wake	(County)	4/25/09	(Date)
19.	Susan Dellinger		(Name)	
	Moore	(County)	4/25/09	(Date)
20.	Donie Oldham	Donie Oldham	(Name)	
	Moore	(County)	4/25/09	(Date)
21.	Sandra J. Herras		(Name)	
	Lee	(County)	04/25/09	(Date)
22.	Virginia Millard		(Name)	
	Granville	(County)		(Date)
23.	Jane Weedlee		(Name)	
	Yanceville	(County)		(Date)
24.	Dawn McKee	Dawn McKee	(Name)	
	Granville	(County)	4/25/09	(Date)
25.	Danny Reep		(Name)	
	Richmond	(County)	4/25/09	(Date)
26.	Teresa Wick		(Name)	
	Orange	(County)	4/25/09	(Date)
27.	Latoya Williams-Clark	Latoya Williams-Clark	(Name)	
	Orange	(County)	4/25/09	(Date)
28.	Mary K. Flair	Mary K. Flair	(Name)	
	Wake	(County)	4/25/09	(Date)
29.	Darlene Leggs		(Name)	
	Harnett	(County)		(Date)
30.	Elaine Bednarz		(Name)	
	Wake	(County)	4/25/09	(Date)
31.	Christine Allen		(Name)	
	Wake	(County)	04/25/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

32.	[signature]	Tamara Y. Oros		(Name)
	Durham	(County)	4/29/09	(Date)
33.	[signature]	Helen P. Allen		(Name)
	Johnston	(County)	4-29-2009	(Date)
34.	[signature]	Deborah Daniel		(Name)
	Wake	(County)	4-29-09	(Date)
35.	[signature]			(Name)
	Wake	(County)	4.29.09	(Date)
36.	Leslie D Flood	Leslie D. Flood		(Name)
	Harnett	(County)	4/29/09	(Date)
37.	Amy de Jongh			(Name)
	Wake	(County)	4/29/09	(Date)
38.	Kathy Klein			(Name)
	Wake 14	(County)	4-30-09	(Date)
39.	[signature]			(Name)
	Wake	(County)	4/30/09.	(Date)
40.	Donna Johnson			(Name)
	Wake	(County)	4/30/09	(Date)
41.	[signature]		4/30/09	(Name)
	WAKE 22	(County)		(Date)
42.	Shane Rose			(Name)
	Wake	(County)	4/30/09	(Date)
43.	Maria E. Packer	MARIA E. PACKER		(Name)
	Durham	(County)	4/30/09	(Date)
44.	Sarah Hodges			(Name)
	Durham	(County)	4/30/09	(Date)
45.	Ursula V. Banks			(Name)
	Wake County	(County)	4/30/09	(Date)
46.	[signature]			(Name)
	Wake County	(County)	430-09	(Date)
47.	[signature]			(Name)
	Durham	(County)	4/30/09	(Date)
48.	[signature]	Renee Pelletier		(Name)
	Brunswick	(County)	4/30/09	(Date)
49.	[signature]			(Name)
	Wake	(County)	4/31/2009	(Date)
50.	Tia DeMaria			(Name)
	Wake	(County)	4/30/09	(Date)
51.	Alice Horn			(Name)
	Harnett	(County)	4/30/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

52.	Miranda Gordon			(Name)
	Pitt	(County)	4/25/09	(Date)
53.	Tara Hunter-Dickey			(Name)
	Wake	(County)	4-25-09	(Date)
54.	Elizabeth Beasley			(Name)
	Craven	(County)	4/25/09	(Date)
55.	Debbie Fowler			(Name)
	Franklin	(County)	4/25/09	(Date)
56.	Mattie May			(Name)
	Franklin	(County)	4/25/09	(Date)
57.	Stephanie Tooth			(Name)
	Onslow 4/25/09	(County)		(Date)
58.	Angie Taylor			(Name)
	Johnston	(County)	4/25/09	(Date)
59.	Yvette McGraw		4/25/09	(Name)
	Franklin	(County)		(Date)
60.	Alene			(Name)
	Wake	(County)	4/25/09	(Date)
61.	Jennifer Grogan		4/25/09	(Name)
	Wake	(County)	4/25/09	(Date)
62.	Beth Z R.FR			(Name)
	Lee	(County)		(Date)
63.	Michelle Quinn			(Name)
	Wake	(County)		(Date)
64.	Christina Dietrich			(Name)
	Richmond	(County)	4/25/09	(Date)
65.	Adriene Bridges			(Name)
	Durham	(County)	4.25.09	(Date)
66.	Melissa Hill			(Name)
	Johnson	(County)	4/25/09	(Date)
67.	Shauna Davis			(Name)
	Warren	(County)	4-25-09	(Date)
68.	Wendy Weston		4/25/09	(Name)
	Lee	(County)		(Date)
69.	Leslie Stone			(Name)
	Lee	(County)	4/25/09	(Date)
70.	Melissa Buchanan			(Name)
	Lee	(County)	4-25-09	(Date)
71.	Michelle Holland-Hall			(Name)
		(County)	Orange	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

72.	Jeanette McKilligan	Jeanette McKilligan	(Name)	
	Harnett	(County)	4/25/09	(Date)
73.	Claudia Nunez	Claudia Nuñez	(Name)	
	Wake	(County)	4/25/09	(Date)
74.	Carmen Saunders	Carmen Saund	(Name)	
	Wake	(County)	4/25/09	(Date)
75.	Vanessa Fass	Vanessa Fass	(Name)	
	Wake	(County)	4/25/09	(Date)
76.	Cathy Jewell	Lee 4-25-09	(Name)	
	Lee	(County)	4-25-09	(Date)
77.	Michelle Le		(Name)	
	Wake	(County)	4-25-09	(Date)
78.	Gloria Arthur		(Name)	
	Nash Gloria Arthur	(County)	Nash 4-25-09	(Date)
79.	Alice Hornbeck	Alice Hornbeck	(Name)	
	Franklin	(County)	4.25.09	(Date)
80.	Betty Craig	Betty Craig	(Name)	
	Franklin	(County)	4-25-09	(Date)
81.	Janet Kendall	Janet Kendall	(Name)	
	Orange	(County)	4-25-09	(Date)
82.	Paul Graf		(Name)	
	Wake	(County)	4/25/09	(Date)
83.	Melanie Jackson	Melanie Jackson	(Name)	
	Wake	(County)	4.25.09	(Date)
84.	Gwen Anderson	Gwen Anderson	(Name)	
	Johnston	(County)	4.25.09	(Date)
85.	Kari Britt	Kari Britt	(Name)	
	Wake	(County)	4.25.09	(Date)
86.	Ellen Boeckholt	4.25.09	(Name)	
	Orange	(County)	New Hanover	(Date)
87.	Susan Motta	4-25-09	(Name)	
		(County)		(Date)
88.	Margaret Holmes		(Name)	
	Orange	(County)	4/25/09	(Date)
89.	Kristina Keller		(Name)	
	New Hanover	(County)	4/25/09	(Date)
90.	Billie Jo Barbour	4/25/09	(Name)	
		(County)	Wake	(Date)
91.	Cathy Minyard	4/25/09	(Name)	
	Wake	(County)	Cathy Minyard	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

92. Suzanne N. Williant Suzanne N. Williant (Name)
Wake (County) 4-25-09 (Date)

93. Teresa Wimbrow Teresa Wimbrow (Name)
Vance (County) 4-25-09 (Date)

94. Tamara Newton Tamara E Newton (Name)
Vance (County) 4-25-09 (Date)

95. Shelby Becker Shelby Becker (Name)
Wake (County) 4-25-09 (Date)

96. Christine Campbell Christine Campbell (Name)
Wilson (County) 4/25/09 (Date)

97. Karen Perkins Karen Perkins (Name)
Wilson (County) 4/25/09 (Date)

98. Connie Scott Connie Scott (Name)
Chatham (County) 4-25-09 (Date)

99. Yolanda Taylor Leach Yolanda Taylor Leach (Name)
Lee (County) 4/25/09 (Date)

100. Rhonda Wells Rhonda Wells (Name)
Vance (County) 4-25-09 (Date)

101. Lisa Terrell Lisa Terrell 4-25-09 (Name)
Vance (County) (Date)

102. Jennifer Long Jennifer Long (Name)
Vance (County) 4-25-09 (Date)

103. Ann Frederick Ann Frederick (Name)
Lee (County) 4/25/09 (Date)

104. RICHARD L. PRICE Richard L Price (Name)
WAKE Co (County) 4/25/2009 (Date)

105. Christina Divine (Name)
WAKE (County) 4/25/09 (Date)

106. Tonya Dennis 4/25/09 (Name)
Lee (County) (Date)

107. Leslie Loux Phelps Leslie Loux Phelps (Name)
Nash (County) 4/25/09 (Date)

108. Maria Fry (Name)
Wake (County) 4/25/09 (Date)

109. Bonnie W Nelson 405 Indigo Dr (Name)
WAKE (County) WAKE 4/25/09 (Date)

110. Heidi Shekhar (Name)
Wake (County) 18 (Date)

111. Heather Gorgiwo (Name)
(County) Wake 22 (Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

112. Andrea Morgan (Name)
Wayne (County) 4-25-09 (Date)

113. [signature] (Name)
[illegible] (County) 4-25-09 (Date)
Wake

114. Linda G Barbour (Name)
Johnston (County) 4-25-09 (Date)

115. Robin Simonds (Name)
Durham (County) 4-25-09 (Date)

116. Glenda Funk (Name)
Durham (County) 4-25-09 (Date)

117. Vicki Pratt (Name)
Durham (County) 4-25-09 (Date)

118. [signature] Suzanne J. Gaines (Name)
Wake (County) 4-25-09 (Date)

119. Sarah L. Gains Sarah Gains (Name)
Orange (County) 4-25-09 (Date)

120. Dee Hatley Dee Hatley (Name)
~~Alamance~~ Orange (County) 4-25-09 (Date)

121. [signature] Wake 4-25-09 (Name)
Agnes McLellan (County) (Date)

122. Deirdre Mura 4.25.09 (Name)
Deirdre Mura (County) Orange (Date)

123. [signature] (Name)
Wake (County) 4/25/09 (Date)

124. [signature] TRINA WALKER (Name)
HARNETT (County) HARNETT 4-25-09 (Date)

125. [signature] Angela M Frasca (Name)
(County) Wake 4/25/09 (Date)

126. Joyce P Manning (Name)
Durham (County) 25 Apr 09 (Date)

127. [signature] Cynthia Sortisio (Name)
Durham (County) 4/25/09 (Date)

128. GYAN GUPTA (Name)
Wake (County) Wake 4/25/09 (Date)

129. [signature] TINA MCIRVIN (Name)
Cumberland (County) 4.25.09 (Date)

130. Pamela Tucker (Name)
(County) FRANKLIN 4/25 (Date)

131. Donna Travers (Name)
Wake (County) 4/25/09 (Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

132.	Angela Cobb	Angela Cobb	(Name)	
	Wake	(County)	4/27/09	(Date)
133.	Mary Rogers	Mary Rogers	(Name)	
	Wake	(County)	4/27/09	(Date)
134.	Deanna Ludwick	Deanna Ludwick	(Name)	
	Wake	(County)	4/27/09	(Date)
135.	LEIGH DUPUE		(Name)	
	WAKE	(County)	4/27/09	(Date)
136.	Kasey Yulfo		(Name)	
	Wake	(County)	4/27/09	(Date)
137.			(Name)	
	WAKE	(County)	4-27-09	(Date)
138.	Susan Stange	Susan Stange	(Name)	
	Wake	(County)	4/27/09	(Date)
139.	Bonnie Button	B. Button	(Name)	
	Wake	(County)	4/27/09	(Date)
140.	Jaye P. Kremers	Jaye P. Kremers	(Name)	
	Wake	(County)	4/27/09	(Date)
141.	Megan Wiseman	Megan Wiseman	(Name)	
	Wake	(County)	4/27/09	(Date)
142.	Eva Spero		(Name)	
	Wake	(County)	4/27/09	(Date)
143.	MaryLou Lindelof	MaryLou Lindelof	(Name)	
	Wake	(County)	4-27-09	(Date)
144.	VICKIE LEWIS	Vickie Lewis	(Name)	
	Wake	(County)	4.27.09	(Date)
145.	Sophia Morning	Sophia Morning	(Name)	
	Wake	(County)	4/28/09	(Date)
146.	Tina Patterson		(Name)	
	Johnston	(County)	4/28/09	(Date)
147.	Catherine Cajka	4/28/09	(Name)	
	Durham	(County)		(Date)
148.	Kathy Brantner		(Name)	
	Wake	(County)	4.28.09	(Date)
149.	Mary Henry		(Name)	
	Durham	(County)	4/28/09	(Date)
150.	Eileen Taylor		(Name)	
	Wake	(County)	Wake	(Date)
151.		Wake	(Name)	
		(County)	4/28/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

152. Janice Booth Janice Booth (Name)
Gaston (County) April 28-09 (Date)

153. Johanna Lovvorn Johanna Lovvorn (Name)
Mecklenburg (County) April 28, 2009 (Date)

154. Risa g Brandon Risa Brandon (Name)
Gaston (County) April 29, 2009 (Date)

155. Kathy Cheves Kathy Cheves (Name)
Gaston Co. (County) April 28, 2009 (Date)

156. MARY BOWES-EPLEY Mary Bowes-Epley (Name)
GASTON County (County) April 28, 2009 (Date)

157. Malinda Gutierrez Malinda Gutierrez (Name)
Rutherford County (County) 4/28/09 (Date)

158. Kaye Mayes Kaye Mayes (Name)
Cleveland County (County) 4/28/09 (Date)

159. Hope Diaz Hope Diaz (Name)
Gaston (County) 4/28/09 (Date)

160. Karen P rine KAREN PRINE (Name)
Gaston (County) 4/28/09 (Date)

161. Denise Satterfield DENISE SATTERFIELD (Name)
Rutherford (County) 4/28/09 (Date)

162. Tonia Davis Tonia Davis (Name)
Cleveland (County) 04/28/09 (Date)

163. Elizabeth Letherman Elizabeth Letherman (Name)
Gaston (County) 4/28/09 (Date)

164. Linda Brooker LINDA BROOKER (Name)
Mecklenburg (County) 4-28-09 (Date)

165. Michelle Rane Michelle Rane (Name)
York (County) 4-29-09 (Date)

166. Stephanie Siebert Stephanie Siebert (Name)
York (County) 4-29-09 (Date)

167. ~~Kristi~~ Kristi Rhyne Kristi Rhyne (Name)
Gaston (County) 4-29-09 (Date)

168. Gale T. Bess 4-29-09 (Name)
GASTON (County) Gale T. Bess 4-29-09 (Date)

169. Sara Withers Sara Withers (Name)
Cleveland (County) 4/29/09 (Date)

170. Starlena Marques Starlena Marques (Name)
Cleveland (County) 4/29/09 (Date)

171. Dawn Day Dawn Day (Name)
Cleveland (County) 4-29-09 (Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

172.	Monica Wright	MONICA WRIGHT	(Name)	
	Gaston	(County)	4/30/09	(Date)
173.	Bailey Beam	Bailey Beam	(Name)	
	Lincoln	(County)	4-30-09	(Date)
174.	Mollie Beam	4-30-09	(Name)	
	Lincoln	(County)	Mollie Beam	(Date)
175.	Anna S Taylor	Anna S. Taylor	(Name)	
	Gaston	(County)	4-30-09	(Date)
176.	Crystal Johnson	Crystal Johnson	(Name)	
	Gaston	(County)	5/1/9	(Date)
177.	Kevin Taylor	Kevin Taylor	(Name)	
	Lincoln	(County)	5/1/09	(Date)
178.	Kevin Taylor	Kevin Taylor	(Name)	
	Lincoln	(County)	5-1-09	(Date)
179.	Joan Brugaan	Joan Brugaan	(Name)	
	Gaston	(County)	5-1-09	(Date)
180.	Tracy P. Stokes	Tracy Stokes	(Name)	
	Gaston	(County)	5-1-09	(Date)
181.	Victoria Stokes	Victoria Stokes	(Name)	
	Gaston	(County)	5-1-09	(Date)
182.	Lindsay Mech	Lindsay Mech	(Name)	
	Gaston	(County)	5-1-09	(Date)
183.	Katie Thompson	Katie Thompson	(Name)	
	Mecklenburg	(County)	May-1-09	(Date)
184.	Christine Chirani	Christine Chirani	(Name)	
	Gaston	(County)	5/4/09	(Date)
185.	Gaston	Gaston	(Name)	
	Gaston	(County)	5/4/09	(Date)
186.	Lynn C Becker	Lynn C. Becker	(Name)	
	Gaston	(County)	5/4/09	(Date)
187.	Hannah Nethery	HANNAH NETHERY	(Name)	
	Gaston	(County)	May 4 2009	(Date)
188.	Yvette Moten	5-4-2009	(Name)	
	Gaston	(County)		(Date)
189.	Allison Henderson	Allison Henderson	(Name)	
	Gaston	(County)	5/04/09	(Date)
190.	Susana Pardapidno	Susana Pardapidno	(Name)	
	Gaston	(County)	5-4-09	(Date)
191.	Edith S Costner	Edith S Costner	(Name)	
	Gaston	(County)	5-4-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

192.	Grazia Mastella		4-27-09	(Name)
	Wayne	(County)		(Date)
193.	Claris Welton			(Name)
	Duplin	(County)	4-28-09	(Date)
194.	Richard Welton		RICHARD WELTON	(Name)
	Duplin	(County)	4-29-09	(Date)
195.	Shirley Hoyt			(Name)
	Wayne	(County)	4/30/09	(Date)
196.	Melanie Ivey		5-5-09	(Name)
		(County)	Wayne	(Date)
197.	Dorothy Moore		5-5-09	(Name)
	Pat Williams	(County)	5-5-09 Wayne	(Date)
198.	Shakara Deuitt		~~5-5-09~~	(Name)
		(County)	5-5-09	(Date)
199.	Gloria Lewis		Wayne	(Name)
	Gloria Lewis	(County)	5-5-09	(Date)
200.	Louise Fossom		5-5-09	(Name)
	Wayne	(County)	Wayne	(Date)
201.	Lillie Thompson		5-5-09	(Name)
	Lillie Thompson	(County)	Wayne	(Date)
202.	Katie M. Richardson		5-5-09	(Name)
	Katie M. Richardson	(County)	Halifax	(Date)
203.	Beatrice Richardson		Halifax	(Name)
	Beatrice Richardson	(County)	5-5-09	(Date)
204.	Jennifer Morgan		Halifax	(Name)
	Halifax	(County)	5-5-09	(Date)
205.	April Portillo			(Name)
	Halifax	(County)	5-5-09	(Date)
206.	Jean Heustess		North Hampton 5-5-09	(Name)
		(County)		(Date)
207.	Valerie Hinton			(Name)
	Northampton	(County)	5-5-09	(Date)
208.	Tammy Colston		5-5-09	(Name)
	Halifax	(County)	Halifax 5/5/09	(Date)
209.	Tonya A. Queen			(Name)
	Halifax	(County)	05/05/09	(Date)
210.	Crystal M. Adams			(Name)
	Halifax	(County)	05/05/09	(Date)
211.	Laura McAllister			(Name)
	Halifax	(County)	5/5/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

212. Jackell Garris (Name)
Halifax (County) 5-05-09 (Date)

213. Ann Strickland (Name)
Halifax (County) 5/5/09 (Date)

214. Sarah Moore (Name)
Northampton/Halifax (County) 5/5/09 (Date)

215. Charlette Bradley (Name)
Halifax (County) 5-5-09 (Date)

216. Thomas Moore (Name)
Halifax/Northampton (County) 5-5-09 (Date)

217. Elizabeth Bridges Elizabeth Bridges (Name)
Northampton (County) 5-5-09 (Date)

218. Thomas J. Moore Thomas J. Moore (Name)
Northampton/Halifax (County) 5-5-09 (Date)

219. Wade Moore Wade Moore (Name)
Halifax - Northampton (County) 5-5-9 (Date)

220. Jessica Moore Jessica Moore (Name)
Northampton (County) 5-5-9 (Date)

221. Crissy Lewis Crissy Lewis (Name)
Wayne (County) 5/5/09 (Date)

222. Peggy H. Lewis Peggy H. Lewis (Name)
Wayne (County) (Date)

223. Scott Lewis (Name)
New Hanover (County) 5/6/09 (Date)

224. Carol Hay (Name)
Lenoir (County) 5/6/09 (Date)

225. Martha G. Webb (Name)
Wake (County) 5/11/09 (Date)

226. CHRISTINA ANDERSON 5-12-09 (Name)
WAKE (County) (Date)

227. Sheila Haines (Name)
Wake (County) 5-12-09 (Date)

228. Dione Michaud (Name)
Wake (County) 5-12-09 (Date)

229. Laura Schramm (Name)
Wake (County) 5-12-09 (Date)

230. Jessica Holliday (Name)
Wake (County) 5-13-2009 (Date)

231. FRANK SHIVE (Name)
WAKE (County) 5-13-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

232.	[illegible]	Belinda Briggs		(Name)
	Wake	(County)	4/25/2009	(Date)
233.	[illegible]	Lisa Wedgewood		(Name)
	Orange	(County)	4/25/2009	(Date)
234.	[illegible]	Peggy Crawl		(Name)
	Cumberland	(County)	4/25/09	(Date)
235.	Cathy Crouch	Cathy Crouch		(Name)
	Johnston	(County)	4/26/09	(Date)
236.	Kathy Rusch	Kathy Rusch		(Name)
	Johnston	(County)	4/26/09	(Date)
237.	Kelly Dodd	Kelly Dodd		(Name)
	Johnston	(County)	4/26/09	(Date)
238.	Linda Lentz			(Name)
	Nash	(County)	4-26-09	(Date)
239.	[illegible]			(Name)
	Robeson	(County)	4-26-09	(Date)
240.	Catrina Harris			(Name)
	Cumberland	(County)	4-26-09	(Date)
241.	[illegible]			(Name)
	Wake	(County)	4/28/09	(Date)
242.	Amanda Kunc	AMANDA KUNC	4/28/09	(Name)
	Wake	(County)	4/28/09	(Date)
243.	Donya Koonce-Daniels	4/28/09	Donya Koonce-Daniels	(Name)
		(County)		(Date)
244.	MacIvalGlenn-Adner			(Name)
	Wake	(County)	4/28/09	(Date)
245.	Dora Thomas	4/28/09		(Name)
	Wake	(County)		(Date)
246.	Kathy Hall/Kathy Hall			(Name)
	Wake	(County)	4/28/09	(Date)
247.	[illegible]			(Name)
	Orange 4/28/09	(County)	4/28/09	(Date)
248.	Cindy Wilkes	Cindy Wilkes		(Name)
	Johnston	(County)	4/28/09	(Date)
249.	Kathryn Balzita			(Name)
	Orange	(County)	4-28-09	(Date)
250.	Terrica Hay	[illegible]		(Name)
	Lenoir	(County)	4-28-09	(Date)
251.	Joan Tillotson	[illegible]		(Name)
	Wake	(County)	4/28/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

252.	Sharon Honeycutt	(Name)		
	Harnett	(County)	4-29-09	(Date)
253.	Kathy Rantz	(Name)		
	Harnett	(County)	5/11/09	(Date)
254.	Sharon Marshall	(Name)		
	Harnett	(County)	5/11/09	(Date)
255.	Juanita Clavis	(Name)		
	Harnett	(County)	5-11-09	(Date)
256.	Sharon Lynn	(Name)		
	Harnett	(County)	5/11/09	(Date)
257.	Lisa Williams	(Name)		
	Harnett	(County)	5-11-09	(Date)
258.	Jodie Hurley	(Name)		
	Harnett	(County)	5-11-09	(Date)
259.	Diane Wright	(Name)		
	Harnett	(County)	5-11-09	(Date)
260.	Dorothy Spears McLeod	(Name)	5-11-09	
	Harnett	(County)		(Date)
261.	Kay Dawn Ross	(Name)		
	Harnett	(County)	5/11/09	(Date)
262.	Gayle Dodge	(Name)	5-11-09	
	Harnett	(County)		(Date)
263.	Rachel Hall-Bailey	(Name)		
	Harnett	(County)	5/11/09	(Date)
264.	Tracey Perez	(Name)		
	Harnett	(County)	5/11/09	(Date)
265.	Lisa Daughtry	(Name)		
	Harnett	(County)	5/11/09	(Date)
266.	Veronica Johnson	(Name)		
	Harnett	(County)	5/11/09	(Date)
267.	Joe Rae McLamb	(Name)	5/11/09	
	Harnett	(County)	5/11/09	(Date)
268.	Evelyn Adkins	(Name)		
	Cumberland	(County)	5-13-09	(Date)
269.	Honeycutt	(Name)		
	Harnett	(County)	5-13-09	(Date)
270.	Arlene Stalter	(Name)		
	Sampson	(County)	5-13-09	(Date)
271.	Amber Brewington	(Name)		
	Harnett	(County)	5-13-09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

272.	Christopher G Brady	Christopher G Brady	(Name)	
	Pitt County	(County)	6/6/09	(Date)
273.	William J Brady	William J Brady	(Name)	
	Pitt	(County)	6/6/09	(Date)
274.	Abbie Gray	Abbie Gray	(Name)	
	Pitt	(County)	6-6-09	(Date)
275.	Jodi Bell	Jodi Bell	(Name)	
	Beaufort	(County)	6-9-09	(Date)
276.	Heather Craddock	Heather Craddock	(Name)	
	Beaufort	(County)	6-9-09	(Date)
277.	Cathy D. Daniels	Cathy D. Daniels	(Name)	
	Beaufort	(County)	6-9-09	(Date)
278.	Elaine Hudnell	Elaine Hudell	(Name)	
	Beaufort	(County)	6-9-09	(Date)
279.	Courtney Bowden	Courteney Bowden	(Name)	
	Beaufort	(County)	6-9-09	(Date)
280.	Brittany Alligood		(Name)	
	Beaufort	(County)	6/9/09	(Date)
281.	Jessica Morter		(Name)	
	Beaufort	(County)	6/9/09	(Date)
282.	Jessica Monter		(Name)	
	Beaufort	(County)	6-9-09	(Date)
283.	Salomon Monter		(Name)	
	Beaufort	(County)	6-9-09	(Date)
284.	Tammy Stotesberry	Tammy Stotesberry	(Name)	
	Beaufort	(County)	6-9-09	(Date)
285.	Hope Woolard	Hope Woolard	(Name)	
	Beaufort	(County)	6-9-09	(Date)
286.	Charlene Elliott Mitchell	Charlene Mitchell	(Name)	
	Beaufort	(County)	6-9-09	(Date)
287.	Eric M. Brauer	ERIC Brauer	(Name)	
	Beaufort	(County)	6-9-09	(Date)
288.	Marie Moore	Marie Moore	(Name)	
	Beaufort	(County)	6-9-09	(Date)
289.	Paul Andrews	Paul Andrews	(Name)	
	Beaufort	(County)	6-9-09	(Date)
290.	Sheri Jobe	Sheri Jobe	(Name)	
	Pitt	(County)		(Date)
291.	Olivia Jobe		6/9/09	(Name)
	Pitt	(County)	6/9/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

312.	Angelia M. Raynor	(Name)		
	Carteret	(County)	4/29/09	(Date)
313.	Cindy S. James	(Name)		
	Craven	(County)	5/14/09	(Date)
314.	[illegible]	(Name)		
	Craven	(County)	5/14/09	(Date)
315.	[illegible]	(Name)	5/14 09	
		(County)		(Date)
316.	[illegible]	(Name)		
	Craven	(County)	5-14-09	(Date)
317.	[illegible]	(Name)		
	Craven	(County)	5-14-09	(Date)
318.	[illegible]	(Name)		
	Craven	(County)	5-14-09	(Date)
319.	Monica Alexander	(Name)		
	Craven	(County)	5-14-09	(Date)
320.	Susan Rollison	(Name)		
	Craven	(County)	5-14-09	(Date)
321.	Melvin Barlow	(Name)		
	Craven	(County)	5-14-09	(Date)
322.	Deanne Brimmer	(Name)		
	Carteret	(County)	5-18-09	(Date)
323.	Tylena Becton	(Name)	5-18-09	
	Carteret	(County)		(Date)
324.	Brett Carter	(Name)		
	Craven	(County)	5-18-09	(Date)
325.	Christine Carter	(Name)		
	Craven	(County)	5-18-09	(Date)
326.	Cynthia Pringle	(Name)		
	Carteret	(County)	5-18-09	(Date)
327.	Linda Thompson	(Name)		
	Carteret	(County)	5-18-09	(Date)
328.	Barbara Hill	(Name)		
	Carteret	(County)	5-19-09	(Date)
329.	Carolyn Owens	(Name)		
	Carteret	(County)	5-19-09	(Date)
330.	[illegible]	(Name)	5-19-09	
	Carteret	(County)		(Date)
331.	Tammera Reynolds	(Name)	5-19-09	
	Carteret	(County)		(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

332.	Stephanie Cohen			(Name)
	Carteret	(County)	5/6/09	(Date)
333.	Lousine Collins			(Name)
	Carteret	(County)	5-11-09	(Date)
334.	Evelyn Carraway			(Name)
	Carteret	(County)	5-11-09	(Date)
335.	Linda Smith			(Name)
	Carteret	(County)	5-11-09	(Date)
336.	June Robinson			(Name)
	Carteret	(County)	5-11-09	(Date)
337.	Lisa Lewis	Lisa W. Lewis		(Name)
	Carteret	(County)	5-11-09	(Date)
338.	Heather Kosnick	Heather K. Kosnick		(Name)
	Carteret	(County)	11 May 09	(Date)
339.	Kathy Russell			(Name)
	Carteret	(County)	5/11/09	(Date)
340.	Michelle Hite		5/11/09	(Name)
	carteret	(County)		(Date)
341.	Tiffany Fulcher			(Name)
	Carteret	(County)	5/11/09	(Date)
342.	Tiffany Fulcher			(Name)
	carteret	(County)	5/11/09	(Date)
343.	Kathy Setzer		5/11/09	(Name)
	Carteret	(County)		(Date)
344.	Peggy Daniel	Peggy Daniel		(Name)
	Carteret	(County)	5/11/09	(Date)
345.	Walter Daniel	Walter Daniel		(Name)
	carteret	(County)	5/11/09	(Date)
346.	Jai R. Oakley			(Name)
	Craven	(County)	5-14-09	(Date)
347.	Traye Burnsworth	Traye Burnsworth		(Name)
	Carteret	(County)	5-14-09	(Date)
348.	Cinnelle Thomas			(Name)
	Carteret	(County)	5-14-09	(Date)
349.	Lucius Thomas		5-14-09	(Name)
	Carteret	(County)		(Date)
350.	Angela Carter			(Name)
	Craven	(County)	5-13-09	(Date)
351.	Kathy Lee			(Name)
	Pamlico	(County)	5-13-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

352. Meta Trombley (Name)
Cumberland (County) 4/29/2009 (Date)

353. Valerie Jackson (Name)
Cumberland (County) 04/29/2009 (Date)

354. Michele Altomare (Name)
Cumberland (County) 5/4/09 (Date)

355. Crystal Watson (Name)
Cumberland (County) 5/4/09 (Date)

356. Kelly Clifton (Name)
Cumberland (County) 5/12/09 (Date)

357. Ronda Gilliam 5/12/09 (Name)
Cumberland (County) (Date)

358. Wandalyn Gilliam 5/12/09 (Name)
~~Fayt~~ Cumberland (County) Cumberland (Date)

359. Eunice Minter 5/12/09 (Name)
Cumberland (County) (Date)

360. Tiffany Higgins (Name)
Cumberland (County) @ 5/12/09 (Date)

361. Yolanda Pratt 5-12-09 (Name)
Cumberland (County) (Date)

362. Nicol Price (Name)
Cumberland (County) 5-12-09 (Date)

363. Tracy Swilley (Name)
Cumberland (County) 5-12-09 (Date)

364. Robb P. Taylor (Name)
Cumberland (County) 5-12-2009 (Date)

365. Vicki Watson 5-12-09 (Name)
Cumberland (County) 12 May 2009 (Date)

366. Don Watson (Name)
Cumberland (County) 12 May 2009 (Date)

367. Karen Gantt (Name)
Cumberland (County) 12-May 2009 (Date)

368. Becky Bishop (Name)
Cumberland (County) 12-May 2009 (Date)

369. Aaron B. Bishop (Name)
Cumberland (County) 12-May-2009 (Date)

370. Rebecca E. Murray 12 May 2009 (Name)
Cumberland (County) (Date)

371. Miranda Benson (Name)
Cumberland (County) 5-13-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

372.	[illegible]	DAWN TWISDALE	(Name)	
	Vance	(County)	4/28/09	(Date)
373.	[illegible]	Casidi S Taylor	(Name)	
	Moore	(County)	5/14/09	(Date)
374.	[illegible]		(Name)	
	Moore	(County)	5/14/09	(Date)
375.	[illegible]		(Name)	
	moore	(County)	5-14-09	(Date)
376.	[illegible]		(Name)	
	Moore	(County)	5/14/09	(Date)
377.	Jenny L Case		(Name)	
	Moore	(County)	5-14-09	(Date)
378.	Michelle A Ley		(Name)	
	Moore	(County)	5-14-09	(Date)
379.	Theresa Logan	5-14-09	(Name)	
	Moore	(County)		(Date)
380.	[illegible]		(Name)	
	Moore	(County)	5.14.09	(Date)
381.	Kaye Lee		(Name)	
	Moore	(County)	5-14-09	(Date)
382.	Sue A. McClain		(Name)	
	Moore	(County)	5/14/09	(Date)
383.	Brian Christensen		(Name)	
	Moore	(County)	5/18/09	(Date)
384.	[illegible]	5/26/09	(Name)	
	WAKE	(County)		(Date)
385.	[illegible]		(Name)	
	Wake	(County)	5/26/09	(Date)
386.	LEEANNE RYAN		(Name)	
	WAKE	(County)	5/26/09	(Date)
387.	Kishia Curtis		(Name)	
	Durham	(County)	5/27/09	(Date)
388.	[illegible]	ANN M. SYKES	(Name)	
	Wake	(County)	5/27/09	(Date)
389.	Rhonda Lewis		(Name)	
		(County)	Wake 5/27/09	(Date)
390.	Joan Williams		(Name)	
	Wake	(County)	5/28/09	(Date)
391.	Wendy Basinger		(Name)	
	Wake	(County)	5/28/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

392.	Betsy Wharton	Betsy Wharton		(Name)
	Wayne	(County)	4-29-09	(Date)
393.	Jennifer Pless			(Name)
	Wayne	(County)	4-29-09	(Date)
394.	Gabrielle Baker		4-29-09	(Name)
	Greene	(County)		(Date)
395.	Jennifer Christenson		4-29-09	(Name)
	Wayne	(County)	Moore	(Date)
396.	Wendy Brennan			(Name)
	Johnston	(County)	4-30-09	(Date)
397.	Michelle Rogers		4-30-09	(Name)
	Wake	(County)	4-30-09	(Date)
398.	Rachel Rogers			(Name)
	Wake	(County)	4/30-09	(Date)
399.	[illegible]			(Name)
	Wake	(County)	5/2/09	(Date)
400.	[illegible]			(Name)
	Wake	(County)	5/2/09	(Date)
401.	[illegible]			(Name)
	Harnett	(County)	04 May 09	(Date)
402.	[illegible]			(Name)
	Wake	(County)	5/5/09	(Date)
403.	Ashlyn Jarrow		5/5/09	(Name)
	Wake	(County)	5/5/09	(Date)
404.	[illegible]		5/5/09	(Name)
	Wake	(County)		(Date)
405.	Lynn Barnes		5/5/09	(Name)
	Wake	(County)	05/5/09	(Date)
406.	[illegible]		Wayne	(Name)
		(County)	5-5-09	(Date)
407.	Deborah McMullen			(Name)
	Wake	(County)	5/5/09	(Date)
408.	Galatia Fust		5/5/09	(Name)
	Wake	(County)		(Date)
409.	[illegible]			(Name)
	WAKE	(County)	5/5/09	(Date)
410.	[illegible]			(Name)
	FRANKLIN	(County)	5-5-09	(Date)
411.	Linda Legge			(Name)
	WAKE	(County)	5-5-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

412. Gail Hicks-Smith (Name)
Person (County) 04.29.09 (Date)

413. Laura Gold (Name)
Orange (County) 5/12/09 (Date)

414. Debbie Hand (Name)
Orange (County) 5-12-09 (Date)

415. Cindy Lavergne (Name)
Orange (County) 5-12-09 (Date)

416. STEPHANIE ROGERS (Name)
ORANGE (County) 5-12-09 (Date)

417. Kristen Zuco (Name)
Orange (County) 5-12-09 (Date)

418. Julie DeCamp Palmer (Name)
Orange (County) 5-12-09 (Date)

419. Maria Spittler (Name)
Orange (County) 5-12-09 (Date)

420. Dawn Graeme (Name)
Person (County) 6-9-09 (Date)

421. Kim Bradsher (Name)
Person (County) (Date)

422. Rae Hunter (Name)
Person (County) Person 6/9/09 (Date)

423. Frances Pruitt (Name)
Person (County) (Date)

424. Christy Pruitt (Name)
Person (County) 6/9/09 (Date)

425. LEIGH WATSON (Name)
PERSON (County) 6-9-09 (Date)

426. Susan Cornett (Name)
Person (County) 6-9-09 (Date)

427. Christie Meegos (Name)
Person (County) 6-9-09 (Date)

428. Tracy Hodges (Name)
Person (County) 6-9-09 (Date)

429. Dori Budzinski (Name)
Person (County) 6-9-09 (Date)

430. (Name)
(County) (Date)

431. (Name)
(County) (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

432.	Rebecca P. Barbre			(Name)
	Rebecca P Barbre	(County)	Pitt 5/14/09	(Date)
433.	Rebecca Cannady		Rebecca Cannady	(Name)
	Pitt	(County)	5-14-09	(Date)
434.	Heather Whitehurst		5/14-09	(Name)
	Pitt	(County)		(Date)
435.	Cindy Brown		Cindy Brown	(Name)
	Pitt	(County)	5/14/09	(Date)
436.	Deborah Albritton		Albitron 5/14/09	(Name)
	Pitt	(County)		(Date)
437.	Kimberly N Smith		Kimberly Smith	(Name)
	Pitt	(County)	5/14/09	(Date)
438.	Daphne Bello-Henry			(Name)
	Pitt	(County)	5/14/09	(Date)
439.	Caroline Doherty		Caroline Doherty	(Name)
	Pitt	(County)	5-14-09	(Date)
440.	Tracy Cash		Tracy Cash	(Name)
	Pitt	(County)	5-14-09	(Date)
441.	WILLIAM KOCHLIN			(Name)
	PITT	(County)	5-14-09	(Date)
442.	Connie Kochlin			(Name)
	Pitt	(County)	5-14-09	(Date)
443.	Joyce Mitchell		5/14/09	(Name)
	Pitt	(County)		(Date)
444.	Michelle Griffin		Griffin 5/14/09	(Name)
	Pitt	(County)		(Date)
445.	Lorri Kessler		Lorri Kessler	(Name)
	Pitt	(County)	5/15/09	(Date)
446.	Cedtra York		Cedtra York	(Name)
		(County)	Pitt county 5/19/09	(Date)
447.	Sandra Biggs		Sandra Biggs	(Name)
	Pitt	(County)	5/15/09	(Date)
448.	Sami Wray		Sami Wray	(Name)
	Pitt	(County)	5-15-09	(Date)
449.	Aisha Jones		Aisha Jones	(Name)
	PITT	(County)	5/15/09	(Date)
450.	William Brady		William Brady	(Name)
	PITT	(County)	5-22-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

451.	Jenny Barrow			(Name)
	Lee	(County)	4/29/09	(Date)
452.	Betsey Walters			(Name)
	Lee	(County)	5/18/09	(Date)
453.	Christie Gardner			(Name)
	Lee	(County)	5/18/09	(Date)
454.	Veronica McPherson			(Name)
	Chatham	(County)	5/19/09	(Date)
455.	Yvette Navarro			(Name)
	Chatham	(County)	5/19/09	(Date)
456.	LaDonna Lindsey			(Name)
	Chatham	(County)	5/19/09	(Date)
457.	Carolyn S. Cobb			(Name)
	Randolph	(County)	5/19/09	(Date)
458.	Kathy Shaffer			(Name)
	Chatham	(County)	5/19/09	(Date)
459.	Tonya Wilds			(Name)
	Chatham	(County)	5/19/09	(Date)
460.	Barbara J Johnson			(Name)
	Chatham	(County)	5/19/09	(Date)
461.	Patricia Yunker			(Name)
	Chatham	(County)	5/19/09	(Date)
462.	Avis Bell			(Name)
	Chatham	(County)	5/19/09	(Date)
463.	Krista W. Miller			(Name)
	Chatham	(County)	5/19/09	(Date)
464.	Heather Hills			(Name)
	Chatham	(County)	5/19/09	(Date)
465.	Joan Gillis			(Name)
	Chatham	(County)	5/19/09	(Date)
466.	Sharon Kea		5/19/09	(Name)
	Chatham	(County)		(Date)
467.	MATTHEW MARKIE			(Name)
	CHATHAM	(County)	5/19/09	(Date)
468.	Christina Gruner Lee		5/29/09	(Name)
		(County)		(Date)
469.	Bailey Kohl			(Name)
	Lee	(County)	05/29/09	(Date)
470.	Abby Cameron			(Name)
	Lee	(County)	5/29/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

471.	Christin Murphy		Christin Murphy	(Name)
	Johnston	(County)	4/29/09	(Date)
472.	Mary Acost		Mary Acosta	(Name)
	Johnston	(County)	4-29-09	(Date)
473.	Ashley Clay		Ashley Clay	(Name)
	Johnston	(County)	4-29-09	(Date)
474.	Shannon Cunningham		S Cunningham	(Name)
	Johnston	(County)	4/29/09	(Date)
475.	Clara McCall		Clara McCall	(Name)
	Johnston	(County)	4.29.09	(Date)
476.	Jessica Gonzalez		Jessica Gonzalez	(Name)
	Johnston	(County)	4/29/09	(Date)
477.	K Doran		Katherine Doran	(Name)
	Johnston	(County)	4/29/09	(Date)
478.	Jillian Robbins		Jillian R Robbins	(Name)
	Wake	(County)	4/29/09	(Date)
479.	Chris Perrin		Chris Perrin	(Name)
	Wake	(County)	4/29/09	(Date)
480.	Natalia Sala		Natalia Sala	(Name)
	Cabarrus	(County)	4-29-09	(Date)
481.	Kenny Rodriguez		Kenny Rodriguez	(Name)
	Henderson	(County)	4-29-09	(Date)
482.	Loriam Nicolicha		Loriam Nicolicha	(Name)
	Johnston	(County)	5/19/09	(Date)
483.	Claire Mills			(Name)
	Johnston	(County)	5/19/09	(Date)
484.	Linda Lam			(Name)
	Johnston	(County)	5/19/09	(Date)
485.	Marylane Collins		Marylane B Collins	(Name)
	Johnston	(County)	5/19/09	(Date)
486.	Suzanne B. Begonzahn			(Name)
	Granville	(County)	5/20/09	(Date)
487.	Dona Johnson			(Name)
	Wake	(County)	6/5/09	(Date)
488.	Margaret Wall		6/5/09	(Name)
		(County)	Wake	(Date)
489.	[illegible]		Lee 6/5/09	(Name)
		(County)		(Date)
490.	[illegible]			(Name)
		(County)	Orange 6/5/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

491.	Michelle White	Michelle White	(Name)	
	New Hanover	(County)	4/29/09	(Date)
492.	Jennifer Bland	Jennifer Bland	(Name)	
	Nash	(County)	4/29/09	(Date)
493.	CINDY KELLEY	Cindy Kelley	(Name)	
	WAKE	(County)	4/29/09	(Date)
494.	Suzanne Savage	Suzanne Savage	(Name)	
	Columbus	(County)	5-11-09	(Date)
495.	Joan A. Jacobs		(Name)	
	Columbus	(County)	Joan Jacobs 5/11/09	(Date)
496.	Jan Williams	Jan Williams	(Name)	
	Columbus	(County)	5-11-09	(Date)
497.	Amy Malpass	Amy B. Malpass	(Name)	
	Columbus	(County)	5-11-09	(Date)
498.	Jolene Murray	Jolene Murray	(Name)	
	Columbus	(County)	5-11-09	(Date)
499.	Roxane Mills	Roxane Mills	(Name)	
	Columbus	(County)		(Date)
500.	Katherine Hare	Katherine Hare	(Name)	
	Columbus	(County)	5-11-09	(Date)
501.	Sabrina Spencer		(Name)	
	Brunswick	(County)		(Date)
502.	Keshawn McArthur		(Name)	
	BRUNSWICK	(County)		(Date)
503.	Christy Cribb		(Name)	
	Brunswick	(County)		(Date)
504.	Heather Whitman		(Name)	
	Brunswick	(County)		(Date)
505.	Melina Trivette		(Name)	
	BRUNSWICK	(County)		(Date)
506.	Tonya Gilluley		(Name)	
	Brunswick	(County)		(Date)
507.	Patricia Mintz		(Name)	
	Brunswick	(County)		(Date)
508.	Nisha Hooks		(Name)	
	Brunswick	(County)		(Date)
509.	Vikki Hall		(Name)	
	Brunswick	(County)		(Date)
510.	Michelle Hennessy		(Name)	
	Brunswick	(County)	5/12/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

531.	Donald Perry	Donald Perry	(Name)	
	Johnston	(County)	4/29/09	(Date)
532.	[illegible]	Lon Everett	(Name)	
	Beaufort	(County)	4/29/09	(Date)
533.	David Adams	[signature]	(Name)	
	Richmond	(County)	4-29-09	(Date)
534.	Daryn L Wilkins		(Name)	
	Brunswick	(County)	4-29-09	(Date)
535.	LAUREN MARSACO	[signature]	4.29.09	(Name)
	WAKE	(County)	[signature]	(Date)
536.	Karen Silverthorne	Karen Silverthorne	(Name)	
	Martin	(County)	5-11-09	(Date)
537.	Jalil Davis	Jalil Davis	(Name)	
	Edgecombe	(County)		(Date)
538.	Johnice Perry	Johnice Perry	(Name)	
	Martin	(County)	5-11-09	(Date)
539.	Erin Keel	Erin Keel	(Name)	
	Martin	(County)	5.11.09	(Date)
540.	Teresa Smith	Teresa Smith	(Name)	
	Martin	(County)	5.11.09	(Date)
541.	Janice Diehl	5/11/09	(Name)	
	Martin	(County)	Janice Diehl	(Date)
542.	Tiwanda Outlaw	Tiwanda Outlaw	(Name)	
	Bertie/Martin	(County)	5-11-09	(Date)
543.	THOMASINA RAZOR	[signature]	(Name)	
	Bertie/Martin	(County)	5-11-09	(Date)
544.	Libby Letchworth	Pitt	5-13-09	(Name)
	Libby Letchworth	(County)		(Date)
545.	Victoria Brown	[signature]	(Name)	
	Greene	(County)	5-13-09	(Date)
546.	Denise Davis	Denise Davis	(Name)	
	Pitt	(County)	5-14-09	(Date)
547.	Michelle Weatherwood	Michelle Weatherwood	(Name)	
	Pitt	(County)	5/14/09	(Date)
548.	Heidi McMillan		(Name)	
	Pitt	(County)		(Date)
549.	Cynthia Gaskins	Cynthia Gaskins	(Name)	
	Pitt	(County)	5/14/09	(Date)
550.	Cynthia Ross	Cynthia Ross	(Name)	
	Pitt	(County)	5/14/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

551.	Barbara D. Hudson	(Name)		
	Wake	(County)	6-5-09	(Date)
552.	Paula Harbison	(Name)		
	Wake	(County)	6-5-09	(Date)
553.	William A Rick	(Name)		
	WAKE	(County)	6-5-09	(Date)
554.	Susan Babb	(Name)		
	Wake	(County)	6-5-09	(Date)
555.	Ann Fowler	(Name)		
	Wake	(County)	6-5-09	(Date)
556.	GERALD LLOYD	(Name)		
	MOORE	(County)	6-5-09	(Date)
557.	ROSALIE MARCUS	(Name)		
	CHATHAM	(County)	6 5 09	(Date)
558.	PAUL KOBRIN	(Name)		
	ORANGE	(County)	6-5-09	(Date)
559.	Webb Hart	(Name)		
	Wake	(County)	6-5-09	(Date)
560.	David Degree	(Name)	6-5-09	
	Wake	(County)		(Date)
561.	C A Dillon	(Name)	6-5-09	
	Wake	(County)		(Date)
562.	Calvin Allen	(Name)	6-5-09	
	Wake	(County)		(Date)
563.	E. Darrell	(Name)	6/5/09	
	Wake	(County)		(Date)
564.	William B Smith	(Name)		
	Wake	(County)	6/5/09	(Date)
565.	W W Hyatt	(Name)		
	WAKE	(County)	6/5/09	(Date)
566.	Zadell Hudson	(Name)		
	Wake	(County)	6/5/09	(Date)
567.	Karen Sullivan	(Name)		
	Wake	(County)	6/5/09	(Date)
568.	Leslie Massey	(Name)	6/5/09	
	Wake	(County)		(Date)
569.	MATTHEW HUDSON	(Name)	6/5/09	
	WAKE	(County)		(Date)
570.	Camellia Boseman	(Name)	6/5/09	
	Wake	(County)		(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

571.	Joe B. Merrill			(Name)
	WAKE	(County)	6/5/09	(Date)
572.	JOHN MARLOW			(Name)
	WAKE	(County)	6/5/09	(Date)
573.	Rhett Rozzy		6/5/09	(Name)
	Wake	(County)		(Date)
574.	Darleen Bates Darleen Bates			(Name)
	Durham	(County)	~~Date~~ 6/5/09	(Date)
575.	Blue Mayberry		BLUE GREENBERG	(Name)
	WAKE	(County)	6-05-09	(Date)
576.	[illegible]		6-05-09	(Name)
	Wake	(County)		(Date)
577.	Jenny Pitchford		Jenny Pitchford	(Name)
	Carteret	(County)	6/5/09	(Date)
578.	James H. Creel Jr.		Johnston	(Name)
		(County)	6/5/09	(Date)
579.	Audrey Ventura		WAKE	(Name)
	AUDREY VENTURA	(County)	6/5/09	(Date)
580.	John Marley		6-5-09	(Name)
		(County)	Wake	(Date)
581.	Randy Poindexter		6-5-09	(Name)
		(County)	Wake	(Date)
582.	Kay Joyce		Kay Joyce	(Name)
	Wake	(County)	6-5-09	(Date)
583.	Doug Dey			(Name)
		(County)	Wake 6-5-09	(Date)
584.	Bill Wiggon			(Name)
	ROWAN	(County)	6-5-09	(Date)
585.	Henry Mafrid		6-5-09	(Name)
	Durham	(County)	~~Date~~	(Date)
586.	Joanna Rogers		6-5-09	(Name)
	~~Chatham~~	(County)	Chatham	(Date)
587.	[illegible]		6/5/09	(Name)
	Jim Torrey	(County)	Chatham	(Date)
588.	Janice Shull			(Name)
	WAKE	(County)	6-5-09	(Date)
589.	Frank Sinclair			(Name)
		(County)	GRANVILLE	(Date) 06 05 09
590.	JUDITH HARDER		6/5/09	(Name)
	ROWAN	(County)		(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

591. Lynne Adams (Name)
New Hanover (County) 5/21/09 (Date)

592. Belinda Greene (Name)
New Hanove (County) 5-21-09 (Date)

593. Fonda Williams 5-21-09 (Name)
New Hanover (County) (Date)

594. India Cothren (Name)
New Hanover (County) (Date)

595. Juanita Hodge (Name)
New Hanover (County) 5/21/09 (Date)

596. Jenean Todd (Name)
New Hanover (County) 5/21/09 (Date)

597. Rebecca S. Addis 5/21/09 (Name)
New Hanover (County) (Date)

598. Cheri Pfeiffer 6/2/09 (Name)
New Hanover (County) (Date)

599. John Pfeiffer (Name)
New Hanover (County) 6/2/09 (Date)

600. Shirley Morales (Name)
Wayne (County) 6-2-09 (Date)

601. Lisa Bauer (Name)
Brunswick (County) 6.2.09 (Date)

602. Kelly Shore (Name)
Brunswick (County) 6-02-09 (Date)

603. Kimberly Rowe (Name)
Brunswick (County) 6/2/09 (Date)

604. Michelle Hennessy (Name)
Brunswick (County) 6/2/09 (Date)

605. I. S. Cloudsdale I.S. CLOUDSDALE (Name)
CHATHAM (County) 6/2/09 (Date)

606. MICHAEL SCHWAB (Name)
WAKE (County) 6-5-09 (Date)

607. ROMAN DAVIS (Name)
DURHAM (County) 5 JUN 09 (Date)

608. Sandy McCoy (Name)
Durham (County) Durham 6-5-09 (Date)

609. SANDRA O. REEVE (Name)
WAKE (County) 6-5-09 (Date)

610. John Marriott (Name)
Wake (County) 6-5-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

611.	Kathy Lawson			(Name)
	Wake	(County)	6-5-09	(Date)
612.	[illegible]			(Name)
	WAKE	(County)	06-05-09	(Date)
613.	John Speight			(Name)
	Wake	(County)	June 5, 2009	(Date)
614.	[illegible]	6/5/09		(Name)
	Wake	(County)		(Date)
615.	Randy Joyce			(Name)
	WAKE	(County)	6/5/09	(Date)
616.	Jeede Downey			(Name)
	Wake	(County)	6/5/09	(Date)
617.	Sue Hughes	6/5/09		(Name)
	Wake	(County)		(Date)
618.	John Stevens	6/5/09		(Name)
	WAKE	(County)		(Date)
619.	Emily Clark			(Name)
	WAKE	(County)	6/6/09	(Date)
620.	Connie Johnson	6-6-09		(Name)
	Wake	(County)	6-6-09	(Date)
621.	Carolyn C. Ashley			(Name)
	Granville	(County)		(Date)
622.	[illegible]			(Name)
	Wake	(County)	6/6/2009	(Date)
623.	[illegible]			(Name)
	[illegible]	(County)	Wake	(Date)
624.	Tom Morgan	6/6/2009		(Name)
		(County)	WAKE	(Date)
625.	[illegible] West			(Name)
	GUILFORD	(County)	JUNE 06 2009	(Date)
626.	Marcia Hayden			(Name)
	Guilford	(County)	JUNE 6-2009	(Date)
627.	Carmina Ng	6/6/09		(Name)
	Mecklenburg	(County)	D.	(Date)
628.	[illegible]			(Name)
		(County)	Wake 6/6/09	(Date)
629.	[illegible]	Wake		(Name)
		(County)	6/6/09	(Date)
630.	[illegible]	6/6/09		(Name)
		(County)	Chatham	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

631.	Chris Elliott		5/5/09	(Name)
	WAKE	(County)		(Date)
632.	Julie Kneis			(Name)
	WAKE	(County)	5/5	(Date)
633.	Jason Tate			(Name)
	Wake	(County)	5/5	(Date)
634.	Derrick Hamrick			(Name)
	WAKE County	(County)	5/5/09	(Date)
635.	TIM BAILEY			(Name)
	JOHNSTON	(County)	5/5/09	(Date)
636.	Brenna Fenaroli			(Name)
	Wake	(County)	5/5/09	(Date)
637.	in Wake Logan Green		5/5/09	(Name)
		(County)		(Date)
638.	ERica Green			(Name)
	Wake	(County)	5/5/9	(Date)
639.	Joseph Johnson			(Name)
	Wake	(County)	5/5/9	(Date)
640.	Amber Vaughn			(Name)
	Wake	(County)	5/5/09	(Date)
641.	Sarah Willford			(Name)
	Wake	(County)	5/5/09	(Date)
642.	Margaret Webb		Margaret Webb	(Name)
	Wake	(County)	5-6-09	(Date)
643.	Kathleen Neff			(Name)
	Wake	(County)	5-6-09	(Date)
644.	Emily Woolworth		Orange & Durham	(Name)
		(County)		(Date)
645.	DONNA MILLER			(Name)
	WAKE	(County)	5/7/09	(Date)
646.	Laurie Lund			(Name)
	Wake	(County)	5/7/09	(Date)
647.	Karen Sheehan			(Name)
	Wake	(County)	5/7/09	(Date)
648.	CHRISTIE JOHNSON			(Name)
	WAKE	(County)	5/8/09	(Date)
649.	Robin Krizan			(Name)
	Wake	(County)	5/7/09	(Date)
650.	Jeanne Ross			(Name)
	Wake	(County)	5/7/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

691.	BRENDA McLeod	Brenda McLeod	(Name)		
	Nash	(County)	5/7/09	(Date)	
692.	Tammy L Eure	Tammy L Eure	(Name)		
	Nash	(County)	5/7/09	(Date)	
693.	Kelly M Collie	Kelly M Collie	(Name)		
	Nash	(County)	5/7/09	(Date)	
694.	English Arnold	English W. Arnold	(Name)		
		(County)	Wayne	(Date)	
695.	Patrenia Hawkins		(Name)		
	Wayne	(County)	11 May 09	(Date)	
696.	Amanda Hargrove	11 may 09	(Name)		
	Wayne	(County)		(Date)	
697.	Barbara N Wilson		(Name)		
	Durham	(County)		(Date)	
698.	Lisa M Hepler		(Name)		
	New Hanover	(County)	05-26-09	(Date)	
699.	Sandi Alessio		(Name)		
	Onslow	(County)	5-27-09	(Date)	
700.	Lisa Greiger		(Name)		
	Onslow	(County)	5.27.09	(Date)	
701.	Cindy Carman		(Name)		
	Pitt	(County)	5/28/09	(Date)	
702.	Deanna Pate		(Name)		
	Wayne	(County)	5-28-09	(Date)	
703.	Mary Louise Ellison		(Name)		
	Wayne	(County)	5-28-09	(Date)	
704.	Denise Osborn		(Name)		
	Onslow	(County)	6/2/09	(Date)	
705.	LeAnne Allen	5-28-09	(Name)		
	Wake	(County)		(Date)	
706.	Sherry Williams	Sherry Willia	(Name)		
	Franklin	(County)	6-5-09	(Date)	
707.	Ryan Davis		(Name)		
	Wake	(County)	6.8.09	(Date)	
708.	Gabe Freeman		(Name)		
	Franklin	(County)		(Date)	
709.	David Eakes		(Name)		
	Johnston	(County)	6/10/09	(Date)	
710.	Scott	6/10/09	(Name)		
	Wake	(County)		(Date)	

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Thank you for your consideration.

711.	Robert M Edwards			(Name)
	Wake	(County)	6.8.09	(Date)
712.	M. Lynn			(Name)
	Wake	(County)	6-9-09	(Date)
713.	Callie Wolfe			(Name)
	WAKE	(County)	6-9-09	(Date)
714.	Paul Brennan			(Name)
	Wake	(County)	6-9-09	(Date)
715.	Walter Stein			(Name)
	Wake	(County)	6-9-09	(Date)
716.	Jon N			(Name)
	Wake	(County)	6-9-09	(Date)
717.	[illegible]			(Name)
	[illegible]	(County)	6-9-09	(Date)
718.	Andrea [illegible]			(Name)
	Wake	(County)	6-9-09	(Date)
719.	[illegible]	Wake	6-9-09	(Name)
		(County)		(Date)
720.	[illegible]	Wake	6-9-09	(Name)
		(County)		(Date)
721.	Karen Copeland			(Name)
	Wake	(County)	6-9-09	(Date)
722.	Jay Huff			(Name)
	Wake	(County)	6-9-09	(Date)
723.	Paul Billy		6-9-09	(Name)
	WAKE	(County)	Paul Billy	(Date)
724.	RUSS SCALES			(Name)
	WAKE	(County)	6/10/09	(Date)
725.	[illegible] Watson			(Name)
	WAKE	(County)	6/10/09	(Date)
726.	Erick Heath			(Name)
	Johnston	(County)	6/10/09	(Date)
727.	Thomas Belavias			(Name)
	WAKE	(County)	6/10/09	(Date)
728.	Rita Shipley			(Name)
	WAKE	(County)	6-10-09	(Date)
729.	Lori Nichols			(Name)
	Cumberland	(County)	6-10-09	(Date)
730.	Andrew Parker			(Name)
	Wake	(County)	6.10.09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

731.	Wanda A Schramm			(Name)
	Wake	(County)	4-29-09	(Date)
732.	[illegible] GORDAN F (OOD			(Name)
	Harnett	(County)	5-2-9	(Date)
733.	RYAN COMBS			(Name)
	WAKE	(County)	2 MAY 09	(Date)
734.	Liz Pezzullo			(Name)
	Wake	(County)	5/2/09	(Date)
735.	Larry Ludwick			(Name)
	Wake	(County)	5/19/09	(Date)
736.	Annette Watson			(Name)
	Wake	(County)	5/24/09	(Date)
737.	Mary Lackey			(Name)
	Guilford	(County)	5/24/09	(Date)
738.	Anthony Corona			(Name)
	WAKE	(County)	5/24/09	(Date)
739.	Jordan Ludwick			(Name)
	WAKE	(County)	5/24/09	(Date)
740.	Wendy Smith			(Name)
	Orange	(County)	5/29/09	(Date)
741.	April Smith			(Name)
	Johnston	(County)	5/29/09	(Date)
742.	Lara Cole			(Name)
	Durham	(County)	5-29-09	(Date)
743.	Ansela Smith			(Name)
	Wake	(County)	5.29.09	(Date)
744.	Pam Hopkins			(Name)
	Wake	(County)	5.29.09	(Date)
745.	Susan Criscenzo			(Name)
	Durham	(County)	5/29/09	(Date)
746.	ELIZABETH VOORHEES			(Name)
	DURHAM	(County)	6-1-09	(Date)
747.	Kristi Bentley			(Name)
	Nash	(County)	6-2-09	(Date)
748.	Cecily Flynn			(Name)
	Wake	(County)	6-3-09	(Date)
749.	Kate Morley			(Name)
	Wake	(County)	6/4/09	(Date)
750.	Ann-marie Saraceno			(Name)
	WAKE	(County)	6.4.09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

771.	Erlinda Wehrman		ORANGE	6/6/09
772.	Mary J Doherty		Chatham	
773.	Sarah Tinsley	6/6/09	Carteret	
774.	Claire Sobel	6/6/09	orange	
775.	[illegible]		Wake	6/6/09
776.	Gerry Taylor	6/6/09	Wake	
777.	[illegible]		Durham	6/6/09
778.	B. VON HAUSEN	6/6/09		
779.	LINDA HANSELL	6/6/09	CHATHAM	
780.	W von Hausen	Wake 6/6/09		
781.	[illegible] Hansell	6/6/09	Chatham	
782.	[illegible]	6-6-09	Wake	6-6-09
783.	[illegible]	Wake		
784.	[illegible]		Wake	6/6/09
785.	BJ Medford	6/6/09	Wake	
786.	Kathy Cameron	6/6/09	Wake	Wake
787.	Lisa Gray	6/6/09		
788.	Arlene Quesada		Wake	6/6/09
789.	C Alex Henderson		WAKE	6/6/09
790.	Michael Johnson		WAKE	6/6/09

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Thank you for your consideration.

791.	[illegible]			(Name)
	Granville	(County)	5/17/09	(Date)
792.	Molly Hicks			(Name)
	Granville	(County)	5/17/09	(Date)
793.	Heather Lovebright			(Name)
	Durham	(County)	5/17/09	(Date)
794.	Bonnie Shepard			(Name)
	Granville	(County)	5/17/09	(Date)
795.	Jen Pacheco			(Name)
	Granville	(County)	5/17/09	(Date)
796.	[illegible]		5/17/09	(Name)
	Wake	(County)		(Date)
797.	[illegible]		5/17/09	(Name)
		(County)	Wilson	(Date)
798.	Crissy Varner -	Wilson	5/17/09	(Name)
		(County)		(Date)
799.	Elizabeth M. Engel			(Name)
	Orange	(County)	5-17-09	(Date)
800.	Rachel Mabbett			(Name)
	Chatham	(County)	5-17-09	(Date)
801.	Norma Jane Gotheridge			(Name)
	Wilson	(County)	5-17-09	(Date)
802.	Sarah H Harris			(Name)
	WAKE	(County)	5-17-09	(Date)
803.	Meredith Allen			(Name)
	Johnston	(County)	5-17-09	(Date)
804.	Wendy B Ada			(Name)
	Johnston	(County)	5-17-09	(Date)
805.	[illegible] Kelly			(Name)
	DURHAM	(County)	5-17-09	(Date)
806.	Veronica Mack		5-17-09	(Name)
		(County)		(Date)
807.	Tonika Cherry			(Name)
	Wayne	(County)	5-17-09	(Date)
808.	Mary B. Faircloth			(Name)
	Franklin	(County)	5-17-09	(Date)
809.	Ursula Joyner		5-17-09	(Name)
	Wake	(County)		(Date)
810.	FRANCO WEBB		5/17/2009	(Name)
	CUMBERLAND	(County)		(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

811. JUAN CARABAÑA (Name)
DURHAM (County) 5/17/09 (Date)

812. Montserrat Caballero (Name)
Durham (County) 5/17/09 (Date)

813. Jennifer Simis (Name)
Wake (County) 5/17/09 (Date)

814. Lisa C Strickland (Name)
Brunswick (County) 5/17/09 (Date)

815. Kyle Villella (Name)
Mecklenburg (County) 5/23/09 (Date)

816. Gary Jewell Gary Jewell (Name)
Wake (County) 6/10/09 (Date)

817. Michael OBrien (Name)
Wake County (County) 6/10/09 (Date)

818. Jim Tarleton (Name)
Wake County (County) 6/10/09 (Date)

819. John Jenkins (Name)
Wake Co (County) 6/10/09 (Date)

820. Lauren Hoover (Name)
Wake Co. (County) 6/10/09 (Date)

821. Natalie Ancil (Name)
wake co. (County) 6/10/09 (Date)

822. MIKE Mauriello (Name)
Wake Co (County) 6/16/09 (Date)

823. Bridgett Ancil (Name)
Wake CO. (County) 6/10/09 (Date)

824. John Dinh (Name)
Wake Co. (County) 6/10/09 (Date)

825. Josh Goodson (Name)
Wake (County) 6/10/09 (Date)

826. Christi Jones (Name)
Wake Co. (County) 6/10/09 (Date)

827. [illegible] (Name)
WAKE (County) 6 10 09 (Date)

828. Sheldon Johnson (Name)
Wake Co (County) 6-10-09 (Date)

829. [illegible] (Name)
Wake Co. (County) 6-10-09 (Date)

830. [illegible] (Name)
Johnston Co. (County) 6-10-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

831.	Julia Smith			(Name)
	Harnett	(County)	5/3/09	(Date)
832.	Felicia Hurpart			(Name)
	Harnett	(County)	5/3/09	(Date)
833.	Audrey Rhyne			(Name)
	Franklin	(County)	5/5/09	(Date)
834.	Sarah Poole			(Name)
	Pitt	(County)	5/8/09	(Date)
835.	Harriette W. Cooper	Harriette W. Cooper		(Name)
	Carteret	(County)	5/08/09	(Date)
836.	[illegible]			(Name)
	Cumberland	(County)	5/20/09	(Date)
837.	Rhonda Baylor	[illegible]		(Name)
	Cumberland	(County)	5/20/09	(Date)
838.	DEL-LYNN MCKEON			(Name)
	5/20/09	(County)	Cumberland	(Date)
839.	Beth Ingram			(Name)
	5/20/09	(County)	Robeson	(Date)
840.	D. G. DEVERA-INGRAM		5/20	(Name)
	[illegible]	(County)	CUMBERLAND	(Date)
841.	[illegible]			(Name)
	Cumberland	(County)	5-26-09	(Date)
842.	TINA EDSALL			(Name)
	HOKE	(County)	5-26-09	(Date)
843.	Tina Heyse			(Name)
	Hoke	(County)	5-27-09	(Date)
844.	Dana Blumenschein			(Name)
	Cumberland	(County)	5-27-09	(Date)
845.	Jessica Maliyewich			(Name)
	Cumberland	(County)	5/27/09	(Date)
846.	[illegible]			(Name)
	Robeson County	(County)	5/28/09	(Date)
847.	Emilyanne Leonard			(Name)
	Moore	(County)	5/28/09	(Date)
848.	Annie Pittman			(Name)
	5/28	(County)	Cumberland	(Date)
849.	Crystal Pittman			(Name)
	5/28	(County)	Cumberland	(Date)
850.	Kendall Pittman			(Name)
	5/28	(County)		(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

851.	Olivia L McKell			(Name)
	Wake	(County)	6-10-09	(Date)
852.	Rebeka Branagan			(Name)
	Wake	(County)	6/11/09	(Date)
853.	TERESA O'BRIEN	Teresa O'Brien		(Name)
	WAKE	(County)	JUN 11 09	(Date)
854.	Madonna S Hays	Madonna S Hayes		(Name)
	Wake	(County)	6-16-09	(Date)
855.	Susan Wilkinson	6/17/09		(Name)
	Wake	(County)		(Date)
856.	Malcolm D Coltrain			(Name)
	Chatham	(County)	6-16-09	(Date)
857.	Jennifer Pope			(Name)
	Wake	(County)	6-17-09	(Date)
858.	Nancy Reece			(Name)
	Wake	(County)	6/17/09	(Date)
859.	TODD WOMACK			(Name)
	Wake	(County)	6/22/09	(Date)
860.	Eric Batten			(Name)
	Wake	(County)	6-22-09	(Date)
861.	James Martin Jr		6-22-09	(Name)
	Vance	(County)		(Date)
862.	[illegible]			(Name)
	Wake	(County)		(Date)
863.	Peggy Ives			(Name)
	Wake	(County)	6-26-09	(Date)
864.	Donna Shinn	Donna Shinn		(Name)
	Wake	(County)	6-29-09	(Date)
865.	Cynthia L McNeill	6/29/09		(Name)
	Wake	(County)		(Date)
866.	Chana Lynn	6/30/09		(Name)
	Wake	(County)		(Date)
867.				(Name)
		(County)		(Date)
868.				(Name)
		(County)		(Date)
869.				(Name)
		(County)		(Date)
870.				(Name)
		(County)		(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

871. SANDY BRISCAR (Name)
WAKE (County) 6/11/09 (Date)

872. Ann Marie Amico (Name)
Wake (County) 6/11/09 (Date)

873. TEENA ANDERSON (Name)
WAKE (County) 6-11-09 (Date)

874. Jay Binkley (Name)
Wake (County) 6-11-09 (Date)

875. Vicki Norris (Name)
Wake (County) 6/11/09 (Date)

876. JEAN HAYES 6/11/09 (Name)
WAKE (County) (Date)

877. Jan Korn 6/11/09 (Name)
Wake (County) (Date)

878. Pamela Wimbish-Cooley (Name)
WAKE 6/11/09 (County) (Date)

879. Rosemary Kenyon (Name)
Wake (County) 6/11/09 (Date)

880. Anita James 07 (Name)
Wake (County) 6/11/09 (Date)

881. Lori McDaniel (Name)
Wake (County) 6/11/09 (Date)

882. Barbara Thompson (Name)
WAKE (County) 6/11/09 (Date)

883. Kathryn Wandell (Name)
Wake (County) 6/11/09 (Date)

884. Robin Beth Hicher (Name)
WAKE (County) 6/11/09 (Date)

885. [illegible] 6/11/09 (Name)
[illegible] (County) (Date)

886. Maureen Hartford (Name)
Wake Raleigh 6/11/09 County (Date)

887. Audrey Penny Baldwin (Name)
WAKE (County) 6/11/2009 (Date)

888. Jane Thurman (Name)
Wake (County) 6/11/09 (Date)

889. Carrie Thames 6/11/09 (Name)
Wake (County) (Date)

890. Dana Johnson (Name)
Orange (County) 6/11/09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

891. Marie Bunnell (Name)
Wake (County) _____ (Date)

892. Leanor A Bottoje (Name)
Wake (County) 6/11/2009 (Date)

893. Rebecca Voelker 6/11/2009 (Name)
Wake (County) _____ (Date)

894. Anne Bryan (Name)
Wake (County) 6/11/09 (Date)

895. Susan Tilley (Name)
WAKE (County) 6/11/09 (Date)

896. Kate Azizi (Name)
Wake (County) 6/11/09 (Date)

897. Sherry Heuser (Name)
Wake (County) 6/11/09 (Date)

898. Cynthia Withmer Cynthia Withmer (Name)
Wake (County) 6/11/09 (Date)

899. Cathy Ward 6-11-09 (Name)
Wake (County) 6-11-09 (Date)

900. Catharine Arrowood (Name)
Wake (County) 6/11/2009 (Date)

901. [illegible] (Name)
WAKE (County) _____ (Date)

902. Margaret Park 6/11/09 (Name)
Wake (County) _____ (Date)

903. Julia Allen Julia B. Allen (Name)
Wake (County) _____ (Date)

904. MARGARET COHEN (Name)
WAKE (County) _____ (Date)

905. Ellen Sinclair E. KARIN SINCLAIR (Name)
Wake (County) 6/11/09 (Date)

906. Leslie Bishop (Name)
Wake (County) 6/11/09 (Date)

907. Rebecca M Christa (Name)
Wake 6/11/09 (County) _____ (Date)

908. PAM KOHT (Name)
WAKE 6/11/09 (County) _____ (Date)

909. Perrin Burton (Name)
Wake 6/11/09 (County) _____ (Date)

910. Donna Fentriss (Name)
Wake (County) 6/11/09 (Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

911.	Cheryl McNeely			(Name)
	Durham	(County)	6/8/09	(Date)
912.	Karen Stevens			(Name)
	Wake	(County)	6/8/09	(Date)
913.	Komiel Oliver			(Name)
	Wake	(County)	6/8/09	(Date)
914.	Tica Cleveland			(Name)
	wake	(County)	6/8/09	(Date)
915.	Karen Parrish		6/8/09	(Name)
	Wake	(County)		(Date)
916.	Kim Harris	Kim Harris		(Name)
	Wake	(County)	6/8/09	(Date)
917.	Tara Harper		6/8/09	(Name)
	Granville	(County)	Granville	(Date)
918.	Angela Cronin			(Name)
	Wake	(County)	6/8/09	(Date)
919.	Scott Everett			(Name)
	Johnston	(County)	6/8/09	(Date)
920.	[illegible]	Tonita van Rijssen		(Name)
	Wake	(County)	6/9/09	(Date)
921.	Lynn McElroy			(Name)
	Wake	(County)	6-9-09	(Date)
922.	Patrick Hohn			(Name)
	[illegible]	(County)	6-9-09	(Date)
923.	[illegible]			(Name)
	Granville	(County)	6-9-09	(Date)
924.	Margaret S Butler			(Name)
	Person	(County)	6/10/09	(Date)
925.	Kenneth Woodcock	Granville		(Name)
		(County)		(Date)
926.				(Name)
		(County)		(Date)
927.				(Name)
		(County)		(Date)
928.				(Name)
		(County)		(Date)
929.				(Name)
		(County)		(Date)
930.				(Name)
		(County)		(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

931.	David West			(Name)
	WAKE	(County)	5/1/09	(Date)
932.	Dawn West			(Name)
	Wake	(County)	5/1/09	(Date)
933.	A. Brooll		~~5/4/09~~	(Name)
	Wake	(County)	5/4/09	(Date)
934.	Heidi Geiger			(Name)
	Wake	(County)	5/5/09	(Date)
935.	VALERIE CARUSO		5/5/09	(Name)
	WAKE	(County)		(Date)
936.	Lori Power			(Name)
	Johnston	(County)	5/5/09	(Date)
937.	Mary Domino		MKDomino	(Name)
	Wake	(County)	5/5/09	(Date)
938.	David Daniels			(Name)
	Wake	(County)	~~Wake~~ 5/5/9	(Date)
939.	Rex Brust			(Name)
	Wake	(County)	~~Wake~~ 5.5.09	(Date)
940.	Tolga Yourday			(Name)
	(Wake)	(County)	5/5/9	(Date)
941.	LORRAINE KIRKPATRICK		~~Lorraine Kirkpatrick~~	(Name)
	WAKE 13	(County)	5-5-09	(Date)
942.	Susan Fennell			(Name)
	Wake Area 19	(County)		(Date)
943.	Lynne Brusler		5/5/09	(Name)
	Area 9	(County)	~~Orange~~ Orange	(Date)
944.	Polly Willis		Polly Willis	(Name)
	WAKE	(County)	5-6-09	(Date)
945.	DonnaWilliams		5-7-09	(Name)
	Wake 18	(County)	Wake	(Date)
946.	Johanna Outlaw		Johanna Outlaw	(Name)
	Wake 10	(County)	May 7, 2009	(Date)
947.	Barbara Hohman		Barbara J Hohman	(Name)
	Chatham	(County)	May 7, 2009	(Date)
948.	Joy Fournier		Joy Fournier	(Name)
	Wake	(County)	~~Wake~~ 5/10/09	(Date)
949.	Angelia Page		Angelia Page	(Name)
	Wake	(County)	5/11/09	(Date)
950.	Cindy Saba		Cindy Saba	(Name)
	Wake	(County)	5/11/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

951. MARCIA Krishart (Name)
Gaston (County) 5/04/09 (Date)

952. Naomi Giampaolo (Name)
Iredell (County) 5-4-09 (Date)

953. JANE VALLAIRE (Name)
MECKLENBURG (County) 5/4/09 (Date)

954. Roslyn Overton (Name)
Mecklenburg (County) 5/4/09 (Date)

955. Amand Cartner (Name)
Mecklenburg (County) 5/4/09 (Date)

956. Crystal Lee CHRYSTAL LEE (Name)
Mecklenburg (County) 5/4/09 (Date)

957. Ruth Roque RUTH ROQUE (Name)
Cabarrus (County) 5-4-09 (Date)

958. Janet Smith (Name)
Mecklenburg (County) 5/4/09 (Date)

959. Jane Westbrook (Name)
Mecklenburg (County) 5/4/09 (Date)

960. Kimberly Lewis (Name)
mecklenburg (County) 5/4/09 (Date)

961. Jessica Jones JESSICA JONES (Name)
Mecklenburg (County) 5/4/09 (Date)

962. Jill Palmer Jill Palmer 5/4/09 (Name)
Mecklenburg (County) 5/4/09 (Date)

963. Fanny Clements Fanny M. Clements (Name)
Mecklenburg (County) 5/4/2009 (Date)

964. Zoraida Soto (Name)
Mecklenburg (County) 5/4/09 (Date)

965. LaToia Gatlin (Name)
Mecklenburg (County) 5/4/09 (Date)

966. Angela Johnson (Name)
Mecklenburg (County) 5-5-09 (Date)

967. Heidi Stokes HEIDI STOKES (Name)
mecklenburg (County) 5/5/09 (Date)

968. Mary-Kathryn Carroll (Name)
Mecklenburg (County) 5/5/09 (Date)

969. Megan McClelland (Name)
Mecklenburg (County) 5/5/09 (Date)

970. Melanie Miller (Name)
Union (County) 5/6/09 (Date)

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Thank you for your consideration.

971. Brandy Hunter (Name)
Lee (County) 5/7/9 (Date)

972. Alison Barnwell (Name)
Wake (County) 5/7/09 (Date)

973. Winnie Brown (Name)
Wake (County) 5/7/09 (Date)

974. Janet Jones (Name)
Wake (County) 5/7/09 (Date)

975. [signature] (Name)
Johnston (County) 5/7/09 (Date)

976. Kathryn Vincent (Name)
Wake (County) 5/7/09 (Date)

977. Tricia Patrick (Name)
Wake (County) 5/7/09 (Date)

978. Anita Baxter (Name)
Wake (County) 5/7/09 (Date)

979. Ruth E Jones (Name)
Rockingham (County) 5/7/09 (Date)

980. VIRGINA PARKER (Name)
WAKE (County) 5/7/09 (Date)

981. Tammy West (Name)
Johnston (County) 5/7/09 (Date)

982. Teresa Sievers (Name)
Durham (County) 5/7/09 (Date)

983. Warren Caldwell (Name)
Mcb (County) [illegible] (Date)

984. Tiffany West (Name)
Wake (County) Wake 5/7/09 (Date)

985. Donna Beckham (Name)
Wake (County) 5/7/09 (Date)

986. Elizabeth H. Beamer (Libb.) (Name)
Durham (County) 5-7-09 (Date)

987. Sharon Degnan (Name)
Wake (County) 5/7/09 (Date)

988. Betsy John (Name)
Wake (County) 5-7-09 (Date)

989. Julie Lanning (Name)
Wake (County) 5-7-09 (Date)

990. Taryn L Peachey (Name)
Wake (County) 5-7-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

991. James Dunn (Name)
(County) Wake 5-7-09 (Date)

992. Aileen Maneeley (Name)
(County) Wake 5-7 09 (Date)

993. Jacky Bell (Name)
(County) Wake 5-7-09 (Date)

994. Molly Hut (Name)
(County) Wake 5-7-09 (Date)

995. Naomi Cooley (Name)
(County) Wake 5-7-09 (Date)

996. Julianne Schmitz (Name)
(County) Wake 5-7-09 (Date)

997. Wanda Hunter (Name)
Wake (County) Wake 5-7-09 (Date)

998. Becki Hall (Name)
(County) Wake 5.7.09 (Date)

999. DANIELLE PARIS (Name)
(County) DURHAM 5.7.09 (Date)

1000. Gwen Hicks (Name)
Wake (County) 5/7/09 (Date)

1001. Rebecca Noble (Name)
Wake (County) 5-13-09 (Date)

1002. Olive McKell (Name)
Wake, 5-16-09 (County) (Date)

1003. Bonnie Warren Nelson (Name)
Wake (County) 5/13/09 (Date)

1004. Jacki Russell (Name)
Johnston (County) Jacki Russell 5/16/09 (Date)

1005. Marla Turlington (Name)
Wake (County) 5.18.09 (Date)

1006. Elaine Freeborn Elaine Freeborn 5-18-09 (Name)
Wake (County) 5/18/09 (Date)

1007. Michelle Le (Name)
Wake (County) 5/18/09 (Date)

1008. Douglas Bradley Douglas Bradley (Name)
Wake (County) 5/18/2009 (Date)

1009. Teryl Brown (Name)
Durham (County) 5/18/09 (Date)

1010. Alice Smith (Name)
Durham (County) 5/18/09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1011.	Patricia Brauer			(Name)
	Beaufort	(County)	5-18-09	(Date)
1012.	David Andrews			(Name)
	Beaufort	(County)	5-18-09	(Date)
1013.	Elaine Hudnell			(Name)
	Beaufort	(County)	5-18-09	(Date)
1014.	Susan Askren			(Name)
	Beaufort	(County)	5/18/09	(Date)
1015.	Jan G Alligood			(Name)
	Beaufort	(County)	18 May 09	(Date)
1016.	Tara Mott			(Name)
	Beaufort	(County)	5/18/09	(Date)
1017.	Lucrecia Smith			(Name)
	Beaufort	(County)	5/18/09	(Date)
1018.	Betty Hamilton			(Name)
	Beaufort	(County)	5/18/09	(Date)
1019.	Jackie Bass			(Name)
	Beaufort	(County)	5/18/09	(Date)
1020.	Rusty Phelps			(Name)
	Pitt	(County)	5-21-09	(Date)
1021.	Glenda Phelps			(Name)
	Pitt	(County)	5-21-09	(Date)
1022.	LeeAnn Phelps			(Name)
	Pitt	(County)	5-21-09	(Date)
1023.	Michelle Fraley		5-21-09	(Name)
	Pitt	(County)		(Date)
1024.	Tammy Barnes		5-21-09	(Name)
	Pitt	(County)		(Date)
1025.	Clyde Phelps		5/21/09	(Name)
	Pitt	(County)		(Date)
1026.	Eric Fraley		5-21-09	(Name)
	Pitt	(County)		(Date)
1027.	Jackie Keesee	Jacquelin Keesee		(Name)
	Pitt	(County)	5/22/09	(Date)
1028.	Chris Keesee			(Name)
	Pitt	(County)	5/22/09	(Date)
1029.	Deborah Brady	Deborah Brady		(Name)
	Pitt	(County)	5/22/09	(Date)
1030.	Chasity Pappas	Chasity Pappas		(Name)
	Pitt	(County)	5/22/09	(Date)

To the members of the North Carolina General Assembly:

We, the undersigned, would like to express our support for a special license plate honoring Girl Scouts, and ask that you vote to support the bill introduced in the 2009 session authorizing the North Carolina Division of Motor Vehicles to produce a special license plate for Girl Scouts. We respectfully request that you pass this legislation so that we may have the opportunity to obtain such a license plate for our motor vehicles.

Thank you for your consideration.

	(Name)	(County)	(Date)
1031.	Brooke Belch	Pitt County	5-21-09
1032.	Tiffany Tetterton	Pitt County	5/21/09
1033.	Natalie King	Pitt County	5/21/09
1034.	Kelsey Brown	Pitt Co.	5-21-09
1035.	Arlyn Branch	Pitt Co	5/21/09
1036.	Niki Britt	Pitt Co.	5/21/09
1037.	Rachel Kukoly	Pitt Co	5/21/09
1038.	Katelyn Putnam	PITT CO	5/21/09
1039.	Frankie Cash-Langley	Pitt Co,	5/21/09
1040.	Charlie Langley	Pitt Co	5/21/09
1041.	Sarah Langley	Pitt Co.	5/21/09
1042.	Lisa McCawthorn	Pitt Co	5/21/09
1043.	Brittany Bowen	Pitt County	5/21/09
1044.	Paige Bostick	Pitt County	5/21/09
1045.	Alice Putnam	Pitt County	5/21/09
1046.	Mike Putnam	Pitt Co.	5/21/09
1047.	Lisa Sawyer	Pitt Co.	5-21-09
1048.	Melissa Burrell	Pitt	5/21/09
1049.	Wanda Needell	Pitt	5/21/09
1050.	Lisa Johnson	Pitt	5/21/09

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1051.	[signature]			(Name)
	Wake	(County)	5-13-09	(Date)
1052.	[signature]			(Name)
	[illegible]	(County)	5-14-09	(Date)
1053.	Tricia McKenna			(Name)
	Wake	(County)	5-14-09	(Date)
1054.	Sue Crook			(Name)
	Chatham	(County)	5/14/09	(Date)
1055.	Jarvis M Baptiste			(Name)
	Orange	(County)	5/14/09	(Date)
1056.	[signature]		5/14/09	(Name)
	Johnston	(County)	5/14/09	(Date)
1057.	Tony Roach		5/14/09	(Name)
	Wake	(County)		(Date)
1058.	Diana Barber	Wake	5/14/09	(Name)
		(County)	5/14/09	(Date)
1059.	[signature]	Wake		(Name)
		(County)	5/14/09	(Date)
1060.	Annette Jones	Franklin		(Name)
		(County)		(Date)
1061.	Nicholas Ray	Wake	5/14/09	(Name)
		(County)		(Date)
1062.	[signature]	WAKE	5/14/09	(Name)
		(County)		(Date)
1063.	Julie Brown	Wake	5/14/09	(Name)
		(County)	5/15/09	(Date)
1064.	[signature]	Wake		(Name)
		(County)		(Date)
1065.	[signature]	M. Eileen Emer		(Name)
	Wake	(County)	5/15/09	(Date)
1066.	Katie Weber			(Name)
	Orange	(County)	5/15/09	(Date)
1067.	[signature]	Lanie Anknum		(Name)
	5-15-09	(County)	Wake	(Date)
1068.	[signature]	Renerick M. Mobley		(Name)
	Wake	(County)	5-16-09	(Date)
1069.	Mitzie Buss			(Name)
	Wake	(County)	5-16-09	(Date)
1070.	Cassandra Fedell	Durham		(Name)
		(County)	5-16-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1071.	Sally Daley			(Name)
	Union	(County)	5/6/09	(Date)
1072.	Jonathan Clements			(Name)
	Mecklenburg	(County)	5/6/09	(Date)
1073.	Laura Prevatt			(Name)
	Cabarrus	(County)	5/6/09	(Date)
1074.	LaisseLopez-Ibanez		5/7/09	(Name)
	Mecklenburg	(County)		(Date)
1075.	Dandy Brunt			(Name)
	Union	(County)	5-6-09	(Date)
1076.	Betty Allison		5-12-09	(Name)
	Forsyth	(County)	5-12-09	(Date)
1077.	Dawn Ratliff			(Name)
	Mecklenburg	(County)	5/12/09	(Date)
1078.	Dana Spry			(Name)
	Stanly	(County)	5/12/09	(Date)
1079.	Jennifer Reuben			(Name)
	Stanly	(County)	5-12-09	(Date)
1080.	Rusty Gonzalez			(Name)
	Mecklenburg	(County)	05/16/09	(Date)
1081.	Brian Capoon			(Name)
	Mecklenburg	(County)	5/19/09	(Date)
1082.	Sue Bright			(Name)
	Mecklenburg	(County)	5/22/09	(Date)
1083.	JSL			(Name)
	Mecklenburg	(County)	5/28/09	(Date)
1084.	Judy McNamara			(Name)
	Mecklenburg	(County)	5/30/09	(Date)
1085.	Sarah McNamara			(Name)
	Mecklenburg	(County)	5/30/09	(Date)
1086.	Sharon Frazier			(Name)
	Mecklenburg	(County)	6/2/09	(Date)
1087.	Melissa L Hutney		6/4/09	(Name)
	Durham	(County)		(Date)
1088.	Stephanie Brooks	Wake	6/4/09	(Name)
		(County)		(Date)
1089.	Sook Cadwell	Wake	6/4/09	(Name)
		(County)		(Date)
1090.	Lattie Gant			(Name)
	Wake	(County)	6-5-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1091. Dianne Yusko Dianne Yusko (Name)
Wake (County) Wake 5-7-09 (Date)

1092. Carol Nixon (Name)
Durham (County) 5-8-09 (Date)

1093. [illegible] 5-8-09 (Name)
Bonnie Miller (County) Johnston (Date)

1094. Melinda Burrows Wake (Name)
Melinda Burrows (County) [illegible] 5/8/09 (Date)

1095. [illegible] (Name)
Stacy Willhite (County) Johnston 5/8/09 (Date)

1096. Aleta English (Name)
Kelmyld (County) Orange 5/8/09 (Date)

1097. Melanie Scott (Name)
(County) Person (Date)

1098. [illegible] (Name)
(County) Johnston (Date)

1099. [illegible] (Name)
(County) Johnston (Date)

1100. Stephanie Ro [illegible] (Name)
Johnston Co (County) [illegible] 5/9/09 (Date)

1101. Jessica Cawsey (Name)
Orange Co. (County) 5/9/09 (Date)

1102. Jackie Pointer (Name)
Durham (County) 5/9/09 (Date)

1103. Mary Pointer (Name)
Durham (County) 5/9/09 (Date)

1104. Lisa Weber Lisa Weber (Name)
Wake (County) 5-11-09. (Date)

1105. Krishna Mayfield 11 May 09 (Name)
Durham (County) (Date)

1106. Gail Gyurek (Name)
Raleigh Wake (County) Wake 5/12/09 (Date)

1107. Jessica Bordelon Jessica Bordelon (Name)
Wake (County) Wake 5/12/09 (Date)

1108. Jonna Leaser Jonna Leaser (Name)
Wake (County) 5/12/09. (Date)

1109. Jennifer Gibson Jennifer Gibson (Name)
Wake (County) 5/12/09 (Date)

1110. Christine Armstrong Orange 5/12/09 (Name)
[illegible] (County) (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1111. Michelle Glasgow (Name)
Wake (County) May 7, 2009 (Date)

1112. Kathy Olson (Name)
Wake (County) 5/7/09 (Date)

1113. Hau Taylor (Name)
WAKE (County) MAY 7, 2009 (Date)

1114. Zena Farkas (Name)
wake (County) may 7, 09 (Date)

1115. Vadell Smith (Name)
Wake (County) May 7, 09 (Date)

1116. Gracia Gartland (Name)
wake (County) may 7, 2009 (Date)

1117. Jennifer Fortunato (Name)
Wake (County) May 7, 2009 (Date)

1118. Michelle LeRoy Michelle LeRoy (Name)
Wake (County) 5/7/09 (Date)

1119. Becky Johnson (Name)
Wake (County) 5/14/09 (Date)

1120. Sue Palmer (Name)
Wake (County) 5/14/09 (Date)

1121. Heather Robbins 5/14/09 (Name)
Wake (County) (Date)

1122. Ashley Barker 5/14/09 (Name)
Wake (County) (Date)

1123. Debbie Welch Debbie Welch (Name)
Wake (County) (Date)

1124. Jenn Allred Jennifer Allred (Name)
Wake (County) 5.14.09 (Date)

1125. Gena Pappalardo (Name)
wake (County) 5-14-09 (Date)

1126. Heidi Shekhar Heidi Shekhar (Name)
Wake (County) 5-14-09 (Date)

1127. Kara Talik (Name)
Wake (County) 5-14-09 (Date)

1128. [illegible] (Name)
Wake (County) 5.14.09 (Date)

1129. Jennifer Stewart (Name)
Wake (County) 5-14-09 (Date)

1130. Suzette Brown (Name)
Wake (County) 5-14-09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1131.	Angel Stephens			(Name)
	Wake	(County)	5/14/09	(Date)
1132.	Kim Sturgeon			(Name)
	Wake	(County)	May 14, 2009	(Date)
1133.	Rachel Hearn	Wake	5/14/09	(Name)
		(County)		(Date)
1134.	Jennifer Torres			(Name)
	Wake	(County)	5/14/2009	(Date)
1135.	Lynette Garcia			(Name)
	Wake	(County)	5/14/09	(Date)
1136.	Joan M. Smith		5-14-09	(Name)
	Wake	(County)		(Date)
1137.	Deborah Williams			(Name)
	Wake	(County)	5/14/09	(Date)
1138.	Jodi Butler		5/14/09	(Name)
	Wake	(County)		(Date)
1139.	Lisa Neal			(Name)
	Wake	(County)	5/14/09	(Date)
1140.	Amanda Rossi			(Name)
	Wake	(County)	5-14-09	(Date)
1141.	Peggy Eaves			(Name)
	Wake	(County)	WAKE 18	(Date)
1142.	Becca Seegondollar			(Name)
	Wake	(County)		(Date)
1143.	Lisa Cy			(Name)
	Wake	(County)	5/14/09	(Date)
1144.	Joan Marion			(Name)
	Wake	(County)	5/14/09	(Date)
1145.	Lauren Floyd			(Name)
	Wake	(County)	5/14/09	(Date)
1146.	Kai Hinkey			(Name)
	Wake	(County)	5/14/09	(Date)
1147.	Shana Rupe			(Name)
	Wake	(County)	5/14/09	(Date)
1148.	Emily McMillan			(Name)
	Wake	(County)	5/14/09	(Date)
1149.	Jody Robson			(Name)
	WAKE	(County)	5/14/09	(Date)
1150.	Maria Lara			(Name)
	Wake	(County)	5/14/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1151.	Shawn Keeter			(Name)
	Wake	(County)	5/14/09	(Date)
1152.	Nellie Greene			(Name)
	Wake	(County)	5/14/09	(Date)
1153.	Melanie Sheriault			(Name)
	Johnston	(County)	5-14-09	(Date)
1154.	Kelly S. Barden			(Name)
	Wake	(County)		(Date)
1155.	Caroline Cameron			(Name)
	Wake	(County)	5-14-09	(Date)
1156.	Brandy Bahn			(Name)
	Wake	(County)	5/14/09	(Date)
1157.	Gwendolynne Grace			(Name)
	Wake	(County)	5-14-09	(Date)
1158.	Margaret Nelson			(Name)
	Wake	(County)	5/14/09	(Date)
a minor → 1159.	~~Kelley Akers~~			(Name)
	~~Wake~~	(County)	~~5/14/09~~	(Date)
1160.	~~[illegible]~~			(Name)
		(County)		(Date)
1161.	Linda Johnson		5/14/09	(Name)
	Wake	(County)		(Date)
1162.	Dizne Pomper			(Name)
	Wake	(County)	3/14/09	(Date)
1163.	Christine Sutherland		3/15/09	(Name)
	Wake	(County)		(Date)
1164.	MICHAEL TAYLOR			(Name)
	WAKE	(County)	5-15-09	(Date)
1165.	Brenda Whipple		5-15-09	(Name)
	Wake	(County)		(Date)
1166.	JEANNE SEAY			(Name)
	WAKE	(County)	5-18-09	(Date)
1167.	Miranda Taylor			(Name)
	Wake	(County)	Wake 5-18-09	(Date)
1168.	Andrea Gullerud		5-26-09	(Name)
		(County)	Wake	(Date)
1169.	Tom Gullerud		5-26-09	(Name)
		(County)	Wake	(Date)
1170.	don Lund			(Name)
	Wake	(County)	5-26-09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1191.	[illegible] Thompson			(Name)
	WAKE	(County)	6/11/09	(Date)
1192.	[illegible]			(Name)
	WAKE	(County)	6/11/09	(Date)
1193.	[illegible]			(Name)
	WAKE	(County)	6/11/09	(Date)
1194.	[illegible]			(Name)
	Wake	(County)	6/11/09	(Date)
1195.	[illegible]		6/10/09	(Name)
	Wake	(County)		(Date)
1196.	Angela Hodge			(Name)
	Wake	(County)	6-10-09	(Date)
1197.	Lisa Angel		6-10-09	(Name)
	Wake	(County)		(Date)
1198.	Debbie Fox		6.11.09	(Name)
	wake	(County)		(Date)
1199.	Gordon Folger		6/11/09	(Name)
	Wake	(County)		(Date)
1200.	Tiffany Andrews			(Name)
	Wake	(County)	6/11/09	(Date)
1201.	Nandair Macher			(Name)
	Wake	(County)	6/11/09	(Date)
1202.	Pam Shank			(Name)
	Wake	(County)	6/11/09	(Date)
1203.	[illegible]			(Name)
	Wake	(County)	6/11/09	(Date)
1204.	Susan Stevens			(Name)
	Wake	(County)	6/11/09	(Date)
1205.	[illegible]			(Name)
	Wake	(County)	6-11-09	(Date)
1206.	Kristi Hoyt			(Name)
	Wake	(County)	6/11/09	(Date)
1207.	[illegible]			(Name)
	WAKE	(County)	6-11-09	(Date)
1208.	Susan Bray			(Name)
	Wake	(County)	6-11-09	(Date)
1209.	Debbie Hamrick		6-11-09	(Name)
	Wake	(County)	Debbie Hamrick	(Date)
1210.	Kendra Stallings		Edgecombe	(Name)
	Kendra Stallings	(County)	6/11/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1211.	Susan Rosemary Sperbeck			(Name)
	Wake (Area 23)	(County)	May 19, 2009	(Date)
1212.	Lynn A Dupre'			(Name)
	Cumberland	(County)	19 May 2009	(Date)
1213.	Mary G Whaley			(Name)
	Wake 22	(County)	May 19, 2009	(Date)
1214.	ELEANOR D. GAUG			(Name)
	WAKE 18	(County)	5/19/2008	(Date)
1215.	Stacy Wilson Attorney at Law			(Name)
	Johnston	(County)	5/20/09.	(Date)
1216.	MaryBeth Hall			(Name)
	Wake 18	(County)	5/20/09	(Date)
1217.	Barbara Allen			(Name)
	Wake 14	(County)	5/20/09	(Date)
1218.	RACHEL HODGES		5/20/09	(Name)
	Durham	(County)		(Date)
1219.	Shantaire M. Butler			(Name)
	Wake	(County)	5/20/09	(Date)
1220.	Kasia Antanaitis		05/20/09	(Name)
	Wake	(County)		(Date)
1221.	Roxanne Manuel			(Name)
	Wake 19	(County)	5/27/09	(Date)
1222.	Sara Hora			(Name)
	Person	(County)	5/27/09	(Date)
1223.	Sherry Smith			(Name)
	Durham	(County)	5/27/09	(Date)
1224.	Barbara Putney			(Name)
	Orange	(County)	5/28/09	(Date)
1225.	Christy Marciniak			(Name)
	Wake	(County)	5/28/09	(Date)
1226.	Neil Murray			(Name)
	Wake	(County)	5/28/09	(Date)
1227.	Felicia Pate		5/29/09	(Name)
	Johnston	(County)		(Date)
1228.	Lisa Robbins			(Name)
	Wake	(County)	6/1/09	(Date)
1229.	Kim Bajde			(Name)
	Wake	(County)	6/2/09	(Date)
1230.	Glenn Benton			(Name)
	Orange	(County)	6/3/09	(Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1231. Leigh Anne Cum (Name)
Wake (County) 5/19/09 (Date)

1232. Bonnie Stewart - Bonnie Stewart (Name)
Wake (County) 5-19-09 (Date)

1233. Betty J Betts (Name)
Wake (County) 05-20-09 (Date)

1234. Jill A Cleary (Name)
Wake (County) 5-20-09 (Date)

1235. Adonica Hall (Name)
Wake (County) 5-20-09 (Date)

1236. [illegible] (Name)
Johnston (County) 5-20-09 (Date)

1237. C Misinonile C. Misinonile (Name)
Johnston (County) 5/21/09 (Date)

1238. Beth C. Lewis (Name)
Wake (County) 5/21/09 (Date)

1239. Amy McCall (Name)
Wake (County) 5/21/09 (Date)

1240. Lisa Boseller (Name)
Wake (County) 5/21/09 (Date)

1241. [illegible] (Name)
Wake19 (County) 5/21/09 (Date)

1242. Lara-Kay (Name)
WAKE (County) 5-21-09 (Date)

1243. Martha Endrich (Name)
Wake (County) (Date)

1244. Rita Ann Cuft (Name)
Warren (County) 5-21-09 (Date)

1245. Kathy Harrington (Name)
Wake (County) 5/21/09 (Date)

1246. Jani Travis 5/21/09 (Name)
(County) Wake 18 (Date)

1247. Tobin Hardy (Name)
Wake (County) 5/22/09 (Date)

1248. Trudy Hardy (Name)
Wake (County) 5/22/09 (Date)

1249. Emily Cuch 5/22/09 (Name)
Wake (County) [illegible] (Date)

1250. G. Strohbeck (Name)
Wake (County) 5/22/09 (Date)

To the members of the North Carolina General Assembly:

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Thank you for your consideration.

1251.	Benjamin C. Waldrep	(Name)		
	Brunswick	(County)	6/25/09	(Date)
1252.	Lucy B. Austin	(Name)		
	Halifax	(County)	6/25/09	(Date)
1253.	Emily D. Andrews	(Name)		
	Wake	(County)	6/25/09	(Date)
1254.	Rebecca H Chase	(Name)	6/25/09	
	Wake	(County)		(Date)
1255.	Monica Burner	(Name)	6/25/09	
	Durham	(County)		(Date)
1256.	Marywalker Romonell	(Name)		
	Nash	(County)	6-25-09	(Date)
1257.	Thalia Myers	(Name)		
	Durham	(County)	6-25-09	(Date)
1258.	Lamita M Dougall	(Name)	6.25.09	
	WAKE	(County)		(Date)
1259.	FRAN O'SULLIVAN	(Name)		
	WAKE	(County)	6/25/09	(Date)
1260.	Dawn morris	(Name)		
	Wake	(County)	6/25/09	(Date)
1261.	Deb Laugheny	(Name)		
	Wake	(County)	6/25/09	(Date)
1262.	James E Peterson	(Name)		
	ORANGE	(County)	6/25/09	(Date)
1263.	Bernadette Spong	(Name)	6/25/09	
	Wake	(County)		(Date)
1264.	VAUGHN BEDDY-DANIEL	(Name)	6-25-09	
	WILSON	(County)		(Date)
1265.	Laura Hulsey	(Name)		
	Wake	(County)	6.25.09	(Date)
1266.	HAROLD KEEN	(Name)		
	JOHNSTON	(County)	6-25-09	(Date)
1267.	Beverly Wyckoff	(Name)		
	Brunswick	(County)	6/25/09	(Date)
1268.	Bonnie Hancock	(Name)		
	Wake	(County)	6/25/09	(Date)
1269.	Annette M Moore	(Name)		
	Orange	(County)	6/25/09	(Date)
1270.		(Name)		
		(County)		(Date)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 580
PROPOSED COMMITTEE SUBSTITUTE S580-CSRB-47 [v.6]

7/1/2009 12:42:41 PM

Short Title: N.C. Life Science Development Corp. Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.

The General Assembly of North Carolina enacts:

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

"Article 4.

"Life Science Development Act.

"**§ 53A -100. Purpose and definitions.**

(a) Purpose. – The General Assembly finds that life science companies generate employment opportunities for the State, expand local tax bases, and engage in the discovery, development, and commercialization of new pharmaceuticals, biologic products, medical devices, and diagnostic products. The General Assembly finds that there exists in the State a serious shortage of credit for life science companies to finance new and expanded facilities and acquire equipment for the production and delivery of life science products and services. The purpose of this Article is to create a mechanism to provide financing to businesses in need of facilities or equipment for the production or delivery of products and services in the life sciences that will build permanent production facilities in North Carolina.

(b) Definitions. – The following definitions apply in this Article:

(1) Board. – The board of directors of the corporation.

(2) Corporation. – The North Carolina Life Science Development Corporation.

(3) Designated investor. – A person who purchases an equity interest in a qualified entity and who is issued an equity certificate pursuant to G.S. 53A-105.

(4) Equity certificate. – A contract between the fund and a designated investor setting forth the amount of investment, the return on the investment, and the repayment terms of the investment.

(5) Fund. – The North Carolina Life Science Loan Fund, L.L.C., Inc.

(6) Incorporator. – The president of the North Carolina Biotechnology Center, a North Carolina nonprofit corporation established and funded by the State of North Carolina.

(7) Life science company. – A company engaged in any of the following:

a. Biotechnology, including agricultural and industrial uses.

b. Pharmaceuticals.

c. Biologic products.

d. Human health care and medical devices.
e. Diagnostic devices.
f. Service laboratories or facilities providing support services to the foregoing companies.

(8) Person. – An individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.

(9) Tax credit certificate. – A certificate issued by the Secretary of Revenue to a designated investor under which a tax credit is issued to the designated investor pursuant to G.S. §105-129.115.

"**§ 53A-101. North Carolina Life Science Development Corporation.**

(a) Creation. – The North Carolina Life Science Development Corporation is a 501(c)(3) entity organized to administer this Article The incorporator must form the corporation by filing articles of incorporation for the corporation with the Secretary of State. The corporation must adopt bylaws and operational policies that are consistent with this Article.

(b) Purposes. – The purposes of the corporation to be specified in the articles of incorporation must include the following:

(1) To organize the fund.
(2) To manage the Fund.
(3) To determine when a tax credit certificate must be issued.
(4) To perform other duties permitted by North Carolina law and consistent with the requirements of this Article.

(c) Conflict of Interest. – The corporation must adopt conflict of interest policies that include all of the following provisions:

(1) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from having any financial interest in a company to which the entity makes loans.
(2) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from accepting employment in a company to which the entity makes loans for a period of at least six months before and after the service of the employee, officer or director with the entity.

(d) Prohibition. – The corporation is prohibited from pledging the credit or taxing power of the State or any political subdivision of the State, or making its debts payable out of any moneys or resources except those of the corporation. The obligations of the corporation are not obligations of the State or any political subdivision of the State but are obligations of the corporation payable solely and only from the corporation's resources.

"**§ 53A-102. Board of Directors.**

The incorporator must name the initial board of directors of the corporation for terms set forth in the corporation's bylaws. The incorporator must exercise due care to assure that the persons named provide the board with the requisite financial, business, and scientific experience necessary in order to carry out the duties of the corporation. The initial board of the corporation consists of nine members, including the president of the North Carolina Biotechnology Center and the North Carolina Secretary of Commerce, who shall be permanent ex officio voting members of the board. After the initial board is named, vacancies will be filled and new directors elected by the board in the manner provided by the corporation's bylaws.

The president of the North Carolina Biotechnology Center shall serve as chair of the board and the North Carolina Secretary of Commerce shall serve as vice-chair.

"**§ 53A-103. North Carolina Life Science Development Fund.**

(a) Organization. – The board must form a for-profit limited liability company under Chapter 57C of the General Statutes known as the North Carolina Life Science Development Fund, L.L.C. The corporation is the sole managing member of the limited liability company.

(b) Purpose. – The Fund may make loans to life science companies for the following purposes:

(1) The acquisition or expansion of capital facilities in North Carolina and to acquire capital equipment to be located in North Carolina.

(2) Regulatory, documentation, and other costs required to make the facilities or equipment to be located in North Carolina operational.

(c) Investments in the Fund. – The Fund is organized to accept nonmanaging member investments from designated investors that pay a designed rate of return and a scheduled redemption, in accordance with rules adopted by the corporation. Investments by designated investors in the fund are permissible investments under applicable laws of the State for State-chartered banks, State-chartered savings and loan associations, State-chartered credit unions, State-chartered industrial loan corporations, domestic insurance companies, or any combination of these entities.

(d) Management Fee. – The corporation may collect a management fee from the Fund. The fee may not exceed the amount needed to pay for reasonable and necessary costs and expenses of the corporation for the activities described in this Article. The corporation is not entitled to receive any other compensation from the Fund.

"**§ 53A-104. Loans by North Carolina Life Science Development Fund.**

(a) Loan Criteria. – The board must determine to what extent and when the Fund should loan funds to qualified life science companies engaged in manufacturing based on the evaluation of the following factors:

(1) Borrower's written business plan.

(2) Borrower's written manufacturing or service plan.

(3) Borrower's history of attracting operating capital from investors, grants, or other lenders.

(4) Borrower's management team.

(5) Borrower's demonstration of engaging in high-tech manufacturing or service in North Carolina.

(6) Borrower's job creation potential in North Carolina.

(7) Borrower's financial resources.

(8) Any other factors considered by the board of directors to be consistent with this Article.

(b) Loan Cap. –The maximum cumulative amount loaned to any borrower may not exceed thirty million dollars ($30,000,000).

"**§ 53A-105. Equity certificates.**

(a) Equity Certificate. – Each designated investor will receive from the Fund an equity certificate. Once issued, an equity certificate is binding on the Fund and the corporation and may not be modified, terminated, or rescinded. An equity certificate must reflect all of the following:

(1) That the investor is a nonmanaging member of the Fund.

(2) The amount of the investment.

(3) The dates and amounts of each guaranteed return on the investment.

(4) The date upon which the investment will be returned to the investor.

(5) That the corporation will issue a tax credit certificate when required by subsection (b) of this section.

(b) Payment. – The corporation must determine at least 20 days prior to the due date of any payment to a designated investor required by an equity certificate whether the Fund will be

able to make the payment in full, taking into consideration the cash flow needs of the Fund, including funding its continuing operations and obligations to the corporation for costs and expenses. In the event the corporation determines there will be a shortfall, the corporation must issue the designated investor a tax credit certificate. The tax credit certificate must include all of the following information:

(1) The amount of the initial equity investment.

(2) The rate of return on the invested capital.

(3) The calculation formula for determining the scheduled aggregate return on the initial equity investment.

(4) The due date of the payment.

(5) The amount of the shortfall for which a tax credit may be claimed under Article 3L of Chapter 105 of the General Statutes.

"**§ 53A-106. Cap on tax credit certificates.**

(a) Cap Amount. – At no time may the total unpaid amount of the issued equity certificates and the remaining obligations of the Fund to designated investors as reflected in the equity certificates backed by potential tax credit certificates exceed one hundred million dollars ($100,000,000). The chair and vice-chair of the board may by unanimous vote require that the Fund repay to the State any or all of the tax credits taken pursuant to a tax credit certificate issued under G.S. 53A-106. The decision of the chair and vice-chair is binding on the corporation and on the Fund. Upon payment, the cap on equity certificates under this subsection is increased to the extent of the payment.

(b) Outstanding Issuances. – So long as a tax credit certificate has been issued and has not been repaid as permitted in subsection (a) of this section, the board must determine, on or before each fifth anniversary of the first issuance of the tax credit certificates and more frequently if the board of directors wishes, whether and to what extent the Fund has the ability to repay the State for the tax credits, considering the Fund's outstanding obligations, ongoing operation, and need for further lending as contemplated in this Article. The board must include this information in the report required by G.S. 53A-107.

"**§ 53A-107. Annual audit and report.**

(a) Audits. – Each calendar year, the corporation must conduct an audit of the activities of the Fund to be made as described in this subsection. The audit must be conducted by an independent auditor engaged by the board. Except for the contract for auditing services, the independent auditor may have no business, contractual, or other connection to the corporation or to the Fund.

(b) Reports. – The corporation must publish an annual report of the activities conducted by the Fund. The annual report must include all of the following:

(1) A copy of the audit of the Fund as required by subsection (a) of this section.

(2) A review of the progress of the corporation in implementing the purposes stated in G.S. 53A-101 and the business plan of the Fund.

(3) A description and amount of the issuance of any tax credit certificates issued under this Article.

"**§ 53A-108 . Dissolution.**

Upon dissolution of the Fund, the corporation will be liquidated and dissolved and any assets owned by the Fund or the corporation must be distributed to the State."

SECTION 2. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"Life Science Development Tax Credits.

"**§ 105-129.100. Tax credit.**

(a) Credit. – A taxpayer that receives a tax credit certificate from the North Carolina Life Science Development Corporation under Article 4 of Chapter 53A of the General Statutes

is allowed a tax credit equal to one hundred percent (100%) of the amount specified in the certificate. The credit is allowed against the franchise tax levied in Article 3 of this Chapter, the premium tax levied in Article 8B of this Chapter, and the income taxes levied in Article 4 of this Chapter.

(b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

(d) Substantiation. – A taxpayer allowed a credit under this Article must maintain and make available for inspection any information or records required by the Secretary. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer

"**§ 105-129.101. Reports.**

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer, for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 3. Section 2 of this act is effective for taxable years beginning on or after January 1, 2010. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 1, 2009

TO: Senator Hoyle

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to S580 v.1

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					

*** Minimal impact in first ten years – potential loss of $3.5 million annually in 10 – 15 years. See Assumptions and Methodology ***

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
Enacts new Article 4 in GS Chapter 53A, entitled the North Carolina Life Science Loan Fund Act, which establishes the North Carolina Life Science Development Corporation (Corporation) and the North Carolina Life Science Loan Fund (Fund) to promote long-term investment in life science and other basic scientific research by facilitating the transfer of new discoveries into commercial development, new employment, and further scientific advances. Defines life science company as a company engaged in any of the following: (1) biotechnology, including agricultural and industrial uses; (2) pharmaceuticals; (3) biologic products; (4) human health care and medical devices; (5)

diagnostic services; and (6) service laboratories or facilities providing support services to the foregoing companies.

Requires the Corporation to organize the Fund as a private, for-profit, limited liability company having the Corporation as its sole managing member. Provides that the Fund makes loans to life science companies for (1) the acquisition or expansion of capital facilities and the acquisition of capital equipment located in the state and (2) regulatory, documentation, and other costs required to make the facilities or equipment to be located in the state operational. Authorizes the Fund to accept nonmanaging member investments from designated investors that pay a designated rate of return and scheduled redemption. Enumerates a list of factors in determining to what extent and when the Fund loans funds to qualified life science companies or other companies engaged in high-tech manufacturing. Prohibits the Fund from making a loan or loans to any borrower in excess of $30 million. Requires an annual audit of the Fund by the Corporation. Sets forth procedures for each designated investor to receive an equity certificate from the Fund, and when applicable, receive (1) payments from the Fund or (2) a tax credit certificate issued by the Secretary of Revenue (Secretary).

Enacts new Article 3L of GS Chapter 105, entitled Life Science Development Tax Credits, to provide for a refundable tax credit equal to 100% of the amount specified on the tax credit certificate issued by the Secretary to the Corporation for distribution to designated investors. Provides that this credit is allowed against a franchise tax levied in Article 3, the premium tax levied in Article 8B, or income taxes levied in Article 4 of GS Chapter 105. Requires that the taxpayer maintain and make available to the Secretary records substantiating the credit claimed. Requires that the Department of Revenue publish by May 1 of each year, for the 12-month period ending the preceding December 31, (1) the number of taxpayers claiming the credit, (2) the amount each credit claimed and the taxes against which it was applied, and (3) the total cost to the General Fund of the credits claimed.

ASSUMPTIONS AND METHODOLOGY:
Upon passage of the bill, the NC Life Science Development Fund would begin the process of recruiting investment and accepting applications for loans and determining which projects are eligible. It is estimated that $70 million in loans would be made within five years. The financial model for the Fund calls for interest-only payments to be made to investors for the first ten years. Because a reserve fund will be established from investments, the Fund is expected to be able to make all scheduled payments for at least ten years.

The Fund will begin to repay principal obligations to investors after ten years. If any of the tax credit certificates are used, it would most likely occur in 10-15 years when the principal repayments become due. A model developed for the NC Biotechnology Center projected a "worst-case scenario" loss of 25% of principal, or $17.5 million. In the event that this scenario occurred, the credits would be taken over the 5-year period with an average annual amount of $3.5 million.

SOURCES OF DATA: North Carolina Biotechnology Center

TECHNICAL CONSIDERATIONS: None

2009

SENATE
FINANCE

MINUTES

SENATE FINANCE COMMITTEE
Tuesday, July 14, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Tuesday, July 14, 2009 at 1:00 p.m. There were twenty-seven committee members present. Senator Dan Clodfelter presided. Spence Newcombe, Allie Murphy, Natalie Jones, Parker Robinson, Will Rhinehart, Garnett Bullock, and Trevor Burgess of Gastonia; Melissa Hirsch of Raleigh; Mark Eatman of Rocky Mount; Matthew Lovejoy of Greensboro; and Brooke Tetrault of Charlotte served as pages.

H.B. 564 – Wilson County Occupancy Tax Modifications.

Representative Tolson was recognized to explain the bill which modifies the authorization for Wilson County to levy an occupancy tax. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 121 – Regulation of Golf Carts by Local Governments.

Representative Underhill was recognized to explain the bill which allows all units of local government to regulate golf carts. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 688 – Jamestown/Satellite Annexations.

Representative Wiley was recognized to explain the bill. It removes the cap on satellite annexations for the Town of Jamestown. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the summary and a map of Jamestown and the annexation area is attached.

H.B. 991 – Montgomery County Debt Collection/Water.

Representative Goodwin was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS authorizes Montgomery County to attach Personal Property, garnish wages, and place license on certain real property to collect unpaid fees for water and sewer services. Senator Tillman offered a technical amendment and moved for its adoption. The motion carried. Senator McKissick moved for a favorable report and the motion failed.

H.B. 772 – Huntersville Charter Rewrite.

Representative Tillis recognized to explain the bill which revises and consolidates the Charter of the Town of Huntersville. Senator Weinstein moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1595 – Malt Beverage Special Permit.

Representative Tillis and Representative Ross were recognized to explain the bill. The bill authorizes the North Carolina Alcoholic Beverage Control Commission to issue malt beverage special event permits and malt beverage tasting permits in the same or similar manner as wine. The Reverend Mark Creech, director of the NC Christian Action League, was recognized to speak in opposition to the bill. Bill Chandler, NC Alcohol Law Enforcement Division director, was recognized to answer questions. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 991 – Montgomery County Debt Collection/Water.

This bill had been discussed earlier in the meeting and the motion for a favorable report had failed. Senator Berger moved to reconsider the motion. There was no opposition to his motion and the motion for favorable report passed on the second consideration. A copy of the PCS, the amendment and the summary is attached.

S.B. 1068 – Permitting of Wind Energy Facilities.

Senator Albertson was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS establishes a system of permits for the siti9ng and operation of wind energy facilities. Jeff Hudson, a staff attorney with the Research Division, was recognized to explain the bill and answer questions. Crystal Simmons from Appalachia State University's Renewable Energy Division, was recognized to speak in favor of the bill and answer questions. Marvin Wall of Avery County was recognized to speak in favor of the bill. Senator Nesbitt moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note, and Ms. Simmons's handout is attached.

The meeting adjourned at 2:12 p.m.

Senator Dan Clodfelter, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, July 14, 2009

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

FAVORABLE

H.B.(CS #1) **121**	Regulation of Golf Carts by Local Governments	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **564**	Wilson County Occupancy Tax Modification.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **688**	Jamestown/Satellite Annexations.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #2) **772**	Huntersville Charter Rewrite.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(SCS #1) **1595**	Malt Beverage Special Permit.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 5

Committee Clerk Comments:
H121 – Sen. Preston
H564 – Sen. Swindell
H688 – Sen. Tillman
H772 - ??
H1595 – Sen. McKissick

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, July 14, 2009

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

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

H.B. **991** Montgomery County Debt Collection/Water.

Draft Number:	70470
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1068** Permitting of Wind Energy Facilities.

Draft Number:	85264
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:
H991 – Sen. Tillman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 14, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **667** 2009 Viticulture/Enology Act.

Draft Number:	50766
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1222** Mortgage/ Rate Spread & High-Cost Loans.

Draft Number:	50765
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:
H667 - ??
H1222 – Sen. Blue

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 14, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 553	Incorporate Swannanoa.	Senator Nesbitt, Jr.
SB 867	Tax Law Compliance Condition of ABC Permit.	Senator Hoyle
SB 1068	Permitting of Wind Energy Facilities.	Senator Albertson
HB 121	Regulation of Golf Carts by Local Governments	Representative Underhill Representative Wainwright
HB 564	Wilson County Occupancy Tax Modification.	Representative Farmer-Butterfield Representative Tolson
HB 688	Jamestown/Satellite Annexations.	Representative Wiley
HB 772	Huntersville Charter Rewrite.	Representative Tillis
HB 991	Montgomery County Debt Collection/Water.	Representative Burr Representative Goodwin
HB 1595	Malt Beverage Special Permit.	Representative Ross Representative Tillis

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Tuesday, July 14, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 121	Regulation of Golf Carts by Local Governments	Rep. Underhill Rep. Wainwright
HB 564	Wilson County Occupancy Tax Modification.	Rep. Farmer-Butterfield Rep. Tolson
HB 688	Jamestown/Satellite Annexations.	Rep. Wiley
HB 772	Huntersville Charter Rewrite.	Rep. Tillis
HB 991	Montgomery County Debt Collection/Water.	Rep. Burr Rep. Goodwin
HB 1595	Malt Beverage Special Permit.	Rep. Ross Rep. Tillis
SB 553	Incorporate Swannanoa.	Sen. Nesbitt
SB 867	Tax Law Compliance Condition of ABC Permit.	Sen. Hoyle
SB 1068	Permitting of Wind Energy Facilities.	Sen. Albertson

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	CAL
Jami Fitzgerald	CAL
Bill Church	CCBS/ALE
Penny Hutto	School of Law
Elizabeth Ortiz	Environment Law Center
Charles Hogan	CAPSTRAT
Dan Conrad	NCCN
Elizabeth Watson	Environment North Carolina
Brian G Moy	Environment NC
Annie Schetinnikova	Environment NC
Alicia Davis	NWC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	DOT
George Everett	Duke Energy
Wade Kolls, III	UNC SOG
George Eppsteiner	UNC SOG
Aimee Wall	UNC SOG

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
R DAVIS	RALEIGH NC
Joey GARDNER	DMV License + Theft
Sharon Miller	CUCA
Paul Sherman	NCFB
Paula Page	4
Linda Andrews	4
Marvin Wall	myself
Andrew Meehan	NC Elec Co-ops
Cannon Henley	Electricities of NC
Suzanne Malysz	SEANC
Farah Qubain	SEANC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Charles W. Wilmoth	NC Dept. of Revenue
Sylvia Tarleton	
Gibbs Knotts	Western Carolina Univ.
Helene Cser	EDF
KRISTEN CORACINI	EDF
Saxby Stradinger	NCSEA
Julie Robinson	NCSEA
PAM QUINLAN	NCSEA
Bob Leker	State Energy Office
Brian Miles	NC state
Crystal Simmons	Voting NC Resident, Newland, NC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Deal	Appalachian Institute for Renewable Energy + Appalachian Voices

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dan Crawford	CCNC
Steve Wall	DENR
Erin Schweitzer	UNC-GA
Anita Watkins	UNC-GA
Betsy McCorkle	CCNC
Will Culpepper	Moore + Van Allen

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NC DOR
Alexandra Embry	DENR
Elizabeth Biser	DENR

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
GERRY COHEN	BILL DRAFTING
Dean Plunkett	NCBWWA

Pages Attending

DATE: 14 July

COMMITTEE: Finance

Time: 1 PM Location: 5

Sen. Hoyle

Page Name	Hometown	Sponsoring Senator
Spence Newcombe	Gastonia	Hoyle
Allie Murphy	Gastonia	Hoyle
Natalie Jones	Gastonia	Hoyle
Melissa Hirsch	Raleigh	Preston
Mark Eatman	Rocky Mount	Swindell
Parker Robinson	Gastonia	Hoyle
Will Rhinehart	Gastonia	Hoyle
Garnett Bullock	Gastonia	Hoyle
Trevor Burgess	Gastonia	Hoyle
Matthew Lovejoy	Greensboro	Vaughan

Brooke Tetrault Charlotte Rucho

HOUSE BILL 564
Committee Substitute Favorable 5/20/09
Third Edition Engrossed 5/26/09

Short Title: Wilson County Occupancy Tax Modification. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORIZATION FOR WILSON COUNTY TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 484 of the 1987 Session Laws, as amended by Chapter 901 of the 1987 Session Laws, Chapter 912 of the 1988 Session Laws, and Section 21(t) of S.L. 2007-527, reads as rewritten:

"**Section 1.** Occupancy Tax. (a) Authorization and scope. The Wilson County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or ~~similar~~ accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations, by summer camps, or by businesses that offer to rent no more than five units.~~organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section.~~ A tax levied under this section ~~is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~shall be levied, administered, collected, and repealed, as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(c1) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

(e) Distribution and use of tax revenue. Wilson County shall, on a ~~monthly~~ quarterly basis, remit the net proceeds of the occupancy tax to the Wilson County Tourism Development Authority. The Authority ~~may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Wilson County through advertising and promotion, to sponsor tourist-oriented events and activities in Wilson County, and to finance tourist-related capital projects in Wilson County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Wilson County and shall use the remainder for tourism-related expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Wilson County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 2.** Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it

shall also adopt a resolution creating the Wilson County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall provide that the Authority shall be composed of the following ~~seven~~ nine members:

(1) A Wilson County Commissioner appointed by the board of ~~commissioners;~~ commissioners.

(2) A member of the Wilson City Council appointed by the city ~~council;~~ council.

(3) Three owners or operators of motels, hotels, or other taxable accommodations in Wilson ~~County that have at least 5 units,~~ County, one of whom shall be appointed by the Wilson City Council, one by the Wilson County Board of Commissioners, and one by the Wilson County Chamber of ~~Commerce; and~~ Commerce.

(4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Wilson City Council and one by the Wilson County Board of Commissioners.

(5) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Wilson County Board of Commissioners.

(6) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Wilson City Council.

~~All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession.~~ The Wilson County Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the ~~chairman or of any three members~~ chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Wilson County shall be the ex officio finance officer of the Authority.

~~(b) Terms of office. Members of the Authority shall serve three-year terms except that the initial appointees shall serve the following terms:~~

~~(1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) of this section shall serve one-year terms.~~

~~(2) Of the members appointed pursuant to subdivision (a)(4) of this section, the appointee of the Wilson City Council shall serve a three-year term and the appointee of the board of commissioners shall serve a two-year term.~~

~~(3) Of the members appointed pursuant to subdivision (a)(3) of this section, the appointee of the Wilson City Council shall serve a one-year term, the appointee of the board of commissioners shall serve a three-year term, and the appointee of the Chamber of Commerce shall serve a two-year term.~~

(c) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate~~

~~percentage of net proceeds that may be expended for administrative services.~~Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"**Sec. 3.** This act is effective upon ratification."

SECTION 3. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, ~~and Washington~~Washington, and Wilson Counties, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

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

HOUSE BILL 564:
Wilson County Occupancy Tax Modification

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 13, 2009
Introduced by:	Reps. Tolson, Farmer-Butterfield	**Prepared by:**	Judy Collier
Analysis of:	Third Edition		Research Assistant

SUMMARY: ***House Bill 564 makes changes to the Wilson County Occupancy Tax by authorizing it to levy less than 3% and by modifying the composition of its Tourism Development Authority. It also conforms the legislation to the uniform administrative provisions in G.S. 153A-155 and to the guidelines adopted by the North Carolina Travel and Tourism Coalition and the House Finance Committee.***

The Occupancy Tax Subcommittee gave the PCS a favorable report on May 7, 2009.

CURRENT LAW: In 1987, the General Assembly authorized Wilson County to levy a 3% room occupancy tax, the proceeds of which are to be used to further the development of travel, tourism, and conventions through advertising and promotion, to sponsor tourist-oriented events and activities, and to finance tourist-related capital projects in the county. The county currently has a seven-member TDA board consisting of one county commissioner, one Wilson City Council member, three owners or operators of taxable accommodations that have at least five units, and two individuals involved in the tourist business who are not hotel owners or operators.

BILL ANALYSIS: House Bill 564 makes the following changes to the existing Wilson County Occupancy Tax:

- Changes the authorization to levy the tax from "3%" to "***up to* 3%.**"
- Expands the membership of the Wilson County Tourism Development Authority by two members who have an interest in the tourism business, one of whom is appointed by the Wilson County Commissioners and one of whom is appointed by the Wilson City Council.
- Makes other changes to conform the legislation to the uniform administrative provisions relating to the levy, collection, administration, repeal, and applicable penalties for occupancy tax.
- Rewrites the existing legislation to conform to the uniform guidelines adopted by the House Finance Committee, which are set out as follows:

UNIFORM OCCUPANCY TAX PROVISIONS	HB 564
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.	Conforms
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.	Conforms
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.	Conforms
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.	Conforms
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.	Conforms

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

BACKGROUND: Since 1983, the General Assembly has authorized many local government units to levy a room occupancy tax, with wide variation in the rate of tax, administration of the tax, use of the tax proceeds, and the body responsible for deciding how the tax proceeds will be spent. The North Carolina Travel and Tourism Coalition has issued a policy statement for legislation authorizing local occupancy taxes, which contains many principles similar to those established by the House Finance Subcommittee on Occupancy Taxes in 1993. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 (counties) and G.S. 160A-215 (municipalities) – to provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

H564-SMRE-62(e3) v1

Trina Griffin, counsel to House Finance Committee substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 121
Committee Substitute Favorable 3/18/09
Senate State and Local Government Committee Substitute Adopted 6/24/09

Short Title: Regulation of Golf Carts by Local Governments. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL UNITS OF LOCAL GOVERNMENT TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-245. Regulation of golf carts on streets, roads, and highways.**

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a county may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within the county that is located in any unincorporated areas of the county or on any property owned or leased by the county.

(b) By ordinance, a county may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway."

SECTION 2. G.S. 160A-300.5 is repealed.

SECTION 3. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.**

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway."

SECTION 4. Section 6 of S.L. 2001-356 is repealed.

SECTION 5. Section 1 of S.L. 2003-124, as amended by S.L. 2004-58, S.L. 2007-204, and S.L. 2007-259, reads as rewritten:

"**SECTION 1.** Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Towns of Beech Mountain, North Topsail Beach, and Seven Devils, and the City of Conover may, by ordinance, regulate the operation of ~~golf carts and~~ utility vehicles on any public street or road within the City or Town. By ordinance, the City or Town may require the registration of ~~golf carts and~~ utility vehicles, specify the persons authorized to operate ~~golf carts and~~ utility

vehicles, and specify required equipment, load limits, and the hours and methods of operation of the ~~golf carts and~~ utility vehicles."

SECTION 6. Section 1 of S.L. 2005-11, as amended by S.L. 2007-18, is repealed.

SECTION 7. Section 3 of S.L. 2005-11, as amended by S.L. 2006-149, S.L. 2006-152, and S.L. 2007-18, reads as rewritten:

"**SECTION 3.** ~~Section 1 of this act applies only to the Towns of Benson, Bladenboro, Chadbourn, Clarkton, Elizabethtown, Four Oaks, Rose Hill and Tabor City. Section 2 of this~~This act applies only to Moore County."

SECTION 8. Section 9.4 of the Charter for the Town of Cary, as enacted by Section 1 of S.L. 2005-117, is repealed.

SECTION 9. S.L. 2006-27, S.L. 2006-149, S.L. 2006-152, S.L. 2007-18, S.L. 2007-72, S.L. 2007-336, and S.L. 2008-71 are repealed.

SECTION 10. Section 5.2 of the Charter for the Town of Whispering Pines, as enacted by Section 1 of S.L. 2008-105, is repealed.

SECTION 11. This act becomes effective October 1, 2009. A county may adopt an ordinance under G.S. 153A-245, and a city may adopt an ordinance under G.S. 160A-300.6 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any act does not affect the rights or liabilities of a local government that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any county or city had adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 153A-245 or G.S. 160A-300.6 as enacted by this act, that ordinance shall remain in effect until amended or repealed by that county or city.

HOUSE BILL 121:
Regulation of Golf Carts by Local Governments

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Reps. Underhill, Wainwright	**Prepared by:**	Heather Fennell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: HB 121 authorizes all city and county governments to regulate the operation of golf carts on public streets, roads, and highways within a city's municipal limits, within a county's unincorporated areas, or on any property owned or leased by a city or county. The bill also permits golf carts to be operated only where the speed limit is 35 mph or less and only by persons who are at least 16 years old.

CURRENT LAW: Vehicles intended to be operated on State highways must be registered with the Division of Motor Vehicles (G.S. 20-50). Golf carts may not be registered (G.S. 20-54) and, therefore, may not be operated on highways. A "golf cart" is defined as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour. (G.S. 20-4.01(12a)).

G.S.160A-300.5 authorizes one county and several municipalities to regulate by ordinance the operation of golf carts on any public street or highway within their jurisdictional limits or on any property that they own or lease. This statute authorizes the listed jurisdictions to require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

In addition, under current local laws, several other local jurisdictions are authorized to regulate the operation of golf carts.

BILL ANALYSIS: House Bill 121 is a statewide bill that authorizes all cities and counties to regulate golf carts within their corporate limits.

Section 1 authorizes all counties to regulate by ordinance the operation of golf carts on public streets, roads, and highways that are located in any unincorporated areas within the county or on any property owned or leased by the county, where the speed limit is 35 miles per hour or less. No person less than 16 years old would be permitted to operate a golf cart on a public street, road, or highway.

Section 3 authorizes all cities to regulate by ordinance the operation of golf carts on public streets, roads, and highways that are located within their municipal limits or on any property owned or leased by the city, where the speed limit is 35 mph or less. No person less than 16 years old would be permitted to operate a golf cart on a public street, road, or highway.

Under Sections 1 and 3 of the bill, cities and counties may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

Remaining sections of the bill repeal or rewrite local acts to conform to the changes made in this bill.

EFFECTIVE DATE: This act becomes effective October 1, 2009. Under the bill's savings clause, local governments would not be required to re-enact existing golf cart ordinances authorized by a local act as long as the ordinance meets the requirements of the new sections, including the maximum speed limit and minimum operator age restriction.

BACKGROUND: G.S. 160A-300.5 authorizes the following jurisdictions to regulate the operation of golf carts: New Hanover County; Cities of Locust, Saluda, and Wilmington; Towns of Badin, Beulaville, Butner, Carolina Beach, Emerald Isle, Erwin, Faison, Fremont, Hobgood, Indian Beach, Kings Mountain, Kure Beach, Mayodan, Morrisville, Mount Olive, Oakboro, Oriental, Pineville, Shelby, Wrightsville Beach; Village of Pinehurst.

In addition to the municipalities and the county listed in G.S. 160A-300.5, the following jurisdictions have authority granted by local act to regulate golf carts:

- Bald Head Island S.L. 2002-129
- Beech Mountain S.L. 2003-124
- Benson S.L. 2006-149
- Bladenboro S.L. 2005-11
- Cary S.L. 2005-117
- Caswell Beach S.L. 2006-149
- Chadbourn S.L. 2006-149, S.L. 2007-18
- Clarkton S.L. 2006-152, S.L. 2007-18
- Conover S.L. 2007-259
- Elizabethtown S.L. 2005-11, S.L. 2007-18
- Faison S.L. S.L. 2006-27
- Four Oaks S.L. 2007-18
- Lake Waccamaw S.L. 2001-356
- Lake Royale community in Franklin and Nash Counties S.L. 1999-11
- North Topsail Beach S.L. 2007-204
- Rose Hill S.L. 2005-11, S.L. 2007-18
- Seven Devils S.L. 2004-58
- Seven Lakes community in Moore County S.L. 2002-82
- Tabor City S.L. 2006-149, S.L. 2007-18
- Whispering Pines S.L. 2008-105

The following local bills to allow regulating golf carts have been introduced this session:

- Grover (HB 11)
- Holly Ridge (HB 31)
- Marvin (HB 73, SB 63)
- Camden County (HB 77)
- Swansboro (HB 113)
- Morganton (HB 117)
- River Bend (HB 121)
- Pikeville (HB 127, SB 480)
- Winterville (HB 152, SB 197)
- Bethel (HB 165, SB 145)
- Troutman (HB 234)
- Marshville (HB 244)
- Hendersonville (HB 276, SB 288)
- Denton (HB 474)
- Currituck County (HB 662)
- Deep Run (HB 973)
- Rutherford County (HB 1008)
- Stanfield (SB 28)
- Stallings (SB 103)
- Swansboro/Holly Ridge (SB 176)

As introduced, HB 121 was a local bill to allow the Town of River Bend in Craven County to regulate golf carts. In the House, it was converted into a bill to let all municipalities and counties regulate golf carts, but it did not contain the 35 mph and 16-year-old limitations. Three other bills this session would let all local governments regulate golf carts; to date, none has been enacted. One of them, SB 650, was approved by this committee in May with the 35 mph and 16-year-old provisions this PCS for HB 121 now contains.

Giles Perry and Bill Patterson, staff attorneys in the Research Division, contributed significantly to this summary.

H121-SMTD-110(e3) v3

HOUSE BILL 688

Short Title:	Jamestown/Satellite Annexations.	(Local)
Sponsors:	Representative Wiley.	
Referred to:	Rules, Calendar, and Operations of the House, if favorable, Judiciary II, if favorable, Finance.	

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF JAMESTOWN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

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

HOUSE BILL 688:
Jamestown/Satellite Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Rep. Wiley	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 688 is a local bill that would allow the Town of Jamestown to annex satellite areas without meeting one of the five (5) standards required for voluntary satellite annexation. The Town would not have to meet the standard that limits the size of the area within the satellite corporate limits.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area[1] may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. **The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.**

BILL ANALYSIS: House Bill 688 would add the Town of Jamestown to the list of municipalities for which the fifth requirement stated above has been eliminated. The other municipalities include the following:

Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

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

H688-SMTD-113(e1) v3

Kara McGraw, counsel to House Judiciary II Committee substantially contributed to this summary.

[1] G.S. 160A-58.4 provides that satellite corporate limits cannot be considered a part of a municipality's corporate limits for purposes of its ETJ. Therefore, satellite annexations have no effect upon a municipality's ETJ.

Town of Jamestown

Town of Jamestown

Currently, contiguous town limits include 1630 acres. 10% of that total (163 acres) is allowed to be "satellite" annexed parcels. At this time, our golf course (185 acres) puts us over this limit. The proposed satellite annexation (voluntary- in blue) is approximately 4 acres in size.

1 inch = 0.5 miles

0 0.25 0.5 1 1.5 Miles

Map Prepared by:
Matthew Johnson, Planner, Town of Jamestown, NC
Current as of 3/10/2009

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 991
PROPOSED SENATE COMMITTEE SUBSTITUTE H991-CSTD-64 [v.2]

7/6/2009 7:13:21 PM

Short Title: Montgomery County Debt Collection/Water. (Local)

Sponsors:

Referred to:

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MONTGOMERY COUNTY TO ATTACH PERSONAL PROPERTY, GARNISH WAGES, AND PLACE LIENS ON CERTAIN REAL PROPERTY TO COLLECT UNPAID FEES FOR WATER AND SEWER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. A county may adopt an ordinance providing that a fee charged by the county for water or sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the county for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided a statement containing the name and address of the person against whom the lien is claimed, the name of the county claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service and within 180 days of the date of the failure to pay for the service. The lien may be discharged as provided in G.S. 44-48.

SECTION 2. This act shall not apply to fees collectable under Articles 9A and 9B of Chapter 44 of the General Statutes, and G.S. 153A-293.

SECTION 3. This act applies to Montgomery County only.

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

HOUSE BILL 991:
Montgomery County Debt Collection/Water

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Reps. Goodwin, Burr	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition H991-CSTDf-64		

SUMMARY: ***The proposed committee substitute to House Bill 991authorizes Montgomery County to collect delinquent fees for water and sewer services in the same manner property taxes are collected.***

CURRENT LAW: Local governments are authorized to charge fees for the provisions of various services, including solid waste systems, water and waste water systems, transportation systems, mental health services, animal control, etc. Several fees have statutory provision for the collection of the fees, including:

- **Public Enterprises:** G.S. 153A-277(b) authorizes a county to disconnect services after an account is delinquent for 10 days.
- **Ambulance Services:** G.S. 44-51.4 allows a local government to collect an account 90 days delinquent through the use of attachment and garnishment proceedings set forth for the collection of property taxes. G.S. 44-55.1 also allows the placement of a lien on real property for unpaid ambulance fees.
- **Solid Waste Fees:** G.S. 153A-293 authorizes a county to enact an ordinance providing that a solid waste fee may be billed and collected as a property tax.

Property taxes may be collected in the following ways:

- Placement of a lien on real and personal property that is superior to all other liens.
- Sale of personal property.
- Attachment and garnishment of wages and bank accounts.
- Sale of real property.

BILL ANALYSIS: The proposed committee substitute to House Bill 991 authorizes Montgomery County to adopt an ordinance providing that the county may collect any fee for water and sewer service that is 90 days past due as if it were a property tax. For liens placed on real property, the lien is valid from the time of filing. The lien must be filed with the clerk of superior court in the county in which the service was provided and must provide a statement of the name and address of the person against whom the lien is served, the specific service provided for which the fee is delinquent, the amount of the unpaid charge, and the date and place of the service provided. The lien must be filed after the charge is 90 days past due and within 180 days of the failure to pay the charge.

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

BACKGROUND: The following local legislation regarding delinquent water and sewer fees has been enacted:

- S.L. 1993-768: Authorizes City of Durham to collect delinquent water and sewer fees resulting from leaking or broken pipes of the real property owner in the same manner as property taxes.

- S.L. 2003-270: Authorizes Columbus[1], Davie, Duplin, and Lenoir Counties, the municipalities in these counties, and water and wastewater authorities in these counties to collect delinquent water and sewer fees in the same manner as delinquent property taxes.

H991-SMTD-111(CSTDf-64) v5

[1] The authority for Columbus County was removed in 2004. However, the municipalities within Columbus County maintain the authority.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 991

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

H991-ATD-51 [v.1]

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

Date July 14 ,2009

Senator Tillman

moves to amend the bill on page 1, line 19 by rewriting the line to read:

"lien may be discharged as provided in G.S. 44-48. A lien on real property is not effective against real property owned by purchasers for a valuable consideration, including trustees under deeds of trusts on the real property and mortgagees under mortgages which secure indebtedness, whose interest has been registered in the office of the register of deeds of Montgomery County prior to the filing of the lien."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 772

Committee Substitute Favorable 5/6/09
Committee Substitute #2 Favorable 6/3/09
Fourth Edition Engrossed 6/8/09

Short Title: Huntersville Charter Rewrite. (Local)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF HUNTERSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Huntersville is revised and consolidated to read:

"CHARTER OF THE TOWN OF HUNTERSVILLE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Sec. 1.1. **Incorporation.** The Town of Huntersville and the inhabitants thereof shall continue to be a municipal body politic and corporate under the name and style of the "Town of Huntersville," hereinafter sometimes referred to as the "Town."

"Sec. 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Huntersville specifically by this Charter or upon municipal corporations by general law, which shall include as general law as defined in G.S. 160A-1.

"Sec. 1.3. **Corporate Boundaries.** The corporate limits shall be those existing at the time of the ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town showing the current municipal boundaries shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Mecklenburg County Register of Deeds, the appropriate board of elections, and as may otherwise be required by general law.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. **Governing Body; Composition.** The Board of Commissioners, hereinafter referred to as the "Board," and the Mayor shall be the governing body.

"Sec. 2.2. **Board of Commissioners.** Beginning with the election and installation of Board members elected in the 2011 municipal elections, the Board shall consist of six members, elected by all qualified voters of Huntersville, for a term of two years or until their successors are elected and qualified. Until such time, the Board shall continue to consist of five members elected to serve a two-year term or until their successors are elected and qualified.

"Sec. 2.3. **Mayor, Term of Office, Duties.** The Mayor shall be elected by all qualified voters of the Town for a term of two years and until a successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the

Board. The Mayor shall have the right to vote only when there is an equal division on any question in a matter before the Board, unless otherwise provided in this Charter, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Sec. 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability. A Board member serving as Mayor Pro Tempore shall be entitled to vote on all matters and shall be considered a Board member for all purposes, including the determination of whether a quorum is present. The Mayor Pro Tempore shall serve at the pleasure of the Board.

"Sec. 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. **Quorum; Voting.** As provided by G.S. 160A-74, a majority of the actual membership of the Board plus the Mayor, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by a majority vote of the remaining members of the Board present shall be counted as present for the purposes of determining whether or not a quorum is present. All votes shall be taken in accordance with applicable provisions of general law, and in particular G.S. 160A-75.

"Sec. 2.7. **Qualifications.** The qualifications of the Mayor and Board members shall be in accordance with general law and with the Constitution of North Carolina.

"Sec. 2.8. **Compensation.** The Board may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officials may be made effective at such time as the Board may direct, but the salary of elected officials shall not be reduced during the then current term of office unless such official has agreed thereto. The officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties subject to adopted Board policies. The Board may, from time to time, establish rates and amounts of reimbursement which shall not be exceeded without prior approval of the Board.

"Sec. 2.9. **Vacancies on Board.** In the event of a vacancy on the Board, the remaining members of the Board shall select a replacement to fill the unexpired term, which replacement shall serve until the expiration of that term or until a replacement thereof is elected and qualified. If the vacancy is as a result of the resignation of a Board member, and if the resigning member has tendered his or her resignation effective as of the date subsequent thereto, and such resignation is accepted by the remaining members of the Board, the Board may appoint a replacement at anytime thereof to be effective upon the effective date of the resignation, and if the resignation is to be effective more than one year from and after the beginning of the resigning member's then current term, in which case the resigning member may participate in the selection of the replacement.

"Sec. 2.10. **Vacancies in Office of Mayor.** In the case of a vacancy in the office of Mayor, the remaining members of the Board shall choose a replacement to fulfill an unexpired term of the Mayor and until a replacement thereof is elected and qualified, provided, the selection of a replacement other than a then serving member of the Board shall require the affirmative vote of three-fourths of the total membership of the Board, excluding vacant seats.

"Sec. 2.11. **Powers and Duties.** Board members and the Mayor shall have all of the powers and duties granted by this Charter and granted by general municipal law, unless specifically limited by this Charter.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the Uniform Municipal Election Laws of North Carolina. Elections shall be conducted and the Mayor and Board Members elected on a nonpartisan basis according to the nonpartisan, plurality method authorized by G.S 163-292.

The Mayor shall be elected by all voters of the Town to serve for a two-year period and until his or her successor is elected and qualified.

"Sec. 3.2. **Election of Mayor and Commissioners.** The Mayor and all Board members shall be elected by all of the qualified voters of the Town in each regular municipal election, to serve for a term of two years or until their replacement is elected and qualified. The Mayor and Board members serving at the time of the ratification of this act shall continue in office until the next regular municipal election.

"Sec. 3.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or any applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. **Form of Government.** The Town shall operate under the Council-Manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. **Town Manager.** The Board shall appoint the Town Manager to be the administrative head of the Town government and be responsible for the administration of all departments and to serve at the pleasure of the Board, and receive such compensation as is fixed by the Board. The appointment shall be in accordance with G.S. 160A-147 and the provisions of Article 5 of this Charter. The Town Manager may concurrently hold another appointed, but not elected, office as determined by the Board. The Town Manager shall be the administrative head of the Town and shall have all the powers, duties, and authority as set forth in G.S. 160A-148, by general law, and by this Charter, unless otherwise limited by this Charter.

"Sec. 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and perform such other duties as may be required by law or as may be directed by the Board or Town Manager.

"Sec. 4.4. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform such other duties as required by law or as may be directed by the Board. The Board may appoint one or more assistant town attorneys to assist the Town Attorney. The Board may further authorize the Town Manager to engage the services of other duly qualified attorneys on individual legal matters and projects.

"Sec. 4.5. **Finance Director.** The Town Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Town Manager.

"Sec. 4.6. **Tax Collector.** The Board shall appoint a Tax Collector to perform those duties specified in G.S. 105-350 and such other duties as are prescribed by law or assigned by the Town Manager. This office is one that may be held concurrently with any other appointed, but not elected, office. Notwithstanding, the Town is specifically authorized to enter into interlocal agreements with other governmental taxing authorities and agencies to perform some or all of the tax collecting and revenue collecting services for the Town, and to pay to such other agency such fees as the Board may have, by resolution adopting the interlocal agreement, agreed to.

"ARTICLE V. TOWN MANAGER.

"Sec. 5.1. **Board-Manager Relationship.** The Board shall hold the Town Manager responsible for the proper management and affairs of the Town, and the Town Manager shall keep the Board informed of conditions and needs of the Town and shall make such reports and recommendations as may be requested by the Board or as the Town Manager may deem necessary. Neither the Mayor, Board, nor any member thereof shall direct the conduct of any Town employee, directly or indirectly, except through the Town Manager.

"Sec. 5.2. **Assistant Town Manager.** The Town Manager may appoint an Assistant Town Manager to exercise such duties as the Town Manager may direct, and who shall serve as the acting Town Manager to exercise the powers and perform the duties of the Town Manager during the temporary absence or disability of the Town Manager. During such absence or

disability, the Board may revoke the designation as acting Town Manger and appoint another to serve until the Town Manager returns or his or her disability ceases.

"Sec. 5.3. **Execution of Instruments.** The Town Manager may execute in the name and on behalf of the Town, contracts, bonds, and other legal instruments, except for deeds, deeds of trust, and mortgages, when such instruments are authorized by the Board, this Charter, or general law.

"Sec. 5.4. **Settlement of Claims.** The Town Manager may, when authorized by the Board by a specific or a continuing resolution, settle claims against the Town for:

(a) Personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars ($5,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses, actually incurred; and

(b) The taking of small portions of private property needed for road and street purposes when the amount involved does not exceed the actual loss sustained and the taking has been authorized by the Board. Settlement of a claim by the Town Manager pursuant to this provision shall constitute a complete release of the Town for any and all other damages sustained by the person involved in the settlement in any manner arising out of the incident, the occasion, or taking or complained of.

"ARTICLE VI. PUBLIC CONTRACTS.

"Sec. 6.1. **Design-Build.** The Town of Huntersville may contract for the design, construction, and operation of buildings, parking decks or facilities, roads and streets, bridges, sidewalks and other transportation-related facilities, and other public projects, notwithstanding any provisions and requirements of Chapter 143 of the General Statutes. The authorization includes, if deemed appropriate by the Board, the use of the single-prime contractor method of design and construction, the design-build or the design-build-operate method of construction, or a request for proposals and negotiation as an alternative design and construction method. The Town shall request proposals from and interview at least three design-build teams, or design-build-operate teams as appropriate, that have submitted proposals for the project. If three proposals are not received and the project has been publicly advertised for a minimum of 30 days, then the Town may proceed with the proposals received. The Town shall award the contract to the best qualified contractor, taking into account the time of completion of the project, the capital and operation and maintenance costs of the project, the technical merits of the proposal including, but not limited to, reliability and protection of the environment, and such other factors and information set forth in the request for proposals that the Town determines to have a material bearing on the ability to evaluate any proposal.

"ARTICLE VII. SALE, LEASE, AND DISPOSITION OF PROPERTY.

"Sec. 7.1. **Disposition of Certain Real Property.** The Board may authorize the Town Manager to dispose of interest in real property without obtaining Board approval for each disposition by private negotiation and sale when the fair market value of the Town's interest in the real property is ten thousand dollars ($10,000) or less.

"Sec. 7.2. **Disposition of Personal Property.** The Town may sell any and all surplus property belonging to the Town at private sale, including by use of electronic auction.

"Sec. 7.3. **Lease or Rental of Property.** Notwithstanding the provisions of G.S. 160A-272, the Board may, in its discretion, lease Town-owned property for such terms and upon such conditions as the Board may determine, including terms for more than 10 years without the necessity of following any procedures other than those required by G.S. 160A-272 for leases of 10 years or less. The Town is specifically authorized to lease such property to any person or entity and for any purposes the Town deems appropriate, so long as the Board has reasonably determined that such leased property shall not be needed for public purposes for the term of the lease, and if the leased property is not to be used for public purpose, that the lease shall be at a fair market rate.

"Sec. 7.4. **Conditions and Restrictions Authorized.** The Board may sell, exchange, or otherwise transfer the fee or any lesser interest in real property to any purchaser subject to covenants, conditions, and restrictions as the Board may deem to be in the public interest. The sale, exchange, or other transfer may be made pursuant to the provisions of this Charter, Article 7 of Chapter 160A of the General Statutes, or any other applicable provisions of law, and the consideration received by the Town, if any, for the sale, exchange, or transfer may reflect the restricted use of the property resulting from the covenants, conditions, and restrictions. The Town may invite bids or written proposals, including detailed development plans and site plans, for the purchase of any property or property interest, whether by sale, exchange, or other transfer, pursuant to such specifications as may be approved by the Town. The sale, exchange, or other transfer of real property, or interest therein, pursuant to this section may be made contingent upon the necessary rezoning of the property.

"ARTICLE VIII. REGULATORY AND PLANNING FUNCTIONS.

"Sec. 8.1. **Adequate Level of Service.** In order to ensure that growth and development will not adversely affect the public health, safety, and general welfare of the Town, its residents, and those subject to its jurisdiction, the Board may adopt ordinances to ensure that proposed development will not adversely impact traffic and transportation conditions and the level of services for parks, fire and police protection, and other governmental services below a level of service as may be determined by the Board from time to time. Any such ordinance must contain provisions permitting the applicant for such development to mitigate impact of development if such development would cause the level of service to fall below the predetermined level.

"ARTICLE IX. EXTENSION OF LIMITS.

"Sec. 9.1. **Annexation of Noncontiguous Areas.** G.S. 160A-58.1(b)(5) shall not apply to the Town."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Huntersville and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are not inconsistent therewith, so that all rights and liabilities which have accrued are preserved and may be enforced. The following acts or portions of acts having served the purposes for which they were enacted, or having been consolidated into this act are hereby repealed:

Chapter 240, Private Laws of 1876-1877
Chapter 46, Private Laws of 1885
Chapter 320, Private Laws of 1893
Chapter 684, Session Laws of 1961
Chapter 777, Session Laws of 1963.

SECTION 3. No provision of this act is intended, nor shall be construed, to affect in any way, any rights or interest, whether public or private:

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act; or

(2) Derived from or which might be sustained or preserved in reliance upon, actions heretofore taken pursuant to or within the scope of any provision of law repealed by this act expressly or by implication.

SECTION 4. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 5. All existing ordinances and resolutions of the Town of Huntersville and all existing rules and regulations of departments or agents of the Town of Huntersville not

inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 6. No action or proceeding of any nature, whether civil or criminal, judicial or administrative, or otherwise, pending at the effective date of this act by or against the Town of Huntersville or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 7. If any part of this act or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. Whatever reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 9. This act is effective when it becomes law.

HOUSE BILL 772:
Huntersville Charter Rewrite

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 13, 2009
Introduced by:	Rep. Tillis	**Prepared by:**	Judy Collier
Analysis of:	Fourth Edition		Research Assistant

SUMMARY: House Bill 772 revises and consolidates the Charter of the Town of Huntersville.

CURRENT LAW: The Charter of the Town of Huntersville was ratified on March 9, 1877. Since that time several local acts have been enacted to amend the Charter, but none have accomplished a complete rewrite.

BILL ANALYSIS: House Bill 772 rewrites the entire Charter of the Town of Huntersville. It provides, beginning in 2011, for a 6-member Board, elected for two-year terms by the entire electorate, and a Mayor, also elected for a two- year term by the entire electorate. House Bill 772 also repeals the following acts or portions of acts:

- Chapter 240, Private Laws of 1876-1877
- Chapter 46, Private Laws of 1885
- Chapter 320, Private Laws of 1893
- Chapter 684, Session Laws of 1961
- Chapter 777, Session Laws of 1963

The Charter also contains provisions concerning: election of the Mayor Pro Tempore by the Board; compensation of the Mayor and Board; the filling of vacancies; elections in odd-number years on a non-partisan plurality basis; appointment of the Manager, Clerk, Attorney, Finance Director, and Tax Collector; settlement of claims; use of design-build method for public contracts; disposition of property; ordinances concerning impact of development on services; and satellite annexation.

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

H772-SMRE-63(e4) v1

Giles Perry, counsel to House Local Government I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

HOUSE BILL 1595

Committee Substitute Favorable 5/20/09
Committee Substitute #2 Favorable 6/3/09
Senate Commerce Committee Substitute Adopted 7/1/09

Short Title: Malt Beverage Special Permit. (Public)

Sponsors:

Referred to:

May 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE MALT BEVERAGE SPECIAL EVENT PERMITS AND MALT BEVERAGE TASTING PERMITS IN THE SAME OR SIMILAR MANNER AS WINE.

Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.

(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
(36) Repealed by Session Laws 2005-380, s. 1, effective September 8, 2005, and applicable to wine shipper permit applications submitted on or after that date.
(37) Wine shop permit – $100.00.
(38) Winemaking on premises permit – $400.00.
(39) Wine shipper packager permit – $100.00.
(40) Malt beverage special event permit – $200.00.
(41) Malt beverage tasting permit – $100.00."

SECTION 2. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(18) Malt Beverage Tasting Permit. – A malt beverage tasting permit authorizes malt beverage tastings on a premises holding a retail permit by the retail permit holder or his employee. A representative of the brewery whose beverages are being featured at the tasting shall be present at the tasting unless the wholesaler or a wholesaler's employee determines that no representative of the brewery needs to be present. A malt beverage tasting consists of the offering of a sample of one or more malt beverage products, in amounts of no more than two ounces for each sample, without charge, to customers of the business. Any persons pouring malt beverage at a malt beverage tasting shall be at least 21 years of age.

a. Representatives of the brewery which produced the malt beverage, a wholesaler, or a wholesaler's employee may assist with the tasting. Assisting with a malt beverage tasting includes:

1. Pouring samples for customers.

2. Checking the identification of patrons being served at the malt beverage tasting.

b. When a representative of the brewery that produced the malt beverage, a malt beverage wholesaler, or a malt beverage wholesaler's employee assists in a malt beverage tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the malt beverage tasting.
2. A retail permit holder's employee shall not supervise more than three malt beverage tasting areas.
3. No more than four malt beverages may be tasted at any one tasting area.
4. The malt beverage tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the malt beverage tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of malt beverages, and that the tastings are not used by industry members for unlawful inducements to retail permit holders. Except for purposes of this subdivision, the holder of a malt beverage tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a malt beverage tasting permit."

SECTION 3. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler permit
(18) Cider and vinegar ~~manufacturer.~~manufacturer
(19) Wine producer ~~permit.~~permit
(20) Malt beverage special event permit."

SECTION 4. Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.5. Authorization of malt beverage special event permit.**

(a) Authorization. – The holder of a brewery, malt beverage importer, or nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission. Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler.

(b) Limitation. – A malt beverage special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of malt beverages. A malt beverage special event shall not be used as subterfuge for malt beverages suppliers to ship directly to retail permittees unless otherwise authorized by law."

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

HOUSE BILL 1595:
Malt Beverage Special Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Reps. Tillis, Ross	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: House Bill 1595 would authorize the ABC Commission to issue two new permits: a malt beverage tasting permit that would allow malt beverage tastings at grocery stores and other food businesses, and a malt beverage special event permit that would authorize the permittee to give free samples and to sell its products at trade shows, conventions, shopping malls, various festivals & other similar events approved by the ABC Commission.

CURRENT LAW: For the sale and on premises consumption of malt beverages, an establishment must have an on-premises malt beverages permit. The permit may be issued to restaurants, hotels, eating establishments, food businesses, retail businesses, private clubs, community theatres, convention centers, and certain breweries in areas where the sale of the beverage is lawful. The holder of a brewery permit may give its products to its employees and guests for consumption on the premises of the brewery. There are no provisions for retail permittees to hold malt beverage tastings. However, with the proper permit wine tastings are allowed at food businesses and wine shops. Wine tastings may also be held at special events for which a winery special event permit has been issued.

BILL ANALYSIS: House Bill 1595 would authorize the ABC Commission to issue two new permits:

- A malt beverage tasting permit that would allow malt beverage tastings at grocery stores and other food businesses
- A malt beverage special event permit that would authorize a brewery to give free samples and to sell its products at trade shows, conventions, shopping malls, various festivals & other similar events approved by the ABC Commission

Malt Beverage Tasting Permit

Section 1 of the bill provides that the application fee for the malt beverage tasting permit would be $100.00.

Section 2 of the bill would create a malt beverage tasting permit that would be issuable to any food business holding an ABC permit for the retail sale of malt beverages. The relevant statutory definition of a food business is *"an establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises."* Food businesses include grocery stores, convenience stores, and other establishments such as variety stores or drugstores, where food is regularly sold. A malt beverage tasting permit would authorize tastings on the premises, conducted and supervised by the holder of the permit. The bill would require that a representative of the brewery whose beverages are featured at the tasting be present, unless the wholesaler or a wholesaler's employee determined that no brewery representative is necessary. Wholesalers and representatives of the brewery that produced the malt beverage would be authorized to assist with the tastings by pouring samples and by checking identification. A malt beverage tasting is defined as the offering of a sample of one or more malt beverage products, without charge and in amounts of no more than two ounces for each sample, to customers of the business.

The bill specifies other conditions for malt beverage tastings, including the following:

- Retail permit holder would be required to designate an employee to actively supervise the tasting, and the employee would not be allowed to supervise more that three tasting areas
- No more than 4 malt beverages could be tasted at any one tasting area
- The tasting could not last longer than 4 hours from the designate starting time

The holder of the retail permit would be liable for any violations of ABC law in connection with the tasting.

Malt Beverage Special Event Permit

Section 1 of the bill provides that the application fee for the malt beverage special event permit would be $200.00.

Section 3 of the bill would authorize the ABC Commission to issue a malt beverage special event permit; **Section 4** would authorize the holder of a brewery permit, malt beverage importer permit, or nonresident malt beverage vendor permit to obtain a special event permit allowing the permit holder to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, and various festivals, local fundraisers and other similar events approved by the ABC Commission. Except for a brewery, all malt beverages sampled or sold under this permit must be purchased from a licensed malt beverage wholesaler. The permit would only be valid in jurisdictions that have approved the sale of malt beverages.

Under G.S. 18B-903, the permits would be valid for one year; the renewal application fee would be 25% of the original application fee.

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

Brenda Carter, counsel to House Alcoholic Beverage Control, and Trina Griffin, Counsel to House Finance, substantially contributed to this summary.

H1595-SMTD-119(e4) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1595 (Second Edition)

SHORT TITLE: Malt Beverage Special Permit.

SPONSOR(S): Representatives Tillis and Ross

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	**$101,700**	**$44,325**	**$53,925**	**$65,800**	**$80,100**
EXPENDITURES	**0**	**0**	**0**	**0**	**0**
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: ABC Commission

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

H.B. 1595 amends G.S. 18B-902(d) to establish an application fee for a new malt beverage special event permit ($200) and a malt beverage tasting permit ($100). The bill adds a new section G.S. 18B-1001(18) defining the conditions for a malt beverage tasting permit, which involve providing samples of beverages in amounts of no more than two ounces each, without charge. It establishes further guidelines for the tasting and includes liability provisions. H.B. 1595 also amends G.S. 18B-1100 to authorize the Alcoholic Beverage Control (ABC) Commission to issue a malt beverage special event permit and adds a new section G.S. 18B-1114.5 defining the conditions for such an event, which involves providing free tastings and selling beverages at trade shows, conventions, festivals, and other similar events approved by the Commission. Finally, the bill provides that such permits are valid only in jurisdictions that have approved the establishment of ABC stores or have approved the sale of malt beverages. The Second Edition of H.B. 1595 adds nonresident malt beverage vendors and malt beverage importers to the permit holders eligible to receive a malt beverage special event permit.

Source: *Adapted from the Bill Digest H.B. 1595 (05/05/0200).*

Background
The Alcoholic Beverage Control Commission issues over 62 different types of permits, all established in statute. There are two main types of permits – retail permits for establishments selling alcohol to the general public (this would include restaurants and bars, as well as grocery stores and corner markets) and commercial permits for establishments either making alcohol products (wineries, breweries, or distilleries) or selling those products to retail outlets for resale to the general public (liquor importers, malt beverage wholesalers, etc.). Commercial permits require a one-time initial license fee and remain valid indefinitely. Retail permits require an initial license fee, and in most cases require an annual renewal or registration fee. Proceeds from the sale of permits go to the General Fund.

ASSUMPTIONS AND METHODOLOGY:
This bill creates two new retail permits in G.S. 18B-902(d), a malt beverage special event permit and a malt beverage tasting permit.

Malt Beverage Special Event Permit
The malt beverage special event permit would be available to brewery, malt beverage importer, and nonresident malt beverage vendor permit holders. The malt beverage special event permit is identical to the permit available for wine special events. Winery special events permits are available to holders of unfortified and limited winery permits, wine producer permits, and viticulture or enology course permits. In order to estimate the number of breweries that would apply for special events permits, the ratio of unfortified and limited winery permit holders, wine producers permit holders, and viticulture/enology course permit holders to winery special event permits was calculated. In 2009, there are 88 unfortified winery permits, no limited winery permits, 17 wine producer permits, and one viticulture/enology course permit, for a total of 106 permit holders eligible for the special event permit. However, only 86 winery special event permits have been issued in 2009. Therefore, based on current permit holders, 81% of those eligible for a wine special event permit applied for one.

In 2009, the ABC Commission has issued 40 brewery permits, five malt beverage importer permits, and 40 nonresident malt beverage vendor permits. If 81% of those permit holders applied for a special event permit, 62 permits might be issued. The bill establishes a permit fee of $200 for the malt beverage special event permit. Therefore, the new permit will generate $12,400 in permit fees. ($200 multiplied by 62 permits equals $12,400.) To the extent that the number of special event permit holders estimated is incorrect, this figure may be over- or underestimated. Since the malt beverage special event permit is a commercial permit, there is no renewal or registration fee associated with it. Therefore, no permit fees will be generated in addition to the initial permit fee.

To determine the rate at which the number of permit holders might increase over the next five years, a history of winery special event permits was examined. The table below provides the number of winery special event permits held each year, along with the percent increase in number of permit holders over the prior year. The average percent increase over this five year period was 19%.

Winery Special Event Permits Since FY 2004-05					
Fiscal Year	**2004-05**	**2005-06**	**2006-07**	**2007-08**	**2008-09**
Winery Special Event Permits	43	54	67	80	86
Increase Over Prior Year		26%	24%	19%	8%

The following table shows the number of new permits that would be issued each year if the malt beverage special event permits increased at the same average rate as the winery special event permits. This table also provides the estimated revenue that would be generated from those new permits assuming the fee remained $200.

Estimated Malt Beverage Special Event Permits					
Fiscal Year	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Malt Beverage Special Event Permits	62	12	14	17	20
New Permit Revenue Generated	$12,400	$2,400	$2,800	$3,400	$4,000

Malt Beverage Tasting Permits

The tasting permit would be available to holders of malt beverage off-premise permits. In order to estimate the number of malt beverage off-premise permit holders that would apply for tasting permits, the ratio of off-premise unfortified wine permit holders to wine tasting permits was calculated. (Both unfortified and fortified wine permit holders are eligible to obtain a wine tasting permit. However, in many cases, establishments hold both types of permits. In order to avoid double counting, for the purposes of this note, only unfortified wine permits were used to determine the rate of wine tasting permits issued.) In 2009, there are 6,074 establishments with off-premise unfortified wine permits, and 747 with wine tasting permits. Therefore, based on current permit holders, 12% of those eligible for a wine tasting permit applied for one.

There are currently 7,449 off-premise malt beverage permit holders in the State. If 12% of those establishments applied for a malt beverage tasting permit, 893 permits might be issued. The bill establishes a permit fee of $100 for the malt beverage tasting permit. Therefore, the new permit will generate $89,300 in initial permit fees. ($100 multiplied by 893 permits equals $89,300.) To the extent that the number of tasting permit holders estimated is incorrect, this figure may be over- or underestimated. Since the malt beverage tasting permit is a retail permit, the renewal fee each year will be 25% of the initial permit fee, or $25.

To determine the rate at which the number of permit holders might increase over the next five years, a history of wine tasting permits was examined. The table below provides the number of wine tasting permits held each year, along with the percent increase in number of permit holders over the prior year. The average percent increase over this five year period was 22%.

Wine Tasting Permits Since FY 2004-05					
Fiscal Year	**2004-05**	**2005-06**	**2006-07**	**2007-08**	**2008-09**
Wine Tasting Permits	344	411	460	566	747
Increase Over Prior Year		19%	12%	23%	32%

The following table shows the number of new permits that would be issued each year if the malt beverage tasting permits increased at the same average rate as the wine tasting permits. This table also provides the estimated revenue that would be generated from those new permits assuming the fee remained $100, and the amount generated by permit renewals, assuming a 100% renewal rate.

Estimated Malt Beverage Tasting Permits Since FY 2004-05					
Fiscal Year	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Malt Beverage Tasting Permits	893	196	240	292	357
New Permit Revenue Generated	$89,300	$19,600	$23,900	$29,200	$35,600
Permit Renewal Revenue Generated	$0	$22,325	$27,225	$33,200	$40,500

The following table shows the total estimated revenue that will be generated by the two new permits authorized by H.B. 1595. The total estimated revue in the first year will be $95,700. This estimate assumes the permit fees will remain the same for the next five years and that all tasting permit holders will renew their permits. To the extent that these assumptions are incorrect, this revenue estimate may be over- or underestimated.

Total Estimated Revenue Resulting from H.B. 1595					
Fiscal Year	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Malt Beverage Special Events Permits	$12,400	$2,400	$2,800	$3,400	$4,000
Malt Beverage Tasting Initial Permits	$89,300	$19,600	$23,900	$29,200	$35,600
Malt Beverage Tasting Permit Renewal	$0	$22,325	$27,225	$33,200	$40,500
Total	**$95,700**	**$43,125**	**$52,525**	**$64,000**	**$78,100**

All ABC permits are issued by the Alcoholic Beverage Control (ABC) Commission. The Commission has indicated that there will be no additional operating expenses resulting from this bill. Therefore, no expenditures are anticipated.

SOURCES OF DATA: ABC Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 2, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1068*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/7/09
PROPOSED COMMITTEE SUBSTITUTE S1068-CSSBf-61 [v.7]

7/13/2009 4:15:45 PM

Short Title: Permitting of Wind Energy Facilities. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SYSTEM OF PERMITS FOR THE SITING AND OPERATION OF WIND ENERGY FACILITIES.

Whereas, S.L. 2007-398 established a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) to diversify the resources used to reliably meet the energy needs of consumers in the State; and

Whereas, wind energy generation is a critical component for the State to meet the requirements established by the REPS; and

Whereas, North Carolina has abundant wind resources in the coastal and mountain regions; and

Whereas, it is the policy of the State to promote the development of wind energy in a manner compatible with environmental protection, sustainable development, and the efficient use of resources; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-103 is amended by adding a new subdivision to read:

"(12) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy."

SECTION 2. Part 4 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-118.3. Permits for wind energy facilities.**

(a) No person shall undertake development associated with a wind energy facility anywhere in the coastal area without first obtaining a permit from the Commission.

(b) A person applying for a permit for a wind energy facility shall include all of the following in an application for the permit:

(1) A narrative description of the proposed facility.

(2) A map showing the location of the proposed facility.

(3) The capacity of proposed energy generation.

(4) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to develop the property.

(5) Certification of adjacent property owner notification to the maximum extent practicable.

(6) A study of the noise impacts of the turbines to be associated with the proposed facility, unless the turbines will be located in a sound or in offshore waters at least 0.60 miles from a shoreline.

(7) A study on shadow flicker impacts of the turbines to be associated with the proposed facility, unless the turbines will be located in a sound or in offshore waters at least 1.6 miles from a shoreline.

(8) A study on avian and bat impacts of the proposed facility.

(9) A study on viewshed impacts of the proposed facility.

(10) An explanation of how the proposed facility would be consistent with the requirements in subsection (c) of this section.

(11) The application fee required by subsection (e) of this section.

(12) Other data or information the Commission may reasonably require.

(c) The Commission shall deny an application for a permit for a wind energy facility if the Commission finds any one or more of the following:

(1) Construction or operation of the facility would be inconsistent with or violate rules adopted by the Commission.

(2) Construction or operation of the facility would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance, including national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges; preserves and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission; and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(3) Construction or operation of the facility would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters. For purposes of this section, a wind energy facility in the coastal area is a water dependent use.

(4) Construction or operation of the facility would have a significant adverse impact on fish or wildlife.

(5) Construction or operation of the facility would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(6) Construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace.

(7) A permit for the facility would be denied under any other criteria set out in G.S. 113A-120.

(8) The cumulative impact of the proposed facility with other existing or proposed wind energy facilities would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance.

(d) The Commission may include, as a condition of a permit for a wind energy facility, a requirement that the permit holder mitigate any adverse impacts.

(e) An applicant for a permit for a wind energy facility under this section shall submit with the application under subsection (b) of this section an application fee of two thousand dollars ($2,000).

(f) The Commission shall require an applicant for a permit for a wind energy facility to provide a plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include a proposed description of the condition of the site once the wind energy facility has been decommissioned and removed. The Commission may require a bond, guarantee, insurance, or other financial instrument to provide for the decommissioning and the removal of structures that comprise the wind energy facility. The Commission shall consider the size of the wind energy facility, the location of the facility, and the financial qualifications of the applicant in making its determination to grant or deny the permit.

(g) The Commission shall hold a public hearing in the county in which the proposed wind energy facility is to be located within 75 days of receipt of a completed application for a wind energy facility. The Commission shall give a minimum of 30 days' notice of the public hearing. The Commission shall make a final decision on a permit application within 150 days following receipt of a completed application. If the Commission determines that an application for a wind energy facility fails to meet the requirements for a permit under this section, the Commission shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial. If the Commission fails to act within any time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(h) The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals.

(i) Nothing in this section shall be interpreted to limit: (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for regulation of the siting of a wind energy facility, a city or county shall consider the information, factors, and criteria set out in subsections (b) and (c) of this section.

(j) Any person who proposes to construct or operate a wind energy facility within the planning jurisdiction of a city or county must demonstrate compliance with any local ordinances concerning land use and any applicable permitting processes.

(k) The Commission may adopt rules implementing this section. The Commission shall consult with the Department to ensure consistent statewide permitting requirements within and outside of the coastal area to the extent practicable.

(l) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility without obtaining a permit under this section or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day. The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without obtaining a permit under this section or who constructs or operates a wind energy facility in violation of its permit terms and conditions."

SECTION 3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Permitting of Wind Energy Facilities.

"**§ 143-215.74R. Definitions.**

(1) Department. – The Department of Environment and Natural Resources.

(2) Wind energy facility. – Has the same meaning as defined in G.S. 113A-103.

"**§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.**

(a) No person shall undertake development associated with a wind energy facility anywhere outside the coastal area without first obtaining a permit from the Department.

(b) A person applying for a permit for a wind energy facility shall include all of the following in an application for the permit:

(1) A narrative description of the proposed facility.

(2) A map showing the location of the proposed facility.

(3) The capacity of proposed energy generation.

(4) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to develop the property.

(5) Certification of adjacent property owner notification to the maximum extent practicable.

(6) A study of the noise impacts of the proposed facility.

(7) A study on shadow flicker impacts of the proposed facility.

(8) A study on avian and bat impacts of the proposed facility.

(9) A study on viewshed impacts of the proposed facility.

(10) An explanation of the how the proposed facility would be consistent with the requirements in subsection (c) of this section.

(11) The application fee required by subsection (e) of this section.

(12) Other data or information the Department may reasonably require.

(c) The Department shall deny an application for a permit for a wind energy facility if the Department finds any one or more of the following:

(1) Construction or operation of the facility would be inconsistent with or violate rules adopted by the Commission.

(2) Construction or operation of the facility would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance, including national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges; preserves and management areas; areas that provide habitat for threatened or endangered species; and primary nursery areas designated by the Wildlife Resources Commission.

(3) Construction or operation of the facility would have a significant adverse impact on fish or wildlife.

(4) Construction or operation of the facility would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(5) Construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace.

(6) The proposed facility would be located in an area designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the North Carolina Geological Survey.

(7) Construction of the facility would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(8) The cumulative impact of the proposed facility with other existing or proposed wind energy facilities would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance.

(d) The Department may include as a condition of a permit for a wind energy facility a requirement that the permit holder mitigate any adverse impacts.

(e) An applicant for a permit for a wind energy facility under this section shall submit with the application under subsection (b) of this section an application fee of two thousand dollars ($2,000).

(f) The Department shall require an applicant for a permit for a wind energy facility to provide a plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs and the proposed site condition after decommissioning. The Department may require a bond, guarantee, insurance, or other financial instrument to provide for decommissioning and removal of any structures that comprise the facility. The Department shall consider the size of the wind energy facility, the location of the facility, and the financial qualifications of the applicant in making its determination to grant or deny the permit.

(g) The Department shall hold a public hearing in the county in which the proposed wind energy facility is to be located within 75 days of receipt of a completed application for a wind energy facility. The Department shall give a minimum of 30 days notice of the public hearing. The Department shall make a final decision on a permit application within 150 days following receipt of a completed application. If the Department determines that an application for a wind energy facility fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial. If the Department fails to act within any time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(h) The issuance of a permit under this section shall not preclude the applicant from the requirement to obtain any and all other applicable local, State, or federal permits, licenses, or approvals.

(i) The Department may adopt rules governing the siting of wind energy facilities that are subject to the permit requirements of this section. The Department shall consult with the Coastal Resources Commission to ensure consistent statewide permitting requirements within and outside the coastal area to the extent practicable.

"**§ 143-215.74T. Civil penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility without obtaining a permit under this Part or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day.

(b) The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without obtaining a permit under this Part or who constructs or operates a wind energy facility in violation of its permit terms and conditions.

"**§ 143-215.74U. Local ordinances authorized.**

(a) Nothing in this Part shall be interpreted to limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for regulation of the siting of a wind energy facility, a city or county shall consider the information, factors, and criteria set out in G.S. 143-215.74S(b) and (c).

(b) Any person who proposes to construct or operate a wind energy facility within the planning jurisdiction of a city or county must demonstrate compliance with any local ordinances concerning land use and any applicable permitting processes."

SECTION 3. G.S. 113A-206 reads as rewritten:

"**§ 113A-206. Definitions.**

Within the meaning of this Article:

...

(3) "Tall buildings or structures" include any building, structure or unit within a multiunit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "Tall buildings or structures" do not include:

a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.

b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or ~~windmills.~~windmills, if the windmill is associated with a residence, the primary purpose of the windmill is to generate electricity for use within the residence, and the windmill is no more than 100 feet from the base to the turbine hub.

c. Buildings and structures designated as National Historic Sites on the National Archives Registry.

...."

SECTION 4. This act becomes effective January 1, 2010, and applies to wind energy facilities, as defined in G.S. 113A-103, as enacted by Section 1 of this act, that are constructed on or after that date.

SENATE BILL 1068:
Permitting of Wind Energy Facilities

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Senator Albertson	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to Second Edition S1068-CSSBf-61		Legislative Analyst

SUMMARY: The 2nd Edition of Senate Bill 1068 would establish a system of permits for the siting of wind energy facilities in the coastal area of the State. The Proposed Committee Substitute (PCS) for Senate Bill 1068 would establish a parallel system of permits for the siting of wind energy facilities in locations outside the coastal area of the State and would make clarifying changes regarding windmills in the Mountain Ridge Protection Act.

[As introduced, this bill was identical to H809, as introduced by Reps. Harrison, Fisher, Owens, which is currently in House Energy and Energy Efficiency, if favorable, Environment and Natural Resources, if favorable, Finance.]

BILL ANALYSIS: The PCS for Senate Bill 1068 would establish a system of permits for the siting of wind energy facilities in North Carolina. "*Wind energy facility*" is defined in **Section 1** of the bill to mean:

> The turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively with any other wind energy facility whose turbines are located within one-half mile of one another have a rated capacity of three megawatts or more of energy.

Sections 2 and 3 of the bill would establish a parallel permitting process for wind energy facilities based on the proposed location of the facility, either in the coastal area (as defined in G.S. 113A-103), or in areas of the State located outside the coastal area. Permits for wind energy facilities in the coastal area of the State would be reviewed and acted upon by the Coastal Resources Commission (CRC), while permits for wind energy facilities in areas of the State located outside the coastal area would be reviewed and acted upon by the Department of Environment and Natural Resources (Department). The following permitting processes and criteria would be the same for proposed wind energy facilities located within or outside the coastal area of North Carolina:

A wind energy facility permit application must include:

1) A narrative description of the proposed facility.
2) A map showing the location of the proposed facility.
3) The capacity of proposed energy generation.
4) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to develop the property.
5) Certification of adjacent property owner notification to the maximum extent practicable.
6) A study of the noise impacts of the proposed facility.

7) A study on shadow flicker[1] impacts of the proposed facility.

8) A study on avian and bat impacts of the proposed facility.

9) A study on viewshed impacts of the proposed facility.

10) An explanation of how the proposed facility (considering the cumulative impact of the proposed facility with other existing or proposed wind energy facilities) would not result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance, fish and wildlife, views from any State or national park, wilderness area, significant natural heritage area, or interference with air navigation routes, air traffic control areas, military training routes, or special use airspace.

11) Other data or information the CRC or the Department may reasonably require.

12) An application fee of $2,000.

Additional criteria specific to permits for proposed wind energy facilities located in the **coastal area of the State**

- The applicant must explain how the construction and operation of the proposed facility will be consistent with rules adopted by the CRC.
- A study of noise impacts is required unless the proposed turbines will be located in a sound or in offshore waters at least 0.60 miles from a shoreline.
- A study of shadow flicker impacts is required unless the proposed turbines will be located in a sound or in offshore waters at least 1.6 miles from a shoreline.
- The applicant must explain how the construction and operation of the proposed facility will not obstruct major navigation channels or create a significant obstacle to navigation in coastal waters.

Additional criteria specific to permits for proposed wind energy facilities located **outside the coastal area of the State**

- The applicant must explain how the construction and operation of the proposed facility will be consistent with rules adopted by the Environmental Management Commission.
- Among other factors, the Department must deny a permit application if the proposed facility would be located in an area designated with a slide hazard ranking of "moderate" or "high" on a Stability Map Index prepared by the North Carolina Geological Survey.

Wind energy facility permitting conditions

- The CRC or the Department may include, as a condition of the permit for a wind energy facility, a requirement that the permit holder mitigate any adverse impacts.
- Permit applicants must supply the CRC or the Department with a plan to decommission and remove the wind energy facility that includes an estimate of the cost to decommission and

[1] Shadow flicker from wind turbines is the effect resulting from the shadows cast by the rotating blades of the turbine on sunny days. The effect may be more or less pronounced depending on the intensity of the sun/shadow contrast and the distance from the turbines to a receptor. From: Maine Department of Environmental Protection.

remove the facility. The plan must also include a proposed description of the condition of the site once the facility has been decommissioned and removed.

- The CRC or the Department may require a bond, guarantee, insurance, or other financial instrument to provide for decommissioning and the removal of wind energy facility structures.
- Obtaining a wind energy facility permit would not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals.
- This act must not be interpreted to limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for regulation of the siting of a wind energy facility, a city or county must consider the information, factors, and criteria set out above.

CRC/Department actions on wind energy facility permit applications

- The CRC or the Department must hold a public hearing in the county in which the proposed wind energy facility is to be located within 75 days of receipt of a completed permit application and provide a minimum of 30 days notice of the public hearing.
- The CRC or the Department must make a final determination on a permit application within 150 days of receipt of a complete application.
- Permit denials must be accompanied by a written explanation for the denial to the applicant.
- If the CRC or the Department does not act within the time periods prescribed above, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under the Administrative Procedure Act.

In its determination to grant or deny the permit for a wind energy facility, the CRC or the Department must consider the size and location of the facility and financial qualifications of the applicant.

The CRC or the Department must deny a permit application for a wind energy facility that would result in a significant adverse impact or interference to those areas described in item 10) and the additional criteria listed above.

Both the CRC and the Department may adopt rules governing the siting of wind energy facilities that would be subject to the permitting requirements under this act. The CRC and the Department must consult with one another to ensure consistent statewide permitting requirements within and outside the coastal area to the extent practicable.

Section 4 of the bill would amend the Mountain Ridge Protection Act of 1983 (Ridge Law) to clarify that windmills, when associated with a residence, employed for the primary purpose of generating electricity for use within the residence, and no more than 100 feet from the base to the turbine hub, are not considered to be "tall buildings or structures" for the purposes of the Ridge Law.

EFFECTIVE DATE: Except as noted above, this act would become effective January 1, 2010 and applies to wind energy facilities that are constructed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1068 (Second Edition)

SHORT TITLE: Permitting of Wind Energy Facilities.

SPONSOR(S): Senator Albertson

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
General Fund	$2,000	$0	$2,000	$0	$2,000
EXPENDITURES					
General Fund	$500	$0	$500	$0	$500

POSITIONS (cumulative): Department will use existing staff.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Coastal Resources Commission, Department of Environment and Natural Resources

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY:
S.B. 1068 creates a permitting process for wind energy facilities to be managed by the Coastal Resources Commission (CRC). The bill modifies the definition of wind energy facility in GS 113A-103 to mean the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more (was, in excess of two megawatts) of energy. The bill states that an application for a wind energy facility permit shall include all of the following:

- a narrative description of the facility;
- a map showing the location of the facility;
- the capacity of the energy to be generated;
- a copy of the deed, purchase agreement, lease agreement, or other legal document showing the right to develop the property;

- certification that adjacent property owners were notified to the maximum extent practicable;
- a study of noise impacts of the turbines, unless the turbines will be located in waters at least 0.6 miles from a shoreline;
- a study of shadow flicker impacts, unless the turbines will be located in waters at least 1.6 miles from a shoreline;
- a study of avian and bat impacts;
- a study on viewshed impacts;
- an explanation of how the proposed facility would be in compliance with proposed GS 113A-118.3(c);
- the application fee; and
- any other information CRC may reasonably acquire.

As proposed GS 113A-118.3(c), the bill outlines several conditions under which CRC can deny a permit. The bill requires an application fee of $2,000. The bill also allows CRC to attach conditions to a permit that the applicant mitigate adverse impacts and also that the applicant provide a plan for decommissioning and removal of the facility, as well as requiring the applicant to provide a bond, insurance or other guarantee to provide for the decommissioning and removal of the facility. S.B. 1068 requires that the Commission hold a public hearing in the county where the facility will be located.

The bill specifies that nothing in the statute is to be interpreted to limit the application of Article 7 of GS Chapter 113A to facilities, including the permitting requirements under GS 113A-118 or the ability of a city or county to plan for or regulate the siting of facilities in accordance with land use regulations. The bill further requires that any person who proposes to construct or operate a wind energy facility within the planning jurisdiction of a city or county must demonstrate compliance with any local ordinances concerning land use and any applicable permitting processes. Finally, the bill gives CRC rule-making authority to implement the bill.

ASSUMPTIONS AND METHODOLOGY:

Expenditures

As this is a new program with no historical data to draw from, estimates were obtained from the Department of Environment and Natural Resources (DENR) as to what resources would be needed to manage the program. The Division of Coastal Management (DCM) within DENR reported that they would not need additional staff and that the new program could be managed by reallocating 25% of the time of a current employee. For the purposes of this note, no new staff costs are anticipated.

DCM anticipates $500 in costs to conduct the public hearings. These costs include travel for one CRC hearing officer and two DCM staff, as well as publishing public notices, and meeting room rental costs (although efforts will be made to obtain local meeting rooms with no costs).

Revenues

DCM anticipates receiving one application in the first year and two more applications over the next four years. The bill establishes an application fee of $2,000; thus revenues are anticipated to be $2,000 in the first year and $2,000 every other year thereafter. These application fees will be credited to a General Fund account, as no new special fund is created in the bill.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristin Walker

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 13, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

Capital Weather Gang

The inside scoop on DC, Maryland and Virginia weather

AT A GLANCE

Tue	Wed	Thu
30%	30%	20%
63 | 84	62 | 82	62 | 82
Fri	**Sat**	**Sun**
20%	20%	20%
65 | 85	67 | 88	68 | 86

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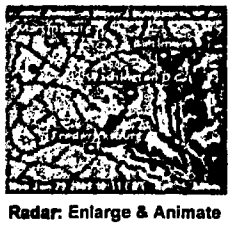
- Weather: A Few Clouds
- Temperature: 84.0 F (28.9 C)
- Heat Index: 82 F (28 C)
- Wind: West at 9.2 MPH
- Dew Point: 50.0 F (10.0 C)
- Pressure: 999.7 mb

Jun 29 2009, 6:52 pm EDT



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Warming Possibilities in 2100 Under No Policy Scenario

Warming Possibilities in 2100 Under Policy Scenario

Warming possibilities for "no policy" and policy scenarios between 1990 and 2100. Size of pie slice indicates the likelihood of a given amount of warming under the different scenarios. Graphics courtesy MIT Joint Program on the Science and Policy of Global Change.

New research from MIT scientists shows that in the absence of stringent reductions in greenhouse gas emissions, 21st century climate change may be far more significant than some previous climate assessments had indicated.

The new findings, released this month by MIT's Joint Program on the Science and Policy of Global Change, showed significantly increased odds that by the end of the century warming would be on the high end of the scale for a so-called "no policy scenario" as compared with similar studies completed just six years ago. The main culprits: the cycling of heat and carbon dioxide in the climate system are now better understood and projections of future greenhouse gas emissions have increased.

The results also showed that even if nations were to act quickly to reduce emissions, it is more likely that warming would be greater than previous studies had shown. However, the increase in projected temperatures under the "policy scenario" was not as large as for the no policy scenario.

Keep reading for more information about MIT's revised projections...

The modeling experiments are not meant to provide precise forecasts of future temperature changes, but rather to serve as what one related MIT study calls "thought experiments" to help policymakers and the public understand how decisions regarding emissions reductions may affect the magnitude of climate change. They show how human activities are loading the dice in favor of a warming climate, and cast doubt on the feasibility of limiting temperature increases to the lower range of what the influential U.N. Intergovernmental Panel on Climate Change projected in its most recent assessment report in 2007.

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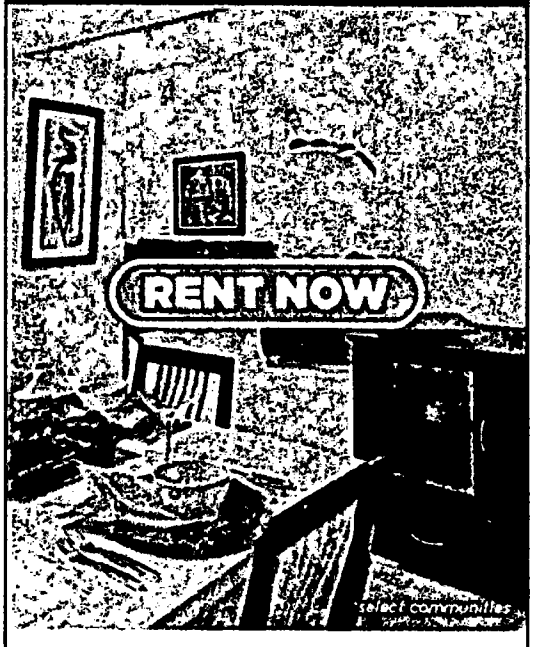

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National Airport
June 29, 2009

- Average Hi: 87
- Average Lo: 68
- Record Hi: 101 (1934)
- Record Lo: 54 (1888)
- High so far: 85

Yesterday at DCA

- Hi: 77
- Lo: 68
- Precip: 0.00 in

Past Data

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- The Weather Channel Blog
- MarylandWeather.com Blog
- AccuWeather.com Blogs
- DCist.com
- Jeff Masters' Wunderblog
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To update their findings that were first unveiled in 2002, the MIT researchers used an in-house computer model known as the MIT Integrated Global System Model that incorporated new insight into how the climate system functions.

A main conclusion is that feedbacks within the climate system, which MIT says can be more accurately simulated in the updated version of its model, may act to increase the magnitude of climate change in response to increasing atmospheric concentrations of greenhouse gases. The more greenhouse gases in the atmosphere, MIT researchers reported, the more significant the feedbacks may be.

Results of the studies are depicted online in MIT's "Greenhouse Gamble" exercise that conveys the "range of probability of potential global warming" via roulette wheel graphics (shown above). The modeling output showed that under both a "no policy" scenario and one in which nations took action beginning in the next few years to reduce greenhouse gas emissions, the odds have shifted in favor of larger temperature increases.

For the no policy scenario, the researchers concluded that there is now a nine percent chance (about one in 11 odds) that the global average surface temperature would increase by more than 7°C (12.6°F) by the end of this century, compared with only a less than one percent chance (one in 100 odds) that warming would be limited to below 3°C (5.4°F) .

The median warming value, with even odds of the temperature increase being above or below that value, was 5.1°C (9.2°F). For comparison, the same research group's no policy scenario yielded a median value of just 2.4°C (4.3°F) in 2002.

"The take home message from the new greenhouse gamble wheels is that if we do little or nothing about lowering greenhouse gas emissions that the dangers are much greater than we thought three or four years ago," said Ronald G. Prinn, professor of atmospheric chemistry at MIT. "It is making the impetus for serious policy much more urgent than we previously thought."

According to the research group, there was no single factor that caused the new computer modeling to project a greater amount of warming compared with their 2002 simulations.

"In our more recent global model simulations, the ocean heat-uptake is slower than previously estimated, the ocean uptake of carbon is weaker, feedbacks from the land system as temperature rises are stronger, cumulative emissions of greenhouse gases over the century are higher, and offsetting cooling from aerosol emissions is lower," the group's web site states. "Rather than interacting additively, these different affects appear to interact multiplicatively, with feedbacks among the contributing factors, leading to the surprisingly large increase in the chance of much higher temperatures."

Under the policy scenario, in which global carbon dioxide concentrations would reach about 550 parts per million by 2100 (the current level is about 385 ppm), the projected magnitude of climate change is significantly less than under the no policy scenario, but it still would warm more significantly than the 2002 projections. Under the policy scenario, there is a 90 percent chance that climate change could be limited to below 3°C (5.4°F), compared to just a one percent chance of that occurring in the no policy case.

"If greenhouse gas emissions are controlled to relatively low levels then the Earth systems feedbacks are much lower and the slight difference in Earth system properties is not as important -- again a result of the way in which these different factors interact multiplicatively," the researchers stated.

As with any computer modeling work, there are uncertainties involved in the projections, and MIT researchers went to great lengths to quantify them in their estimates of temperature increases and future greenhouse gas emissions. Prinn said that rather than obscuring the uncertainties, the roulette wheels "give our best shot of showing what the uncertainties are and at the same time showing the value of a policy."

The MIT research is sponsored by a consortium of government agencies, including the Department of Energy and U.S. EPA, as well as companies that include several major oil companies such as ExxonMobil and Chevron.

Technical papers accompanying the results can be found here and here.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 553
PROPOSED COMMITTEE SUBSTITUTE S553-CSLMx-16 [v.3]

7/13/2009 2:16:19 PM

Short Title: Incorporate Swannanoa. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF SWANNANOA, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Swannanoa is enacted to read:

"CHARTER OF THE TOWN OF SWANNANOA.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Swannanoa are a body corporate and politic under the name 'Town of Swannanoa.' The Town of Swannanoa has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Swannanoa are as follows:

BEGINNING at a point on the northern margin of US Highway 70, the southwest corner of parcel #1, said point being approximately 2030 LF east of the intersection of US Highway 70 and Porter's Cove Road (SR#2838) thence from this point of BEGINNING heading north along the west line of said parcel #1 to its common corner with parcel #2 thence following the southern & west line of parcel #2 to its next common corner with parcel #1 thence following the west & north line of parcel #1 to its common corner with parcel #3, thence following the northern line of parcel #3 to its common corner with parcel #4 thence turning north along the west & north lines of parcel #4 to its common corner with parcel #5, continuing with the northern line of parcels #5, #6,#7, and #8 to its common corner with parcel #9 (Warren Wilson College). Thence following the southern & eastern lines of parcel #9 to its common corner with parcel #10, thence following the southern & eastern lines of parcel #10 to the southern edge of the Swannanoa River. Thence proceeding north crossing the river to the southern line of parcel #11 and following said southern line along the northern edge of the Swannanoa River to its common corner with parcel #12 and continuing north to its common corner with parcel #13. Thence following the east line of parcel #13 to its common corner with parcel #14, thence heading east along the southern line of parcels #14 & #15 to the southern margin of Warren Wilson Road (SR #2416). Thence in a westerly direction along the southern margin of Warren Wilson Road (SR #2416) to the northwest corner of parcel #13, thence a distance of approximately 250 feet to the corner of parcel #16 which is on the northern margin of Warren Wilson Road (SR #2416), thence with the east line of parcels #16, #17 and #18, & the east and

northern lines of parcel #17 to its common corner with parcel #18. Thence following the east line of parcel #18 to its common corner with parcels #19 & #20. Proceeding north with the west line of parcel #19 to its common corner with parcel #21 (Chemtronics), thence following the west and north lines of parcel #21 to its common corner with parcel #22, thence following the west & south line of parcels #22, 23, 24, 25, 26, 27, 28, 29, 30, thence following the west line of parcels #30, 31, and 32 to the common corner of parcels #32, 33 & 34 (City of Asheville). Thence following the west line of parcel #34 in a southerly & easterly direction to its common corner with parcels #35 & #36, continuing along the southern line of parcel #36 to its common corner with parcel #37, thence along the west line of parcel #37 to its common corner with parcel #38, thence along the north, east and southern lines of parcel #38 to its common corner with parcel #39. Thence along the east & southern lines of parcel #39 to its common corner with parcel #40 (State of North Carolina), continuing south along the east line of parcel #40 to its common corner with parcel #41 (State of North Carolina), thence following the east line of parcel #41 to the east margin of a 20 foot wide alley, thence in a southerly direction with the east margin of said alley to the northern margin of Old US Highway 70 (SR #2435) being the southeast corner of parcel #42. Crossing Old US Highway 70 (SR #2435) in a southerly direction to the north east corner of parcel #43 and following the east line of parcel #43 to the common & northwest corner of parcel #44, thence following the west and southern lines of parcel #44 to the common corner with parcel #45, thence in an easterly direction along the southern line of parcels #45, 46, 47 and 48 to the northern margin of US Highway 70, continuing across US Highway 70 to the northwest corner of parcel #49 thence following the west line of parcel #49 to the northern margin of Interstate Highway 40. Crossing Interstate Highway 40 in a southerly direction to the southern margin of Interstate Highway 40, thence proceeding in an easterly direction along the southern margin of Interstate Highway 40 to the northwest corner of parcel #50, thence along the west line of parcel #50 to its common corner with parcel #51, thence along the southern line of parcel #51 to its common corner with parcel #52 (Black Mountain Center for Research), thence along the west line of parcel #52 to its common corner with parcel #53, continuing south along the west line of parcel #53 to its common corner with parcel #54, thence along the west line of parcel #54 in a southerly direction to its common corner with parcel #55 (Blue Ridge Assembly), thence following the west line of parcel #55 to its common corner with parcel #56, thence along the west line of parcel #56 in a southerly direction to the common corner with parcel #57 thence along the northern line to its common corner with parcel #58, thence with the east line of parcel #58 to its common corner with parcel #59. Thence along the southern line of parcels #59, 60 & 61 to the intersection of Mountain Azalea Drive, continuing along the north margin of Mountain Azalea Drive to its intersection with Wildflower Cove Drive, crossing over the road right of way to the west margin of Wildflower Cove Drive, thence following the west margin of Wildflower Cove Drive to the common (northeast) corner of parcels 62 & 63, continuing along the southern line of parcels 63 & 64 to the common corner of parcels 64 & 65. Thence following the northern line of parcels 65 & 66 to its common corner with parcel #67, thence following this north line of parcel #67 to its common corner with parcel #68. Continuing along the southern line of parcel #68, 69, and 70 to the common corner with parcel #71, thence with the southeast line of parcel #71 to its common corner with parcel #72, continuing along the east line of parcels #72, 73, and 74 to the common corner with parcels #75 and #76. Thence along the north line of parcel #76 to the common corner with parcel #77, continuing along the east line of parcel #77 to its common corner with parcel #78, following the north line of parcel #78 and 77 to its common corner with parcel #79, thence north along the east and south lines of parcels #79, 80, and 81 to its common corner with parcel #82, thence following the east and north line of parcel #82 to the common corner with parcel #83, and then following the north line of parcel #83, 84, and 85 to its common corner with parcel #86. Continuing along the east, south and west lines of parcel #86 to its common corner with parcel #87, thence along the south line of parcel #87 to

its southeast corner, the common corner with parcel #88, thence along the south and west line of parcel #88 to the southern margin of Saunooke Road (SR #2842), thence in a northeast direction along the south margin of the road to the northwest corner of parcel #89, turning north across Saunooke Road (SR #2842) and Interstate Highway 40 to the point of Beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Swannanoa is a Mayor and the Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in May 2010 provided for by Section 4.2 of this Charter, David Alexander, Jane Hansel, Ron Hillabrand, Mike Tolley, Robert Shepard, and Dr. Eloise Styles are appointed council members of the Town of Swannanoa, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect persons to serve as Interim Mayor and Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in May 2010.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council, and except as provided in this section, they shall serve four-year terms. In 2010, the three candidates receiving the highest numbers of votes shall be elected to four-year terms, and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2012, and quadrennially thereafter, two members shall be elected to four-year terms. In 2014, and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In May 2010 and biennially thereafter, the Mayor shall be elected for a term of two years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Town Council. The Mayor shall exercise the powers and duties conferred upon him by the general laws of the State of North Carolina, the provisions of this Charter, or the Town Council. The Mayor shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in May 2010 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held May 4, 2010. The filing period for candidacies for the first regular municipal election to be held May 4, 2010 is the same as provided by G.S. 163-106.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Manager.** The Town Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government, except as otherwise directed by the Town Council. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Town Council, so far as authorized by general law. As chief administrator of the Town, the Town Manager shall have the power to appoint, suspend, and remove all Town officers, department heads, and employees, except the Town Attorney, Town Clerk, and any other official whose appointment or removal is vested in the Town Council by this Charter or by general law. Neither the Town Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town of Swannanoa, except as provided by this Charter.

"Section 5.3. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.4. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"Section 5.5. **Other Administrative Officers and Employees.** The Town Council may authorize other offices and positions and appoint persons to fill the offices and positions, or the Council may authorize the offices and positions to be filled by appointment by the Town Manager. The Town Council may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2009, the citizens and property in the Town of Swannanoa shall be subject to municipal taxes levied for the year beginning July 1, 2009, and for that purpose the Town shall obtain from Buncombe County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2009.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Swannanoa is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS PROVISIONS.

"Section 8.1. **Annexation.** Notwithstanding any other provision of law, the Town of Swannanoa shall not annex any area beyond the southern boundary of the corporate limits of the Town that runs along a ridge line and borders the Fairview Township in Buncombe County.

"Section 8.2. **Expenses.** The entities sponsoring incorporation shall be entitled to recover from the Town expenses of sponsoring incorporation in the amount of five hundred dollars ($500.00) or greater, provided that the entities seeking recovery shall submit written requests for reimbursement and shall be subject to annual audit. The Town Council may reimburse expenses after the first full fiscal year. To receive reimbursement, all requests must be submitted prior to the end of the second fiscal year.

SECTION 2. The Buncombe County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Swannanoa the question of whether or not the area shall be incorporated as the Town of Swannanoa. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Swannanoa."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Town of Swannanoa," Section 1 of this act shall become effective on the date that the Buncombe County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

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

SENATE BILL 553:
Incorporate Swannanoa

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S553-CSLMx-16		Committee Counsel

SUMMARY: Senate Bill 553 incorporates the Town of Swannanoa[1]. The proposed committee substitute provides the description of the Town boundaries, prohibits the Town from annexing any area beyond the southern boundary of the corporate limits that run along a ridge line and borders the Fairview Township, and corrects the temporary officers of the Town.

CURRENT LAW: Article VII of the North Carolina Constitution provides that the General Assembly may create cities and towns. The General Assembly created the Joint Legislative Commission on Municipal Incorporations in 1986 to conduct an independent review and evaluation of proposed municipal incorporations. The evaluation is conducted in accordance with a statutory set of objective criteria found in Article 20 of Chapter 120 of the General Statutes. The statutory criteria include a review of community support, population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable rate. Chapter 160A of the General Statutes provides the general laws applicable to the administration, powers, and duties of municipalities. Municipalities may share in the following revenue sources: local sales tax distributions, Powell Bill allocations, franchise tax revenues on electricity, beer and wine excise taxes, piped natural gas excise tax revenues, and telecommunications sales tax revenues.[2]

BILL ANALYSIS: Senate Bill 553 incorporates the Town of Swannanoa, to be governed by a five-member town council and a mayor. The Joint Legislative Commission on Municipal Incorporations found that the proposed incorporation met the standards required for incorporation under Article 20 of Chapter 120 of the General Statutes.

- The Town of Swannanoa would be located in Buncombe County. The Town of Black Mountain, population 7,511 is within a distance of one mile of the proposed Town boundaries and the City of Asheville, population 68,889 is located within a distance of five miles of the proposed Town boundaries. Both the Town of Black Mountain and the City of Asheville have submitted resolutions expressing approval of the incorporation of the Town.
- The estimated permanent population of the Town of Swannanoa would be 8,667 residents. The estimated population density for the Town would be 448 people per square mile. The estimated assessed property tax valuation would be $819,151,374.
- The Town plans to offer the following services: police protection provided by the Buncombe County Sheriff's Department, fire protection provided by the Swannanoa Volunteer Fire Departments; street maintenance provided through a contract with the Department of Transportation, and street lighting provided by contract with Progress Energy.

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[1] In its Report to the General Assembly dated June 17, 2009, the Joint Legislative Commission on Municipal Corporations found that the proposed Town of Swannanoa meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Town of Swannanoa.

[2] A municipality must have a property tax rate greater than $0.05/$100 valuation and provide at least four services to receive the following shared revenues: local sales and use tax, beer and wine excise taxes, sales tax on telecommunications, and Powell Bill allocations.

- The Town would be entitled to the following estimated amounts of revenue from shared tax revenue sources: $512,422 of local sales tax; $312,000 of franchise tax; $39,000 of beer and wine excise taxes if the Town holds a referendum in which the sales of beer and wines are approved; $123,000 of sales tax on telecommunications; and $250,000 of Powell Bill allocations. The Town is proposing a property tax rate of $0.17/$100 valuation for estimated property tax revenue of a little more than $1 million.

EFFECTIVE DATE: SB 553 would become effective when it becomes law.

S553-SMTD-118(CSLMx-16) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 867
PROPOSED COMMITTEE SUBSTITUTE S867-CSRB-52 [v.4]

7/14/2009 12:15:36 PM

Short Title: Suspend ABC Permit for Overdue Tax Debt. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO DIRECT THE SUSPENSION OF AN ABC PERMIT IF THE ABC PERMIT HOLDER HAS AN OVERDUE TAX DEBT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-243.2. Procedure for suspension of ABC permit.**

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

(1) ABC permit. – A permit authorizing the retail sale of mixed beverages, fortified or unfortified wine, or malt beverages issued under G.S. 18B-1001.

(2) Commission. – The North Carolina Alcoholic Beverage Control Commission established G.S. 18B-200.

(3) Overdue tax debt. – Defined in G.S. 105-243.1.

(4) Tax debt. – Defined in G.S. 105-243.1.

(b) Notice of ABC Permit Suspension. – The Secretary may instruct the Commission to suspend the ABC permit of a taxpayer who has an overdue tax debt by sending the Commission a written notice of permit suspension. At least 30 days before the Department sends a notice of an ABC permit suspension to the Commission, the Department must notify the taxpayer by mail that the taxpayer's ABC permit will be suspended if payment is not received within 30 days after the notice is mailed.

(c) Clearance Certificate. – Upon payment of the overdue tax debt or entry into an installment agreement with the taxpayer under G.S. 105-237 for payment of the tax debt, the Department must send the Commission written notice of a clearance certificate instructing the Commission to reinstate the taxpayer's ABC permit."

SECTION 2. G.S. 18B-904(e) reads as rewritten:

"(e) ~~Business or Location No Longer Suitable.~~ Permit Suspension or Revocation. – An ABC permit is subject to suspension or revocation in the circumstances described in one of the following subdivisions:

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood.

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred.

(4) The Commission must suspend a permit authorizing the retail sale of mixed beverages, fortified or unfortified wine, or malt beverages issued under G.S. 18B-1001 when it receives a notice of permit suspension from the Department of Revenue under G.S. 105-243.2 for failure of the permit holder to pay an overdue tax debt. Upon receipt of a notice of a permit suspension, the Commission must notify the permit holder named in the notice of the suspension in writing. The suspension is effective 10 days after the date of the written notice. The suspension remains in effect until the Commission receives a clearance certificate issued by the Department of Revenue stating the permit holder's retail permit may be reinstated. Upon receipt of the certificate, the Commission must reinstate the permit at no additional cost to the permit holder and notify the permit holder of the reinstatement and the effective date of the reinstatement.

SECTION 3. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of ~~G.S. 150B-2,~~ G.S. 150B-2. ~~and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on~~ Except as provided in this section, the issuance, suspension, or revocation of an ABC ~~permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case"~~ permit

is subject to the contested case provisions of Article 3 of Chapter 150B of the General Statutes. ~~except as provided in this section.~~The following Commission action on ABC permits is not subject to Article 3 of Chapter 150B of the General Statutes:

(1) Issuance of a temporary permit under G.S. 18B-905.

(2) Revocation of a permit under G.S. 18B-904(a)(3).

(3) Suspension of a permit under G.S. 18B-904(a)(4)."

SECTION 4. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(39) To exchange information with the North Carolina Alcoholic Beverage Control Commission for the collection of overdue tax debts pursuant to G.S. 105-243.2."

SECTION 5. The Department of Revenue must report to the Revenue Laws Study Committee the amount of tax revenue collected as a result of G.S. 105-243.2, as enacted by this act. The first report is due by June 1, 2010, and the second report is due by October 1, 2011. The report must include the following information:

(1) The amount of tax collected from taxpayers who receive notice from the Department of Revenue that the taxpayer's ABC permit will be suspended but before the Department sends the North Carolina Alcoholic Beverage Control Commission a notice to suspend the taxpayer's ABC permit.

(2) The number of ABC permit suspension notices sent by the Department of Revenue to the North Carolina Alcoholic Beverage Control Commission.

(3) The number of taxpayers whose ABC permits are suspended pursuant to a notice of ABC permit suspension.

(4) The amount of tax collected from taxpayers whose ABC permits are suspended.

SECTION 6. This act becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.

SENATE BILL 867:
Tax Law Compliance Condition of ABC Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 13, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S867-CSRB-52		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 867 would give the Department of Revenue an additional tool to use in its collection of overdue tax debts. The bill would allow the Department to direct the North Carolina Alcohol Beverage Control Commission to suspend the ABC permit of a permittee who has an overdue tax debt. The bill becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.***

CURRENT LAW: The Department of Revenue may collect a tax when a return is filed showing tax is due, when a taxpayer does not request a review of a proposed assessment, when a settlement concerning the amount of tax due is reached, when a taxpayer does not file a petition for a contested case hearing upon a notice of final determination, or when a final determination is reached after a contested case hearing. The Department may collect a tax debt through the levy and sale of a taxpayer's real or personal property, through the attachment and garnishment of the taxpayer's intangible property such as rents, bank deposits, and wages, and through the outsourcing of the tax debt to a private collection agency.

A tax debt that remains unpaid 90 days or more after it becomes collectible is considered an overdue tax debt. The Department may impose a 20% collection assistance fee on an overdue tax debt that remains unpaid 30 days or more after the fee notice is mailed to the taxpayer.

BILL ANALYSIS: Senate Bill 867 would allow the Department to suspend an ABC permit authorizing the retail sale of mixed beverages, wine, or beer if the holder of the permit fails to pay an overdue tax debt within 30 days after the Department gives the taxpayer written notification of the possible suspension. If the taxpayer fails to pay the overdue tax debt in a timely manner, the Department may instruct the ABC Commission to suspend the taxpayer's ABC permit. Upon receiving the instruction, the Commission must send the permittee written notice that the permit will be suspended 10 days from the date of the notice. The suspension remains in effect until the Commission receives a clearance certificate issued by the Department stating the overdue tax debt has been addressed and the permit may be reinstated. The Commission must reinstate the permit at no additional cost to the permittee and it must notify the permit holder of the reinstatement and the effective date of the reinstatement.

Typically, when a person makes retail sales of alcoholic beverages with a suspended permit, the Commission revokes the person's permit. A revoked permit may not be reissued for at least three years. A distributor may not deliver alcoholic beverages to a person who does not hold an active permit. Whenever a retailer places an order, the distributor is suppose to check the Commission's website to verify that the retailer holds an active permit. A distributor who delivers alcoholic beverages to a retailer whose permit has been suspended may have its own permit suspended for up to five days or be fined up to $500.

EFFECTIVE DATE: The bill becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.

BACKGROUND: About a decade ago, the General Assembly authorized the Department of Revenue and the Office of the State Controller to conduct a study of the Department's delinquent collection

ɔractices. Based on the results of the study conducted by Pricewaterhouse Coopers, the Department centralized its collection process, made technology upgrades, and implemented an automated case management tool with debt scoring and performance measures.

The Department initiated *Project Collect* in 2001 with a goal to produce an additional $150 million in revenue collections. In conjunction with that *Project*, the General Assembly authorized the Department to outsource the collection of tax debts owed by both in-state and out-of-state residents. It also provided the Department with a funding mechanism for some of its collection activities through the imposition of a collection assistance fee[1] of 20% on all tax debts that remain unpaid for 90 days after they become final.

The Department initiated *Project Compliance* in 2003 with a goal to produce an additional $40 million in revenue collections for fiscal year 2003-2004. In conjunction with that *Project*, the General Assembly provided funding for 39 new positions in the Examination Division in 2003 and funding for an additional 47 new positions in the Examinations Division in 2004.

This year, the Governor's budget included an amount of revenue for "Department of Revenue Improved Enforcement". Both the Senate budget and the House budget include a line item in its General Fund Availability Statement attributable to "Improved Enforcement." The amount in the Senate budget attributable to this source is $50,000,000 for FY 2009-2010 and $75,000,000 for FY 2010-2011. The amount in the House budget attributable to this source is $60,000,000 for FY 2009-2010 and $90,000,000 for FY 2010-2011. There are no specific legislative changes contained in any of the three budgets related to the Department's improved enforcement practices.

'he Department makes semiannual reports to the General Assembly on its collection of tax debt.[2] In its .eport dated August 1, 2008, the Department lists its existing initiatives and its long-term collection plan. Although the initiative in this bill is not included in that report, it was mentioned by Secretary Lay in his remarks to the Senate Finance Committee earlier this session. He also mentioned an initiative that focuses on unreported income by individuals using Individual Taxpayer Identification Numbers. Senate Bill 1006, sponsored by Sen. Hoyle and currently in the House Finance Committee, would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation.

S867-SMRB-42(CSRB-52) v2

The proceeds of the fee may be used to pay contractors for collecting overdue tax debts, to pay the fee the US Department of Treasury charges for debt setoff, to pay for taxpayer locater services, to pay for postage or other delivery charges associated with the collection of an overdue tax debt, to pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center, and to pay for expenses of the Examination and Collection Division.

[2] GS 105-243.1(f) and GS 105-256(a)(8).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 14, 2009

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 867

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	*See Assumptions and Methodology*				
	Increases General Fund Availability by $2.5 M to $17.2 M				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
NC Alcoholic Beverage Control Commission, NC Department of Revenue

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY: Senate Bill 867 amends G.S. 18B-903 requiring that compliance with the State's tax law is a condition of holding an Alcoholic Beverage Control (ABC) Permit. The legislation also allows for the revocation of an ABC permit for failure to file a timely tax return or pay an overdue tax debt. Effective January 1, 2010, the bill also modifies G.S. 105-259 (b)

allowing the Department of Revenue to release taxpayer information to the ABC Commission for the purposes of granting or revoking alcohol permits.

ASSUMPTIONS AND METHODOLOGY: The changes set forth in SB 867 aid the North Carolina Department of Revenue (DOR) in collecting unpaid sales and use taxes from ABC license holders. With the ability to revoke permits, DOR expects that tax increased will generate between $2.5 million and $17.2 million in General Fund availability.

Revenue estimates that retailers with the potential of being ABC permit holders owe a total of $43.3 million in delinquent collections. Potential ABC permit holders include grocery and convenience stores with the authority to sell beer and wine for off-premise consumption in addition to hotels, bars and restaurants possessing the licensure to sell mixed drinks as well as beer and wine for on premise consumption. Revenue officials expect the conditions set forth in SB 867 to be most effective in collecting delinquent taxes from two groups of taxpayers, those that have not remitted taxes at all and those that are 30 days overdue in the remittance process. Table 1 lists length of delinquency and total tax liability by business class for these two types of businesses.

Table 1. Tax Delinquency By Business Class, April 2009

Business Class	Balance		Total Tax Liability
	Estimated Non-Filer	0-30 days	
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$1,873,942	$470,724	$2,344,667
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$8,797,808	$2,206,098	$11,003,906
Other - Food & Beverage Group (Canners, Meat Processors)	$401,562	$40,297	$441,859
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$790,377	$178,978	$969,355
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$1,027,192	$9,583	$1,036,775
Hotels, Motels, etc. Resorts	$1,319,348	$52,005	$1,371,353
Total	**$14,210,230**	**$2,957,685**	**$17,167,915**

There are several unknown variables in estimating the Department's ability to collect delinquent taxes under SB 867 most notably, the exact number of businesses with ABC permits and those businesses with past due tax debts ability to pay. The ABC Commission and Department of Revenue currently lack a method to match or merge ABC permittee data with DOR tax payer identification information. Implementation of SB 867 requires the ABC Commission to gather additional permittee information for data matching purposes.

Table 2. Estimated Collections from Increased Enforcement under SB 867			
Business Class	**Unpaid/Overdue Trust Taxes**	**25% increased compliance**	**15% increased compliance**
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$2,344,667	$586,167	$351,700
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$11,003,906	$2,750,977	$1,650,586
Other - Food & Beverage Group (Canners, Meat Processors)	$441,859	$110,465	$66,279
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$969,355	$242,339	$145,403
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$1,036,775	$259,194	$155,516
Hotels, Motels, etc. Resorts	$1,371,353	$342,838	$205,703
Total	**$17,167,915**	**$4,291,979**	**$2,575,187**

In addition to the lack of identifying information, the businesses' ability to pay is also difficult to estimate. DOR, in cases of tax delinquency, has the authority to seize all taxpayer assets within four weeks of notification. DOR collections protocol allows for the confiscation and auction of all assets within a relatively short period of time. Given the Department's current ability to collect past due taxes, the additional leverage that SB 867 provides in increasing compliance is unknown. Table 2 provides several collection scenarios. Should 100% of past due tax payers both hold ABC permits and have the ability to pay delinquent taxes, General Fund availability would increase by $17.2 million annually. If tax compliance increases by 25% General Fund availability would increase by $4.2 million annually.

SOURCES OF DATA: North Carolina Department of Revenue Collections Division

TECHNICAL CONSIDERATIONS: None

SENATE BILL 867

Short Title:	Tax Law Compliance Condition of ABC Permit.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COMPLIANCE WITH THE STATE'S TAX LAWS IS A CONDITION OF HOLDING AN ABC PERMIT AND THAT AN ABC PERMIT MAY BE REVOKED FOR FAILURE TO TIMELY FILE A TAX RETURN OR PAY AN OVERDUE TAX DEBT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-903 is amended by adding a new subsection to read:

"(b3) Tax Compliance. – Compliance with Chapter 105 of the General Statutes is a condition of holding an ABC permit issued under this Chapter. A person required to renew a mixed beverages permit under subsection (a) of this section and a person required to register under subsection (b1) of this section must submit, along with the renewal application or annual registration, a certification that the person has timely filed all tax returns that are due and has no overdue tax debts. Failure to file a timely tax return and failure to pay an overdue tax debt are grounds for revoking a permit issued under this Chapter. The term 'overdue tax debt' has the same meaning as defined in G.S. 105-243.1."

SECTION 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(39) To provide to the North Carolina Alcoholic Beverage Control Commission the information needed to determine if a person holding an ABC permit under Chapter 18B of the General Statutes is in compliance with this Chapter."

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

SENATE FINANCE COMMITTEE
Wednesday, July 15, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Wednesday, July 15, 2009 at 1:00 p.m. There were twenty-six committee members present. Senator Clark Jenkins presided.

H.B. 456 – Tech. & Org. Changes/Certain DHHS Facilities.

Representative Insko was recognized to explain the bill which makes technical and organizational changes to the law regarding the licensure and inspection of faculties for aged and disabled individuals. Senator Tillman offered a technical amendment and moved for its adoption. The motion carried. Cindy Avrette, staff attorney with the Research Division, was recognized to answer questions. Senator Albertson moved to report the bill favorable as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 1196 – State Nat. & Hist. Pres. Addns. & Del.

Representative England was recognized to explain the bill. Senator Purcell moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS dedicates and accepts certain properties as part of the State Nature and Historic Preserve and removes certain lands for the State Nature and Historic Preserve. Senator Atwater moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1159 – Insurance Licensing Changes.

Senator Vaughan was recognized to explain the bill. It clarifies the laws on insurance business entity licenses, provides for electronic filings with the Department of Insurance, and clarifies the law on appointment of agents by insurance companies. Senator Nesbitt moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1313 – Regulate Public Adjusters.

Senator Vaughan was recognized to explain the bill which provides for meaningful regulation of insurance public adjusters. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 553 – Incorporate Swannanoa.

Senator Nesbitt recognized to explain the bill. Senator Albertson moved to adopt the PCS for discussion and the motion carried. The PCS incorporates the Town of Swannanoa, subject to referendum. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 867 – Tax Law Compliance Condition of ABC Permit.

This bill was removed from the agenda.

The meeting adjourned at 1:18 p.m.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 15, 2009

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

FAVORABLE

H.B.(CS #2) **1159** Insurance Licensing Changes.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #1) **1313** Regulate Public Adjusters.-AB
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1196** State Nat. & Hist. Pres. Addns. & Del.
Draft Number: 80489
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:
H1159 – Sen. Vaughan
H1196 – Sen. Atwater
H1313 – Sen. Vaughan

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 15, 2009

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

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

S.B. **553** Incorporate Swannanoa.

Draft Number:	85265
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **456** Tech. & Org. Changes/Certain DHHS Facilities.

Draft Number:	50768
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:
H456 – Sen. Nesbitt

Senate Finance Committee
Wednesday, July 15, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 456	Tech. & Org. Changes/Certain DHHS Facilities.	Rep. Earle Rep. England Rep. Farmer-Butterfield Rep. Insko
HB 1159	Insurance Licensing Changes.-AB	Rep. Goforth Rep. Wray
HB 1196	State Nat. & Hist. Pres. Addns. & Del.	Rep. England
HB 1313	Regulate Public Adjusters.-AB	Rep. Goforth Rep. Wray
SB 553	Incorporate Swannanoa.	Sen. Nesbitt
SB 867	Tax Law Compliance Condition of ABC Permit.	Sen. Hoyle

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 15, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 456	Tech. & Org. Changes/Certain DHHS Facilities.	Representative Earle Representative England, M.D. Representative Farmer-Butterfield Representative Insko
HB 1159	Insurance Licensing Changes.-AB	Representative Goforth Representative Wray
HB 1196	State Nat. & Hist. Pres. Addns. & Del.	Representative England, M.D.
HB 1313	Regulate Public Adjusters.-AB	Representative Goforth Representative Wray

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S553 - Incorporate Swannanoa and S867 - Tax Law Compliance Condition of ABC Permit have been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 15, 2009	1:00 PM	544 LOB

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BILL NO.	SHORT TITLE	SPONSOR
HB 456	Tech. & Org. Changes/Certain DHHS Facilities.	Representative Earle Representative England, M.D. Representative Farmer-Butterfield Representative Insko
HB 1159	Insurance Licensing Changes.-AB	Representative Goforth Representative Wray
HB 1196	State Nat. & Hist. Pres. Addns. & Del.	Representative England, M.D.
HB 1313	Regulate Public Adjusters.-AB	Representative Goforth Representative Wray
SB 867	Tax Law Compliance Condition of ABC Permit.	Senator Hoyle
SB 553	Incorporate Swannanoa.	Senator Nesbitt, Jr.

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mary Mumbleton	Payne Jarrell
Patrice Rascon	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Horton	DHHS - DHSR
Rose Williams	NCDOI
Angela Ford	NCDOI
Ethan Maynard	NCDOT
R Davis	Raleigh NC
Jeff Maynard	GBM's Agent
Bill Russell	Aon
Alice Bardeen	NCCR
Will Culpepper	Moore + Van Allen
DAVID BARNES	Poyner Spruill
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 15, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Victoria Hawkins	Bone & Assoc.
Penny Griffin	School of Gov.
Michael Houser	NCDOR
John Sada	NC DOR
Michelle Frazier	MF+S
Kevin Davis	TNC
Melissa Trout	NCACC

HOUSE BILL 456
Committee Substitute Favorable 4/15/09

Short Title: Tech. & Org. Changes/Certain DHHS Facilities. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE LAW REGARDING THE LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED INDIVIDUALS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 131D of the General Statutes is amended by adding the following new Article to read:

"Article 1B.

"Licensing of Maternity Homes."

SECTION 1.(b) G.S. 131D-1 is recodified as G.S. 131D-10.10 under Article 1B of Chapter 131D of the General Statutes.

SECTION 1.(c) The title of Article 1 of Chapter 131D of the General Statutes reads as rewritten:

"Article 1.

~~Licensing of Facilities.~~

Adult Care Homes."

SECTION 1.(d) G.S. 131D-2 is repealed.

SECTION 1.(e) Article 1 of Chapter 131D of the General Statutes, as amended by Section 1(c) of this act, is amended by adding the following new Parts to read:

"Part 1. Licensing.

"**§ 131D-2.1. Definitions.**

As used in this Article:

(1) Abuse. – The willful or grossly negligent infliction of physical pain, injury, or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(2) Administrator. – A person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed adult care home.

(3) Adult care home. – An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered

by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.

(4) Amenities. – Services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.

(5) Assisted living residence. – Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multiunit assisted housing with services. As used in this section, "elderly person" means:

a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or

b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

(6) Compensatory agent. – A spouse, relative, or other caretaker who lives with a resident and provides care to a resident.

(7) Department. – The Department of Health and Human Services unless some other meaning is clearly indicated from the context.

(8) Exploitation. – The illegal or improper use of an aged or disabled resident or the aged or disabled resident's resources for another's profit or advantage.

(9) Family care home. – An adult care home having two to six residents. The structure of a family care home may be no more than two stories high, and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

(10) Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Health Service Regulation and to provide a disclosure statement. The disclosure

statement is required to be a part of the annual rental contract that includes a description of the following requirements:

a. Emergency response system;
b. Charges for services offered;
c. Limitations of tenancy;
d. Limitations of services;
e. Resident responsibilities;
f. Financial/legal relationship between housing management and home care or hospice agencies;
g. A listing of all home care or hospice agencies and other community services in the area;
h. An appeals process; and
i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

(11) Neglect. – The failure to provide the services necessary to maintain a resident's physical or mental health.

(12) Personal care services. – Any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.

(13) Registration. – The submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (10) of this section.

(14) Resident. – A person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.

(15) Secretary. – The Secretary of Health and Human Services unless some other meaning is clearly indicated from the context.

"**§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted housing with services; hospice care; obtaining services.**

(a) Adult Care Homes. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;
(2) Individuals requiring continuous licensed nursing care;
(3) Individuals whose physician certifies that placement is no longer appropriate;
(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
(5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(b) Multiunit Assisted Housing With Services. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

(1) Ventilator dependency;
(2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;

(3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;
(4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
(5) Psychotropic medications without appropriate diagnosis and treatment plans;
(6) Nasogastric tubes;
(7) Gastric tubes, except when the individual is capable of independently feeding himself or herself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;
(8) Individuals requiring continuous licensed nursing care;
(9) Individuals whose physician certifies that placement is no longer appropriate;
(10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;
(11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and
(12) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in multiunit assisted housing with services.

(c) Hospice Care. – At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(d) Obtaining Services. – The resident of an assisted living facility has the right to obtain services at the resident's own expense from providers other than the housing management. This subsection shall not be construed to relieve the resident of the resident's contractual obligation to pay the housing management for any services covered by the contract between the resident and housing management.

"**§ 131D-2.3. Exemptions from licensure.**

(a) The following are excluded from this Article and are not required to be registered or obtain licensure under this Article:
(1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;
(2) Persons subject to rules of the Division of Vocational Rehabilitation Services;
(3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration;
(4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly; and
(5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995.

"**§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals; impact of prior violations on licensure; compliance history review; license renewal.**

(a) Licensure. – Except for those facilities exempt under G.S. 131D-2.3, the Department of Health and Human Services shall inspect and license all adult care homes. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted thereunder, the Department shall issue a license for the balance of the calendar year.

(b) Compliance History Review. – Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission.

(c) Prior Violations. – No new license shall be issued for any adult care home to an applicant for licensure who:

(1) Was the owner, principal, or affiliate of a licensable facility under this Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes that had its license revoked until one full year after the date of revocation;

(2) Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department;

(3) Is the owner, principal, or affiliate of an adult care home that had its license summarily suspended or downgraded to provisional status as a result of Type A or Type B violations until six months from the date of reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable; or

(4) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under this Article or Chapter 122C of the General Statutes or had its license summarily suspended or denied under Article 7 of Chapter 110 of the General Statutes until six months from the date of the reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subdivision (2) of this subsection by filing with the Department a request for review by the Secretary within 10 days of the date of denial of the certification. Within 10 days of receipt of the request for review, the Secretary shall issue to the applicant a written determination that either denies certification of substantial compliance or certifies substantial compliance. The decision of the Secretary is final.

(d) License Renewals. – License renewals shall be valid for one year from the date of renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall not renew a license if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may require.

(e) In order for an adult care home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(f) The Department shall not issue a new license for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration.

"**§ 131D-2.5. License fees.**

The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars ($250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents ($12.50).

"**§ 131D-2.6. Legal action by Department.**

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of an adult care home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

(b) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor and, upon conviction, shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(c) If any person shall hinder the proper performance of duty of the Secretary or the Secretary's representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(d) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"**§ 131D-2.7. Provisional license; license revocation; summary suspension of license; suspension of admission.**

(a) Provisional License. – Except as otherwise provided in this section, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

(1) The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles;

(2) There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

(3) There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department also may issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested

case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(b) License Revocation. – The Department may revoke a license whenever:

(1) The Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and

b. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

(2) The Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and

b. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The licensee has failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

(c) Summary Suspension. – The Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation, or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(d) Suspension of Admissions.

(1) In addition to the administrative penalties described in this Article, the Secretary may suspend the admission of any new residents to an adult care home where the conditions of the adult care home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this section, the Secretary shall consider the following factors:

a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and

b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Health and Human Services shall adopt rules to implement this section.

(4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

"**§§ 131D-2.8 through 2.10: Reserved for future codification purposes.**

"Part 2. Other Laws Pertaining to the Inspection and Operation of Adult Care Homes.

"**§ 131D-2.11. Inspections, monitoring, and review by State agency and county departments of social services.**

(a) State Inspection and Monitoring. – The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

(b) Monitoring by County. – The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this monitoring and perform any required follow-up inspection. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit.

(c) State Review of County Compliance. – The Division of Health Service Regulation shall conduct and document annual reviews of the county departments of social services' performance. When monitoring is not done timely or there is failure to identify or document noncompliance, the Department may intervene in the particular service in question. Department intervention shall include one or more of the following activities:

(1) Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.

(2) Advising county personnel as to appropriate policies and procedures.

(3) Establishing a plan of action to correct county performance.

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes.

"**§ 131D-2.12. Training requirements; county departments of social services.**

(a) The county departments of social services' adult home specialists and their supervisors shall complete:

(1) Eight hours of prebasic training within 60 days of employment;

(2) Thirty-two hours of basic training within six months of employment;

(3) Twenty-four hours of postbasic training within six months of the basic training program;

(4) A minimum of eight hours of complaint investigation training within six months of employment; and

(5) A minimum of 16 hours of statewide training annually by the Division of Health Service Regulation.

(b) The joint training requirements by the Department shall be as provided in G.S. 143B-139.5B.

"**§ 131D-2.13. Departmental duties.**

(a) Enforcement of Room Ventilation and Temperature. – The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit.

(b) Administrator Directory. – The Department shall keep an up-to-date directory of all persons who are administrators as defined in G.S. 131D-2.1.

(c) Departmental Complaint Hotline. – Adult care homes shall post the Division of Health Service Regulation's complaint hotline number conspicuously in a public place in the facility.

(d) Provider File. – The Department of Health and Human Services shall establish and maintain a provider file to record and monitor compliance histories of facilities, owners, operators, and affiliates of nursing homes and adult care homes.

(e) Report on Use of Restraint. – The Department shall report annually on October 1 to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services the following for the immediately preceding fiscal year:

(1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold.

"**§ 131D-2.14. Confidentiality.**

Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under G.S. 131D-2.11:

(1) Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected.

(2) Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives unless the resident objects in writing to review of the resident's records or disclosure of such information.

(3) The facility, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department. The Department shall not disclose:

a. Any confidential or privileged information obtained under this section unless the resident or the resident's legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(4) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Health and Human Services and of any county department of social services regarding inspections of adult care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants.

"**§ 131D-2.15. Resident assessments.**

(a) The Department shall ensure that facilities conduct and complete an assessment of each resident within 72 hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging and Adult Services. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

The facility shall use the assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(b) The Department, as part of its inspection and licensing of adult care homes, shall review assessments and related service plans and care plans for a selected number of residents. In conducting this review, the Department shall determine:

(1) Whether the appropriate assessment instrument was administered and interpreted correctly;

(2) Whether the facility is capable of providing the necessary services;

(3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and

(4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

(c) If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

"**§ 131D-2.16. Rules.**

Except as otherwise provided in this Article, the Medical Care Commission shall adopt rules necessary to carry out this Article. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be adopted to ensure that supervision is appropriate and adequate to meet the special needs of these residents. Rule-making authority under this section is in addition to that conferred under G.S. 131D-4.3 and G.S. 131D-4.5.

"**§ 131D-2.17. Impact on other laws; severability.**

(a) Nothing in this section shall be construed to supersede any federal or State antitrust, antikickback, or safe harbor laws or regulations.

(b) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

"§ 131D-2.18. Application of other laws.

(a) Certification of assisted living administrators shall be as provided under Article 20A of Chapter 90 of the General Statutes.

(b) Compliance with the Health Care Personnel Registry shall be as provided under G.S. 131E-256.

(c) Rules for the operation of the adult care portion of a combination home, as defined in G.S. 131E-101, shall be as provided in G.S. 131E-104."

SECTION 2. G.S. 131D-41 and G.S. 131D-42 are repealed.

SECTION 3.(a) G.S. 131D-2.1(10), as enacted by Section 1 of this act, reads as rewritten:

"(10) "Multiunit assisted housing with services." – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. ~~Regulation and to provide a disclosure statement.~~ Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

a. Emergency response system;
b. Charges for services offered;
c. Limitations of tenancy;
d. Limitations of services;
e. Resident responsibilities;
f. Financial/legal relationship between housing management and home care or hospice agencies;
g. A listing of all home care or hospice agencies and other community services in the area;
h. An appeals process; and
i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs."

SECTION 3.(b) G.S. 131D-2.5, as enacted by Section 1 of this act, reads as rewritten:

"**§ 131D-2.5. License and registration fees.**

(a) The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars ($250.00). The

Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents ($12.50).

(b) The Department shall charge each registered multiunit assisted housing with services program a nonrefundable annual registration fee of three hundred fifty dollars ($350.00). Any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with services program, subject to registration under this section, that fails to register is guilty of a Class 3 misdemeanor and, upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense."

SECTION 3.(c) S.L. 2008-166 is repealed.

SECTION 4. Section 3 of this act becomes effective January 1, 2010, and the remainder of this act becomes effective October 1, 2009. Licenses issued pursuant to G.S. 131D-2 remain effective until the date of annual renewal at which time Part 1 of Article 1 of Chapter 131D of the General Statutes shall apply. In all other respects, beginning October 1, 2009, Part 1 of Article 1 of Chapter 131D shall apply to the operation of facilities currently licensed under G.S. 131D-2.

HOUSE BILL 456:
Tech. & Org. Changes/Certain DHHS Facilities

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 15, 2009
Introduced by:	Reps. Insko, England, Farmer-Butterfield, Earle	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 456 makes technical and organizational changes to the laws regarding licensure and inspection of facilities for aged and disabled individuals.***

[As introduced, this bill was identical to S1042, as introduced by Sen. Nesbitt, which is currently in Senate Finance.]

BILL ANALYSIS:

Section 1(a) and (b) make the following statutory revisions for Maternity Homes:

- Section 1(a) of the bill adds the title of a new Article, Article 1B. Licensing of Maternity Homes, to Chapter 131D of the General Statutes.
- Section 1(b) recodifies G.S. 131D-1 as G.S. 131D-10.10 to place the contents which pertain to the licensing of maternity homes under the new Article 1B.

Section 1(c) changes the title of Article 1 of Ch 131D to "Adult Care Homes." The statutory revisions contained in Sections 1(d) and (e) and Section 2 of the bill are as follows:

Statute Section Title Used in Section 1(e) of HB 456	Statutory Section Added by Section 1(e) of HB 456	Cross Reference to Current Law and Repeal of Current Law	Additional Information on Change
Definitions	GS 131D-2.1 *proposed*	GS 131D-2 *Repealed by Sec. 1(d) of the bill.*	Renumbers the definitions, replaces reference to domiciliary home with adult care home
Persons not to be cared for in adult care homes & multiunit assisted housing with services; hospice care; obtaining services	GS 131D-2.2 *proposed*	GS 131D-2(a1), GS 131D-2(a2), GS 131D-2(a3), GS 131D-2(c1) *Repealed by Sec. 1(d) of the bill.*	Reorganizes; Section (d) in proposed GS 131D-2.2 - Obtaining services rewritten from original language in GS 131D-2(c1)
Exemptions from licensure	GS 131D-2.3 *proposed*	GS 131D-2(c) *Repealed by Sec. 1(d) of the bill.*	
Licensure of adult care homes for aged & disabled individuals; impact of prior violations on licensure; compliance history review; license renewal.	GS 131D-2.4 *proposed*	GS 131D-2(b)(1), GS 131D-2(b)(6), GS 131D-2(b1) GS 131D-2(b)(1b) *Repealed by Sec. 1(d) of the bill.*	
License fees	GS 131D-2.5 *proposed*	GS 131D-2(b)(1) *Repealed by Sec. 1(d) of the bill.*	Also see Section 3 which will rename this section to include registration fees enacted by S.L. 2008-166

Legal action by department	GS 131D-2.6 *proposed*	GS 131D-2(b)(2) GS 131D-2(i) *Repealed by Sec. 1(d) of the bill.*	
Provisional license; license revocation; summary suspension; suspension of admission	GS 131D-2.7 *proposed*	GS 131D-2(b)(1) GS 131D-2(b)(3) GS 131D-2(h) *Repealed by Sec. 1(d) of the bill.*	
Inspections, monitoring, and review by State agency and county departments of social services	GS 131D-2.11 *proposed*	GS 131D-2(b)(1a) *Repealed by Sec. 1(d) of the bill.*	
Training requirements; county departments of social services	GS 131D-2.12 *proposed*	GS 131D-2(b)(1a)(d) *Repealed by Sec. 1(d) of the bill.*	Proposed GS 131D-2.12(b) new language that references joint training requirements by the Department in GS 143B-139.5B
Departmental duties	GS 131D-2.13(a), GS 131D -2.13(b), GS 131D-2.13(c), GS 131D-2.13(d), GS 131D-2.13(e) *All proposed*	GS 131D-2(b)(1a)(e), GS 131D-2(b)(1a)(f), GS 131D-2(j) *Repealed by Sec. 1(d) of the bill.* GS 131D-41, GS 131D-42 *Repealed by Sec. 2 of the bill.*	
Confidentiality	GS 131D-2.14 *proposed*	GS 131D-2(b)(4) GS 131D-2(b)(5) *Repealed by Sec. 1(d) of the bill.*	Replaced reference to domiciliary care to adult care home
Resident assessments	GS 131D-2.15 *proposed*	GS 131D-2(e) *Repealed by Sec. 1(d) of the bill.*	
Rules	GS 131D-2.16 *proposed*	GS 131D-2(c2) *Repealed by Sec. 1(d) of the bill.*	
Impact on other laws; severability	GS 131D-2.17 *proposed*	GS 131D-2(c3), GS 131D-2(f) *Repealed by Sec. 1(d) of the bill.*	
Application of other laws	GS 131D-2.18 *proposed*	N/A	

Section 2 repeals G.S. 131D-41 and G.S. 131D-42 which are covered by the new G.S. 131D-2.13(d) and (c).

Section 3 incorporates the changes enacted by 2008-166 regarding Multiunit assisted housing with services (MAHS) fees which were omitted from the original bill. This Section has an effective date of January 1, 2010 which conforms to S.L. 2008-166. Section 3 (c) repeals S.L. 2008-166 because it was drafted using the current statutory structure and will not fit if this bill is enacted.

EFFECTIVE DATE: Section 3 of the act would become effective January 1, 2010, the remainder of this bill would become effective October 1, 2009. Licenses issued pursuant to G.S. 131D-2 remain effective until the date of annual renewal at which time Part 1 of Article 1 of Chapter 131D of the General Statutes apply. In all other respects, beginning October 1, 2009, Part 1 of Article 1 of Chapter 131D applies to the operation of facilities currently licensed under G.S. 131D-2.

Theresa Matula and Susan Barham substantially contributed to this summary.

H456-SMTD-115(e2) v4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 456

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

H456-ATD-48 [v.3]

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

Date July 15 ,2009

Representative

moves to amend the bill on page 12, line 13 by rewriting the line to read:

"**SECTION 4.(a)** G.S. 58-55-35(a) reads as rewritten:

"(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

(1) "Adult care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(1b).~~G.S. 131D-2.1(3).

...

(5) "Family care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(a)(5).~~G.S. 131D-2.1(9).

..."

SECTION 4.(b) G.S. 90-288.12(b)(2) reads as rewritten:

"(2) Family care homes as defined in ~~G.S. 131D-2(a)(5).~~G.S. 131D-2.1(9)."

SECTION 4.(c) G.S. 90-288.13(3) reads as rewritten:

"(3) Assisted living residence. – A facility defined in ~~G.S. 131D-2(a)(1d),~~G.S. 131D-2.1(5), whether proprietary or nonprofit. The term also includes institutions or facilities that are owned or administered by the federal or State government or any agency or political subdivision of the State government."

SECTION 4.(d) G.S.90-288.19 reads as rewritten:

"**§ 90-288.19. Reporting requirement.**

The holder of a facility license issued ~~pursuant to G.S. 131D-2~~G.S. 131D-2.4 shall report any incidents of suspected abuse, neglect, or exploitation of persons residing in an assisted living residence by a person certified under this Article to the Health Care Personnel Registry."

SECTION 4.(e) G.S. 113-351(c)(4) reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

...

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in ~~G.S. 131D-2(a)(1b)~~G.S. 131D-2.1 or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home."

SECTION 4.(f) G.S. 131D-4.6(c) reads as rewritten:

"(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under ~~G.S. 131D-2(b),~~ Part 1 of this Article, as well as any other action permitted by law."

SECTION 4.(g) G.S. 131D-19 reads as rewritten:

"**§ 131D-19. Legislative intent.**

It is the intent of the General Assembly to promote the interests and well-being of the residents in adult care homes and assisted living residences licensed pursuant to ~~G.S. 131D-2.~~Part 1 of this Article. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. It is the intent of the General Assembly that rules developed by the Social Services Commission to implement Article 1 and Article 3 of Chapter 131D of the General Statutes encourage every resident's quality of life, autonomy, privacy, independence, respect, and dignity and provide the following:

..."

SECTION 4.(h) G.S. 131D-20(4) reads as rewritten:

"(4) "Facility" means an adult care home licensed ~~pursuant to G.S. 131D-2.~~G.S. 131D-2.4 "

SECTION 4.(i) G.S. 131D-29 reads as rewritten:

"**§ 131D-29. Revocation of license.**

The Department of Health and Human Services shall have the authority to revoke a license issued ~~pursuant to G.S. 131D-2~~under G.S131D-2.4 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Health and Human Services requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Health and Human Services may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed."

SECTION 4.(j) G.S. 131E-76(3) reads as rewritten:

"(3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and adult care homes licensed under ~~G.S. 131D-2.~~Part 1 of Article 1 of Chapter 131D of the General Statutes."

SECTION 4.(k) G.S. 131E-176(1) reads as rewritten:

"(1) "Adult care home" means a facility with seven or more beds licensed under ~~G.S. 131D-2~~Part 1 of Article 1 of Chapter 131D of the General Statutes or Chapter 131E of the General Statutes that provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age and disability and for whom medical care is only occasional or incidental."

SECTION 4.(l) G.S. 131E-231 reads as rewritten:

"**§ 131E-231. Definitions.**

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in ~~G.S. 131D-2(a)(1b)~~G.S. 131D-2.1(3) or G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or ~~G.S. 131D-2~~G.S. 131D-2.4 or a person or entity operating a long-term care facility subject to licensure without a license."

SECTION 4.(m) G.S. 131E-256(b) reads as rewritten:

"(b) For the purpose of this section, the following are considered to be "health care facilities":

(1) Adult Care Homes as defined in ~~G.S. 131D-2.~~G.S. 131D-2.1.

(2) Hospitals as defined in G.S. 131E-76.

(3) Home Care Agencies as defined in G.S. 131E-136.

(4) Nursing Pools as defined by G.S. 131E-154.2.

(5) Hospices as defined by G.S. 131E-201.

(6) Nursing Facilities as defined by G.S. 131E-255.

(7) State-Operated Facilities as defined in G.S. 122C-3(14)f.

(8) Residential Facilities as defined in G.S. 122C-3(14)e.

(9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.

(10) Licensable Facilities as defined in G.S. 122C-3(14)b.

(11) Multiunit Assisted Housing with Services as defined in ~~G.S. 131D-2~~G.S. 131D-2.1."

SECTION 4.(n) G.S. 143B-181.21 reads as rewritten:

"(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and ~~G.S. 131D-2.~~Part 1 of Article 1 of Chapter 131D of the General Statutes."

SECTION 5. Section 3 of this act becomes effective January 1, 2010, and the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1196
Committee Substitute Favorable 5/5/09
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/23/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1196-CSRIx-42 [v.2]

7/7/2009 9:54:32 AM

Short Title: State Nat. & Hist. Pres. Addns. & Del. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO DEDICATE AND ACCEPT CERTAIN PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE AND TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE.

Whereas, Section 5 of Article XIV of the North Carolina Constitution authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the North Carolina Constitution; and

Whereas, more than 18,000 acres have been added to the State Parks System since the last dedication and acceptance of properties as part of the State Nature and Historic Preserve pursuant to a petition of the Council of State dated May 1, 2007; and

Whereas, in accordance with G.S. 143-260.8, on May 5, 2009, the Council of State voted to petition the General Assembly to enact a law pursuant to Section 5 of Article XIV of the North Carolina Constitution to dedicate and accept properties added to the State Parks System and designated in the petition for inclusion as parts of the State Nature and Historic Preserve; and

Whereas, as a part of its petition of May 5, 2009, the Council of State also requested the General Assembly to remove certain properties from the State Nature and Historic Preserve; and

Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-260.10 reads as rewritten:

"**§ 143-260.10. Components of State Nature and Historic Preserve.**

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of ~~1 May 2007:~~May 5, 2009: Baldhead Island State Natural Area, Bay Tree Lake State Park, Bear Paw State Natural Area, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Carvers Creek State Park, ~~Chimney Rock State Park,~~ Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Deep River State Trail, Dismal Swamp State Park, Elk Knob State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Haw River State Park, Hammocks Beach State Park, Jones Lake State Park, Lake Norman State Park, Lea Island State Natural Area, Lower Haw River State Natural Area, Lumber River State Park, Mayo River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, ~~Mountain Bog State Natural Area,~~ Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Pineola Bog State Natural Area, Raven Rock State Park, Run Hill State Natural Area, Sandy Run Savannas State Natural Area, Singletary Lake State Park, Sugar Mountain State Natural Area, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of ~~1 May 2007~~May 5, 2009, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the

proceeds for that purpose. The State may not otherwise sell or exchange this land.

a. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.

b. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, east of and including the right-of-way along and across Old Peach Orchard Road, as shown in a survey by the City of Gastonia, File No. 400-194, dated November 23, 1998, and filed in the State Property Office.

c. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page No. 85, located on the north side of SR 2245 (Bethlehem Road) and containing 14,964 square feet as shown on the survey entitled "Survey for Crowders Mountain State Park, Deed Book 1103-107, Township 4 Kings Mountain, Cleveland County, N.C." by David W. Dickson, P.A. dated February 28, 2008.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of ~~1 May 2007.~~ May 5, 2009.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of ~~1 May 2007:~~ May 5, 2009: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to

the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

a., b. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

(14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of ~~1 May 2007.~~ May 5, 2009. With respect to the communications tower site on the top of Mount Jefferson and located on that

certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes.

(17) All lands and waters within the Eno River State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following ~~tract:~~tracts:

a. The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Eno River State Park in Orange County, described in Deed Book 3878, Page 461, and Plat Book 98, Page 11, containing 5,313 square feet and required for the permanent easements for bridge replacement project B-4216 on SR 1002 (St. Mary's Road), as shown in the drawing entitled "Preliminary Plans, Project Reference No. B-4216" prepared for North Carolina Department of Transportation by Mulkey Engineers and Consultants dated March 10, 2009, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of ~~1 May 2007,~~May 5, 2009, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs

State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(19) All lands and waters within the boundaries of Lake James State Park as of ~~1 May 2007~~May 5, 2009, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Lake James State Park containing 13.85 acres, and being 100 feet to the east and 150 feet to the west of a centerline shown on a survey by Witherspoon Surveying PLLC, dated February 9, 2007, and filed in the State Property Office. The State of North Carolina may grant a temporary easement to Duke Energy Corporation across this tract to facilitate the Catawba Dam Embankment Seismic Stability Improvements Project. The grant of the easement within Lake James State Park to Duke Energy Corporation under this sub-subdivision constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of Lake James State Park or another State park. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Lake James State Park in McDowell County, Nebo Township, described in Deed Book 377, Page 423, and also shown as Tract B on the plat of survey prepared by Kenneth D. Suttles, RLS, dated December 4, 1987, entitled "Lake James State Park," Sheet 1 of 2, recorded in Plat Book 4, Page 275 of the McDowell County Registry, for a 40-foot right-of-way beginning at the southwest corner of Tract B and continuing along the southern boundary S 86 38' 51" E for 400 feet to the now or former John D. Walker property. The State of North Carolina may grant an easement across this tract to extinguish prescriptive easements on Tract B to improve management of the

State park property. The State may not otherwise sell or exchange this land. The easement excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14.

(20) All lands and waters within the boundaries of Lake Waccamaw State Park as of ~~May 1, 2007,~~May 5, 2009, with the exception of the following tracts: The portions of that certain tract or parcel of land at Lake Waccamaw State Park in Columbus County described in Deed Book 835, Page 590, containing 48,210 square feet and being the portion of this tract shown as new R/W and permanent utility easement on drawing prepared by State of North Carolina Department of Transportation entitled "Map of Proposed Right of Way Property of State of North Carolina (Parks and Recreation) Columbus County" for Tip B-3830 on SR 1947 (Bella Coola Road) done by John E. Kaukola, PLS No. 3999 and compiled 1-18-2008, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lake Waccamaw State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(21) All lands and waters within the boundaries of Chimney Rock State Park as of May 5, 2009, with the exception of the following tract: The portion of that certain tract or parcel of land at Chimney Rock State Park in Rutherford County being a portion of Parcel 2 as described in Deed Book 933, Page 598, containing 346 square feet and being shown as proposed right-of-way for bridge replacement project B-4258 on U.S. 64 over the Broad River on drawing prepared by Kimley-Horn and Associates for the North Carolina Department of Transportation and revised October 26, 2007, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Chimney Rock State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(22) All State-owned land and waters within the boundaries of the Mountains-to-Sea Trail as of May 5, 2009, with the exception of the following tract: The portion of that certain tract or parcel in Johnston County described in Deed Book 3634, Page 278, containing 4.72 acres and being described as proposed easement area for Piedmont Natural Gas Company transmission line on drawing entitled "Easement Survey Prepared for Piedmont Natural Gas Company, Line 142, Easement to be Acquired from the State of North Carolina" by McKim & Creed and dated July 31, 2008, and revised March 11, 2009. The State of North Carolina may grant an easement to Piedmont Natural Gas Company across this tract to facilitate the transmission of natural gas. The grant of the easement within the Mountains-to-Sea Trail to Piedmont Natural Gas Company under this section constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Section 5 of Article XIV of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use

the proceeds from the easement only for the expansion or improvement of the Mountains-to-Sea Trail or another State park. The State may not otherwise sell or exchange this land."

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

HOUSE BILL 1196:
State Nat. & Hist. Pres. Addns. & Del

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 15, 2009
Introduced by:	Rep. England	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Third Edition H1196-CSRIx-42		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1196 would dedicate and accept certain properties as part of the State Nature and Historic Preserve (Preserve), and remove certain lands from the Preserve.***

CHANGE MADE BY PCS: The PCS deletes a reference to Grandfather Mountain State Park. The bill dedicates all lands and waters within the boundaries of units of the State Parks System as of May 5, 2009 (the date of the Council of State's petition to the General Assembly, see more information below). As the State did not finalize acquisition of the Grandfather Mountain property until June 4, 2009, there were no lands or waters in the unit to be included in the Preserve as of May 5th. Grandfather Mountain State Park will be included in a future bill to be introduced to dedicate and accept properties as part of the Preserve.

The PCS also corrects a figure concerning the acres added to the State Parks System since the last dedication and acceptance of properties as part of the Preserve dated May 1, 2007, from more than 15,000 to more than 18,000.

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 113-44.14 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. G.S. 143-260.10 lists the current components of the Preserve.

BACKGROUND: Properties were last accepted into the Preserve in 2007. Since that time over 18,000 acres have been added to the North Carolina Park System. The Council of State met on May 5, 2009 to petition the General Assembly to accept into the Preserve various State parklands and historic sites. In its petition, the Council of State also requested that certain small parcels be deleted for various reasons in order to improve the management of units, allow for existing road relocations, or allow for utility easements.

BILL ANALYSIS: The PCS would:

- Add Bear Paw State Natural Area and Deep River State Trail, to the Preserve (each is a new unit of the State Parks System authorized since the last dedication of State property in 2007).
- Change the designation of Mountain Bog State Natural Area to Pineola Bog State Natural Area and Sugar Mountain State Natural Area.

- Excepts from dedication and/or deletes from the State Parks System several parcels of land proposed for disposition. These are small parcels and their disposition is to improve the management of the units, to allow for existing road relocations, or to allow for utility easements.

  (6)(c) – Concerning Crowders Mountain State Park: Adds language to the statute to except a parcel of land containing 14,964 square feet, which was found to be an encroachment on the property when the State acquired the property. The parcel would be sold to the adjacent landowner and the encroachment resolved.

  (17)(b) – Concerning Eno River State Park: Adds language to the statute to except a parcel of land containing 5,313 square feet, which is needed for a bridge replacement project on Saint Mary's Road over Stroud's Creek in Hillsborough (allowing permanent drainage easements for the new bridge).

  (21) – Concerning Chimney Rock State Park: Adds language to the statute to except a parcel of land containing 346 square feet, which is needed for a bridge replacement project on US 64 over the Broad River (allowing the Department of Transportation to replace a substandard bridge).

  (22) – Concerning Mountains-to-Sea Trail: Adds language to allow the State to issue an easement to Piedmont Natural Gas Company for a gas transmission line across a recently acquired parcel for the Mountains-to-Sea State Trail. The tract must be removed from the Preserve as property in the Preserve may not be used for such a purpose under Section 5 of Article XIV of the Constitution of North Carolina. The underlying fee simple property will remain in the State Parks System. Disturbance to the surface will be minimized with directional boring for the gas pipeline. This is a gas line that will serve eastern Wake County and Johnston County and will be a permanent exception.

EFFECTIVE DATE: The PCS would be effective when it becomes law.

Jennifer McGinnis, counsel to Senate Agriculture, Environment, and Natural Resources, substantially contributed to this summary.

H1196-SMTD-114(CSRIx-42) v4

HOUSE BILL 1159
Committee Substitute Favorable 4/20/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Insurance Licensing Changes.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAWS ON INSURANCE BUSINESS ENTITY LICENSES; TO PROVIDE FOR ELECTRONIC FILINGS WITH THE DEPARTMENT OF INSURANCE; AND TO CLARIFY THE LAW ON APPOINTMENT OF AGENTS BY INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-26(j) reads as rewritten:

"(j) A business entity that sells, solicits, or negotiates insurance shall be licensed in accordance with G.S. 58-33-31(b). Every member of the partnership and every officer, director, stockholder, and employee of the business entity personally engaged in this State in selling, soliciting, or negotiating policies of insurance shall qualify as an individual licensee. A business entity license shall expire on ~~April 1~~ March 31 of each year unless the business entity pays the renewal fee."

SECTION 2. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-250. Electronic filings.**

(a) As used in this section:

(1) "Commissioner's designee" includes the National Insurance Producer Registry of the NAIC.

(2) "License" includes any license, certificate, registration, or permit issued under this Chapter.

(3) "Licensee" means any person who holds a license.

(b) Notwithstanding any other provision of this Chapter, the Commissioner may adopt rules that require an applicant for a license or a licensee to file documents electronically with the Commissioner or the Commissioner's designee. The rules adopted under this section may contain procedures for the electronic payment of any fee required under this Chapter and the electronic filing of documents, including:

(1) Any document required as part of an application for a license under this Chapter.

(2) Any document required to be filed by an applicant for a license or a licensee to maintain the license in good standing.

(3) Any other document required or permitted to be filed.

(c) The Commissioner or the Commissioner's designee may charge an administrative fee for electronic filing. Fees charged for the processing of an electronic filing are in addition to any other fee imposed for the filing. Fees charged for an electronic filing are limited to the actual cost of the electronic transaction.

(d) This section does not supersede any other provision of law that requires the electronic filing of a document or requires an applicant for a license or a licensee to make any other filing electronically."

SECTION 3. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. Upon the appointment, the individual shall be authorized to act as an agent for the appointing insurer for ~~all~~ the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited. For purposes of determining the number of appointments for an agent, there shall be one appointment for each kind of insurance for which the appointed agent is licensed in this State, unless specifically limited."

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

HOUSE BILL 1159:
Insurance Licensing Changes.-AB

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 15, 2009
Introduced by:	Reps. Wray, Goforth	**Prepared by:**	Heather Fennell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: HB 1159 is an agency bill that clarifies when business entity licenses expire, provides for electronic filings with the Department of Insurance via the National Insurance Producer Registry and authorizes a fee for the electronic filing, and specifies that there must be a separate appointment by an insurer for each kind of insurance for which an agent is licensed in this state.

BILL ANALYSIS:

Section 1 clarifies that business entity licenses expire on March 31st (instead of April 1st) of each year unless renewed.

Section 2 creates a new section, G.S. 58-2-250 which allows electronic filing of licensing documents either with the Commissioner of Insurance or the Commissioner's designee. The designee may include the National Insurance Producer Registry of the National Association of Insurance Commissioners ("National Registry"). The bill allows the National Registry to charge an administrative fee for processing the electronic filing that is in addition to any other fee imposed for the filing. The fee for an electronic filing is limited to the actual cost of the electronic transaction.

Section 3 amends G.S. 58-33-40(b) to clarify that when an insurer appoints a licensed individual to be its agent, the individual is authorized to act as an agent for each type of insurance for which the individual holds a license and which the insurer is authorized to sell. There is one appointment for each type of insurance for which the appointed agent is licensed.

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

Martha Walston, counsel to House Finace, substantially contributed to this summary.

H1159-SMTD-112(e3) v2

HOUSE BILL 1313

Committee Substitute Favorable 5/12/09
Senate Commerce Committee Substitute Adopted 6/15/09

Short Title: Regulate Public Adjusters.-AB (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR MEANINGFUL REGULATION OF INSURANCE PUBLIC ADJUSTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 33A.
"Public Adjusters.

"**§ 58-33A-1. Purpose and scope.**

This Article governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first-party claims.

"**§ 58-33A-5. Definitions.**

(1) Business entity. – A corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) Catastrophic incident. – As defined in the National Response Framework, any natural or man-made incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic incident shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred. If state and local resources are insufficient, the Governor may ask the President of the United States to make such a declaration.

(3) Fingerprints. – An impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

(4) Home state. – The District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the home state.

(5) Individual. – A natural person.

(6) Person. – An individual or a business entity.
(7) Public adjuster. – Any person who, for compensation or any other thing of value on behalf of the insured, does any of the following:
a. Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract.
b. Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property.
c. Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.
(8) Uniform individual application. – The current version of the NAIC Uniform Individual Application for resident and nonresident individuals.
(9) Uniform business entity application. – The current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

"**§ 58-33A-10. License required.**

(a) A person shall not act or hold himself or herself out as a public adjuster in this State unless the person is licensed as a public adjuster in accordance with this Article.

(b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

(c) A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the Commissioner shall find all of the following:
(1) The business entity has paid the fees set forth in G.S. 58-33-125.
(2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws and regulations of this State.

(d) Notwithstanding subsections (a) through (c) of this section, a license as a public adjuster shall not be required of any of the following:
(1) An attorney-at-law admitted to practice in this State, when acting in his or her professional capacity as an attorney.
(2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract.
(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts.
(4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient.

(5) A person who settles subrogation claims between insurers.

"**§ 58-33A-15. Application for license.**

(a) A person applying for a public adjuster license shall apply to the Commissioner on the appropriate uniform application or other application prescribed by the Commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

(c) An applicant for a license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(d) In addition, if an applicant described in subsection (b) of this section is a business entity, each key person must furnish the Commissioner a complete set of the key person's fingerprints and a recent passport size full-face photograph of the applicant. The key person's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every key person shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Each key person shall pay the cost of the State and any national criminal history record check of the key person. As used in this subsection, 'key person' means a proposed officer, director, or any other individual who will be in a position to influence the operating decisions of the business entity. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(e) The Commissioner shall keep all information received pursuant to subsections (c) and (d) of this section privileged, in accordance with applicable State and federal law, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"**§ 58-33A-20. Resident license.**

(a) Before issuing a public adjuster license to an applicant under this section, the Commissioner shall find that the applicant meets all of the following criteria:

(1) Is eligible to designate this State as his or her home state or is a nonresident who is not eligible for a license under G.S. 58-33A-35.

(2) Has not committed any act that is a ground for denial, suspension, or revocation of a license as set forth in G.S. 58-33A-45.

(3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the Commissioner.

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in G.S. 58-33A-50.

(5) Has paid the fees set forth in G.S. 58-33-125.

(6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

(b) In addition to satisfying the requirements of subsection (a) of this section, an individual shall:

(1) Be at least 18 years of age; and
(2) Have successfully passed the public adjuster examination.

(c) The Commissioner may require any documents reasonably necessary to verify the information contained in the application.

"**§ 58-33A-25. Examination.**

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to G.S. 58-33A-30. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Commissioner.

(b) The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in G.S. 58-33-125.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Commissioner as set forth in G.S. 58-33-125.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

"**§ 58-33A-30. Exemptions from examination.**

(a) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 12 months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries indicate that the public adjuster is or was licensed in good standing.

(b) A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this State shall apply within 90 days after establishing legal residence to become a resident licensee pursuant to G.S. 58-33A-20. No prelicensing examination shall be required of that person to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in this State shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within 12 months after the cancellation of the applicant's previous license in this State and if, at the time of cancellation, the applicant was in good standing in this State.

"**§ 58-33A-35. Nonresident license reciprocity.**

(a) Unless denied licensure pursuant to G.S. 58-33A-45, a nonresident person shall receive a nonresident public adjuster license if the person meets all of the following criteria:

(1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state.
(2) The person has submitted the proper request for licensure, has paid the fees required by G.S. 58-33-125, and has provided proof of financial responsibility as required in G.S. 58-33A-50.
(3) The person has submitted or transmitted to the Commissioner the appropriate completed application for licensure.
(4) The person's home state awards nonresident public adjuster licenses to residents of this State on the same basis.

(b) The Commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the Commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where nonresident license is issued must be made as soon as possible, yet no later than 30 days after change in new state resident license. Licensee shall include new and old address. A new state resident license is required for nonresident licenses to remain valid. The new state resident license must have reciprocity with the licensing nonresident state(s) for the nonresident license not to terminate.

"**§ 58-33A-40. License.**

(a) Unless denied licensure under this Article, persons who have met the requirements of this Article shall be issued a public adjuster license.

(b) A public adjuster license shall remain in effect unless revoked, terminated, or suspended as long as the request for renewal and fee set forth in G.S. 58-33-125 is paid and any other requirements for license renewal are met by the due date.

(c) The licensee shall inform the Commissioner by any means acceptable to the Commissioner of a change of address, change of legal name, or change of information submitted on the application within 30 days after the change.

(d) A licensed public adjuster shall be subject to Article 63 of this Chapter.

(e) A public adjuster who allows his or her license to lapse may, within 12 months from the due date of the renewal, be issued a new public adjuster license upon the Commissioner's receipt of the request for renewal. However, an administrative fee in the amount of double the unpaid renewal fee shall be required for the issuance of the new public adjuster license. The new public adjuster license shall be effective the date the Commissioner receives the request for renewal and the late payment penalty.

(f) Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within 60 days after the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after 60 days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from the date of lapse, the person shall reapply for the license under this Article.

(g) A licensed public adjuster who is unable to comply with license renewal procedures because of military service, a long-term medical disability, or some other extenuating circumstance may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(h) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the Commissioner deems necessary.

(i) In order to assist in the performance of the Commissioner's duties, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to licensing, including the collection of fees and data, that the Commissioner may deem appropriate.

"**§ 58-33A-45. License denial, nonrenewal, or revocation.**

(a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with G.S. 58-2-70 or any combination of actions for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(2) Violating any insurance laws or violating any regulation, subpoena, or order of the Commissioner or of another state's insurance regulator.

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(6) Having been convicted of a felony or a misdemeanor involving dishonesty or breach of trust.

(7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

(9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license.

(12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the Commissioner.

(13) Failing to comply with an administrative or court order imposing a child support obligation.

(14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) If the action by the Commissioner is to deny an application for or not renew a license, the Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the nonrenewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner in accordance with Article 3A of Chapter 150B of the General Statutes for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held pursuant to Article 3A of Chapter 150B of the General Statutes.

(c) The license of a business entity may be suspended, revoked, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the Commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil penalty according to G.S. 58-2-70.

(e) The Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Chapter against any person who is under investigation for or charged with a violation of this Chapter, even if the person's license or registration has been surrendered or has lapsed by operation of law.

"**§ 58-33A-50. Bond or letter of credit.**

(a) Before issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the Commissioner through any of the following instruments:

(1) A bond executed and issued by an insurer authorized to issue bonds in this State which meets all of the following requirements:

a. It shall be in the minimum amount of twenty thousand dollars ($20,000).

b. It shall be in favor of this State and shall specifically authorize recovery by the Commissioner on behalf of any person in this State who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster.

c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.

(2) An irrevocable letter of credit issued by a qualified financial institution, which meets all of the following requirements:

a. It shall be in the minimum amount of twenty thousand dollars ($20,000).

b. It shall be to an account to the Commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster.

c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.

(b) The issuer of the evidence of financial responsibility shall notify the Commissioner upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.

(c) The Commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.

(d) The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

"**§ 58-33A-55. Continuing education.**

(a) An individual who holds a public adjuster license and who is not exempt under subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.

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

(1) Licensees not licensed for one full year before the end of the applicable continuing education biennium.

(2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this State on the same basis.

(c) Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of subsection (a) of this section.

"**§ 58-33A-60. Public adjuster fees.**

(a) A public adjuster shall not pay a commission, service fee, or other valuable consideration to a person for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(b) A person shall not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(c) A public adjuster may pay or assign commission, service fees, or other valuable consideration to persons who do not investigate or settle claims in this State, unless the payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).

(d) In the event of a catastrophic incident, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value before settlement of a claim.

"**§ 58-33A-65. Contract between public adjuster and insured.**

(a) Public adjusters shall ensure that all contracts for their services are in writing and contain all of the following terms:

(1) Legible full name of the adjuster signing the contract, as specified in Department records.

(2) Permanent home state business address and phone number.

(3) Department license number.

(4) Title of "Public Adjuster Contract."

(5) The insured's full name, street address, insurance company name and policy number, if known or upon notification.

(6) A description of the loss and its location, if applicable.

(7) Description of services to be provided to the insured.

(8) Signatures of the public adjuster and the insured.

(9) Date contract was signed by the public adjuster and date the contract was signed by the insured.

(10) Attestation language stating that the public adjuster is fully bonded pursuant to state law.

(11) Full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services.

(b) The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

(1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

(2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

(3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner. Such a redaction shall constitute an omission of material fact in violation of Article 63 of this Chapter.

(c) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall comply with all of the following:

(1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim.

(2) Inform the insured that loss recovery amount might not be increased by insurer.

(3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(d) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, including, but not limited to, any ownership of, other than as a minority stockholder, or any compensation expected to be received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company, or person.

(e) A public adjuster contract may not contain any contract term that includes any of the following terms:

(1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company rather than as a percentage of each check issued by an insurance company.

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.

(3) Imposes collection costs or late fees.

(4) Precludes a public adjuster from pursuing civil remedies.

(f) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three types are as follows:

a. "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.

b. "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

c. "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy but has the right to do so.

(3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim. Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured's legal counsel.

(4) The public adjuster is not a representative or employee of the insurer.

(5) The salary, fee, commission, or other consideration is the obligation of the insured, not the insurer.

(g) The contracts shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner.

(h) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(i) The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three-business-day period.

(j) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days after the receipt by the public adjuster of the cancellation notice.

"**§ 58-33A-70. Escrow or trust accounts.**

A public adjuster who receives, accepts, or holds any funds on behalf of an insured, toward the settlement of a claim for loss or damage, shall deposit the funds in a noninterest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

"**§ 58-33A-75. Record retention.**

(a) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include all of the following:

(1) Name of the insured.
(2) Date, location, and amount of the loss.
(3) Copy of the contract between the public adjuster and insured.
(4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss.
(5) Itemized statement of the insured's recoveries.
(6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss.
(7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts.
(8) Name of public adjuster who executed the contract.
(9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company.
(10) Evidence of financial responsibility in a format prescribed by the Commissioner.

(b) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times.

(c) Records submitted to the Commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the Commissioner and shall not be subject to Chapter 132 of the General Statutes or G.S. 58-2-100.

"**§ 58-33A-80. Standards of conduct of public adjusters.**

(a) A public adjuster shall, under his or her license, serve with objectivity and complete loyalty the interest of his or her client alone and render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Article.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in G.S. 58-33A-65.

(e) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in G.S. 58-33A-65.

(f) The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person described by any of the following criteria, unless disclosed to the insured:

(1) The public adjuster has a financial interest in the person.

(2) The public adjuster may receive direct or indirect compensation for the referral from the person.

(g) The public adjuster shall disclose to an insured if the public adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" includes any corporation, partnership, association, joint-stock company, or person.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing, including the source and amount of any such compensation.

(i) Public adjusters shall adhere to all of the following general ethical requirements:

(1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise.

(2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements that are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client.

(3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster or independent adjuster on the same claim.

(4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business-day revocation or cancellation period.

(5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

(6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(j) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

(k) Public adjusters shall not solicit a client for employment between the hours of 9:00 P.M. and 9:00 A.M.

"**§ 58-33A-90. Reporting of actions.**

(a) A public adjuster shall report to the Commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents.

(b) Within 30 days after the initial pretrial hearing date, the public adjuster shall report to the Commissioner any criminal prosecution of the public adjuster taken in any jurisdiction.

The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

"**§ 58-33A-95. Rules.**

The Commissioner may, in accordance with Chapter 150B of the General Statutes, adopt rules that are necessary or proper to carry out the purposes of this Article."

SECTION 2. This act becomes effective July 1, 2010.

HOUSE BILL 1313:
Regulate Public Adjusters.-AB

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 15, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Heather Fennell
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1313 is an agency bill that would enact a new Article 33A "Public Adjusters" of Chapter 58 to provide for the licensure, examination, continuing education, contracting policies, record retention, and standards of conduct of public adjusters operating in the State. The Bill contains provisions from the NAIC Model Act on Public Adjusters.***

House Bill 1313 has been referred to Senate Finance because it authorizes the payment of a fee to perform criminal history record checks as a part of determining license eligibility.

CURRENT LAW: The North Carolina Administrative Code (11 NCAC 06A Section .0900 Public Adjusters) sets forth provisions regulating certain actions of public adjusters in the State, including adjuster transactions with insureds, and relationships with third parties.

NCAC 06A .091(2) defines 'public adjuster' to mean, "...any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under G.S. 58-33-30 or who is authorized to adjust under G.S. 58-33-70;"

G.S. 58-33-30 sets forth requirements for issuance of a license by the Commissioner of Insurance to agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This section addresses education and training, examinations, collection of examination and registration fees, denial of licensure, and reciprocity.

G.S. 58-33-70 authorizes the Commissioner to issue 90 day adjuster learner's permits and permit certain out of state adjusters to operate in state in certain limited circumstances.

BILL ANALYSIS: House Bill 1313 would enact a new Article 33A "Public Adjusters" of Chapter 58.

Definition of public adjuster: Any person who acts on behalf of the insured to settle claims for loss or damage of real or personal property covered by an insurance contract; or advertises for or solicits business as an adjuster; or advises insureds about property loss or damage claims under insurance policies.

Qualification of Licensure: Individuals or businesses seeking licensure must comply with all of the following:

- Payment of fees required under G.S. 58-33-125.
- Provide fingerprints and recent photo for criminal history check. For business entities, the key person for each entity must provide fingerprints and recent photo.
- Pass a written examination, unless exempted.
- Complete 24 hours of continuing education every 2 years.
- Resident licensees must maintain a publicly accessible office.
- Nonresident individuals may qualify for reciprocity if the person is licensed in good standing another state, pays all applicable fees, and the home state of the individual offers reciprocity to North Carolina licensees.
- The following are exempt from licensure as a public adjuster:

- Attorneys acting in a professional capacity.
- Persons negotiating claims under life or health insurance policies, or an annuity contract.
- Photographers, estimators, private investigators, engineers, handwriting experts, and other similar persons hired by an adjuster to provide technical assistance.
- A licensed health care employee who prepares files for a health claim.
- A person who settles subrogation claims between insurers.

Bond or letter of credit: Each public adjuster must secure either a bond or irrevocable letter of credit of at least $20,000 for the purpose of providing recover for an individual damaged by the adjuster acting in his or her capacity as an adjuster.

Fees and Contracts: In the event of a catastrophic incident, an adjuster may not charge more than 10% of the settlement or proceeds. Contracts for services for public adjusters must be in writing, may be rescinded within 3 days of signing, and must contain all of the following:

- Legible full name of the adjuster signing the contract, as specified in Department records, permanent home state business address and phone number, and license number of the adjuster.
- Title of "Public Adjuster Contract."
- The insured's full name, street address, insurance company name and policy number.
- A description of the loss and its location, if applicable.
- Description of services to be provided to the insured.
- Signatures of the public adjuster and the insured, date contract was signed by the public adjuster and date the contract was signed by the insured.
- Attestation language stating that the public adjuster is fully bonded pursuant to state law.
- Full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services.

Disclosure: In addition to the specific requirements for contracts, public adjusters must provide the following written disclosures:

- Any direct or indirect financial interest the adjuster has with any other party to the claim, other than the fee or salary established in the contract.
- A statement regarding the claim process that explains all of the following:
  - The difference between adjusters hired by the insurance company and a public adjuster.
  - A public adjuster is not required to fulfill the obligations under a policy.
  - The public adjuster is not a representative of the insurer.
  - The fee or charge of the public adjuster is an obligation of the insured.

Escrow and Record Retention: All funds held by an adjuster on behalf of an insured must deposit the funds in a noninterest-baring escrow or trust account. Public adjusters must maintain records of all transactions for at least 5 years, and the records must be open to inspection by the Commissioner.

EFFECTIVE DATE: This act becomes effective July 1, 2010.

Ben Popkin and Martha Walston, counsel to House Insurance and Finance Committees, substantially contributed to this summary.

H1313-SMTD-116(e3) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 553
PROPOSED COMMITTEE SUBSTITUTE S553-CSLMx-16 [v.3]

7/13/2009 2:16:19 PM

Short Title: Incorporate Swannanoa. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF SWANNANOA, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Swannanoa is enacted to read:

"CHARTER OF THE TOWN OF SWANNANOA.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Swannanoa are a body corporate and politic under the name 'Town of Swannanoa.' The Town of Swannanoa has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Swannanoa are as follows:

BEGINNING at a point on the northern margin of US Highway 70, the southwest corner of parcel #1, said point being approximately 2030 LF east of the intersection of US Highway 70 and Porter's Cove Road (SR#2838) thence from this point of BEGINNING heading north along the west line of said parcel #1 to its common corner with parcel #2 thence following the southern & west line of parcel #2 to its next common corner with parcel #1 thence following the west & north line of parcel #1 to its common corner with parcel #3, thence following the northern line of parcel #3 to its common corner with parcel #4 thence turning north along the west & north lines of parcel #4 to its common corner with parcel #5, continuing with the northern line of parcels #5, #6,#7, and #8 to its common corner with parcel #9 (Warren Wilson College). Thence following the southern & eastern lines of parcel #9 to its common corner with parcel #10, thence following the southern & eastern lines of parcel #10 to the southern edge of the Swannanoa River. Thence proceeding north crossing the river to the southern line of parcel #11 and following said southern line along the northern edge of the Swannanoa River to its common corner with parcel #12 and continuing north to its common corner with parcel #13. Thence following the east line of parcel #13 to its common corner with parcel #14, thence heading east along the southern line of parcels #14 & #15 to the southern margin of Warren Wilson Road (SR #2416). Thence in a westerly direction along the southern margin of Warren Wilson Road (SR #2416) to the northwest corner of parcel #13, thence a distance of approximately 250 feet to the corner of parcel #16 which is on the northern margin of Warren Wilson Road (SR #2416), thence with the east line of parcels #16, #17 and #18, & the east and

northern lines of parcel #17 to its common corner with parcel #18. Thence following the east line of parcel #18 to its common corner with parcels #19 & #20. Proceeding north with the west line of parcel #19 to its common corner with parcel #21 (Chemtronics), thence following the west and north lines of parcel #21 to its common corner with parcel #22, thence following the west & south line of parcels #22, 23, 24, 25, 26, 27, 28, 29, 30, thence following the west line of parcels #30, 31, and 32 to the common corner of parcels #32, 33 & 34 (City of Asheville). Thence following the west line of parcel #34 in a southerly & easterly direction to its common corner with parcels #35 & #36, continuing along the southern line of parcel #36 to its common corner with parcel #37, thence along the west line of parcel #37 to its common corner with parcel #38, thence along the north, east and southern lines of parcel #38 to its common corner with parcel #39. Thence along the east & southern lines of parcel #39 to its common corner with parcel #40 (State of North Carolina), continuing south along the east line of parcel #40 to its common corner with parcel #41 (State of North Carolina), thence following the east line of parcel #41 to the east margin of a 20 foot wide alley, thence in a southerly direction with the east margin of said alley to the northern margin of Old US Highway 70 (SR #2435) being the southeast corner of parcel #42. Crossing Old US Highway 70 (SR #2435) in a southerly direction to the north east corner of parcel #43 and following the east line of parcel #43 to the common & northwest corner of parcel #44, thence following the west and southern lines of parcel #44 to the common corner with parcel #45, thence in an easterly direction along the southern line of parcels #45, 46, 47 and 48 to the northern margin of US Highway 70, continuing across US Highway 70 to the northwest corner of parcel #49 thence following the west line of parcel #49 to the northern margin of Interstate Highway 40. Crossing Interstate Highway 40 in a southerly direction to the southern margin of Interstate Highway 40, thence proceeding in an easterly direction along the southern margin of Interstate Highway 40 to the northwest corner of parcel #50, thence along the west line of parcel #50 to its common corner with parcel #51, thence along the southern line of parcel #51 to its common corner with parcel #52 (Black Mountain Center for Research), thence along the west line of parcel #52 to its common corner with parcel #53, continuing south along the west line of parcel #53 to its common corner with parcel #54, thence along the west line of parcel #54 in a southerly direction to its common corner with parcel #55 (Blue Ridge Assembly), thence following the west line of parcel #55 to its common corner with parcel #56, thence along the west line of parcel #56 in a southerly direction to the common corner with parcel #57 thence along the northern line to its common corner with parcel #58, thence with the east line of parcel #58 to its common corner with parcel #59. Thence along the southern line of parcels #59, 60 & 61 to the intersection of Mountain Azalea Drive, continuing along the north margin of Mountain Azalea Drive to its intersection with Wildflower Cove Drive, crossing over the road right of way to the west margin of Wildflower Cove Drive, thence following the west margin of Wildflower Cove Drive to the common (northeast) corner of parcels 62 & 63, continuing along the southern line of parcels 63 & 64 to the common corner of parcels 64 & 65. Thence following the northern line of parcels 65 & 66 to its common corner with parcel #67, thence following this north line of parcel #67 to its common corner with parcel #68. Continuing along the southern line of parcel #68, 69, and 70 to the common corner with parcel #71, thence with the southeast line of parcel #71 to its common corner with parcel #72, continuing along the east line of parcels #72, 73, and 74 to the common corner with parcels #75 and #76. Thence along the north line of parcel #76 to the common corner with parcel #77, continuing along the east line of parcel #77 to its common corner with parcel #78, following the north line of parcel #78 and 77 to its common corner with parcel #79, thence north along the east and south lines of parcels #79, 80, and 81 to its common corner with parcel #82, thence following the east and north line of parcel #82 to the common corner with parcel #83, and then following the north line of parcel #83, 84, and 85 to its common corner with parcel #86. Continuing along the east, south and west lines of parcel #86 to its common corner with parcel #87, thence along the south line of parcel #87 to

its southeast corner, the common corner with parcel #88, thence along the south and west line of parcel #88 to the southern margin of Saunooke Road (SR #2842), thence in a northeast direction along the south margin of the road to the northwest corner of parcel #89, turning north across Saunooke Road (SR #2842) and Interstate Highway 40 to the point of Beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Swannanoa is a Mayor and the Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in May 2010 provided for by Section 4.2 of this Charter, David Alexander, Jane Hansel, Ron Hillabrand, Mike Tolley, Robert Shepard, and Dr. Eloise Styles are appointed council members of the Town of Swannanoa, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect persons to serve as Interim Mayor and Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in May 2010.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council, and except as provided in this section, they shall serve four-year terms. In 2010, the three candidates receiving the highest numbers of votes shall be elected to four-year terms, and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2012, and quadrennially thereafter, two members shall be elected to four-year terms. In 2014, and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In May 2010 and biennially thereafter, the Mayor shall be elected for a term of two years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Town Council. The Mayor shall exercise the powers and duties conferred upon him by the general laws of the State of North Carolina, the provisions of this Charter, or the Town Council. The Mayor shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in May 2010 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held May 4, 2010. The filing period for candidacies for the first regular municipal election to be held May 4, 2010 is the same as provided by G.S. 163-106.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Manager.** The Town Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government, except as otherwise directed by the Town Council. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Town Council, so far as authorized by general law. As chief administrator of the Town, the Town Manager shall have the power to appoint, suspend, and remove all Town officers, department heads, and employees, except the Town Attorney, Town Clerk, and any other official whose appointment or removal is vested in the Town Council by this Charter or by general law. Neither the Town Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town of Swannanoa, except as provided by this Charter.

"Section 5.3. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.4. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"Section 5.5. **Other Administrative Officers and Employees.** The Town Council may authorize other offices and positions and appoint persons to fill the offices and positions, or the Council may authorize the offices and positions to be filled by appointment by the Town Manager. The Town Council may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2009, the citizens and property in the Town of Swannanoa shall be subject to municipal taxes levied for the year beginning July 1, 2009, and for that purpose the Town shall obtain from Buncombe County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2009.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Swannanoa is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS PROVISIONS.

"Section 8.1. **Annexation.** Notwithstanding any other provision of law, the Town of Swannanoa shall not annex any area beyond the southern boundary of the corporate limits of the Town that runs along a ridge line and borders the Fairview Township in Buncombe County.

"Section 8.2. **Expenses.** The entities sponsoring incorporation shall be entitled to recover from the Town expenses of sponsoring incorporation in the amount of five hundred dollars ($500.00) or greater, provided that the entities seeking recovery shall submit written requests for reimbursement and shall be subject to annual audit. The Town Council may reimburse expenses after the first full fiscal year. To receive reimbursement, all requests must be submitted prior to the end of the second fiscal year.

SECTION 2. The Buncombe County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Swannanoa the question of whether or not the area shall be incorporated as the Town of Swannanoa. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Swannanoa."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Town of Swannanoa," Section 1 of this act shall become effective on the date that the Buncombe County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

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

SENATE BILL 553:
Incorporate Swannanoa

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 14, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S553-CSLMx-16		Committee Counsel

SUMMARY: Senate Bill 553 incorporates the Town of Swannanoa[1]. The proposed committee substitute provides the description of the Town boundaries, prohibits the Town from annexing any area beyond the southern boundary of the corporate limits that run along a ridge line and borders the Fairview Township, and corrects the temporary officers of the Town.

CURRENT LAW: Article VII of the North Carolina Constitution provides that the General Assembly may create cities and towns. The General Assembly created the Joint Legislative Commission on Municipal Incorporations in 1986 to conduct an independent review and evaluation of proposed municipal incorporations. The evaluation is conducted in accordance with a statutory set of objective criteria found in Article 20 of Chapter 120 of the General Statutes. The statutory criteria include a review of community support, population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable rate. Chapter 160A of the General Statutes provides the general laws applicable to the administration, powers, and duties of municipalities. Municipalities may share in the following revenue sources: local sales tax distributions, Powell Bill allocations, franchise tax revenues on electricity, beer and wine excise taxes, piped natural gas excise tax revenues, and telecommunications sales tax revenues.[2]

BILL ANALYSIS: Senate Bill 553 incorporates the Town of Swannanoa, to be governed by a five-member town council and a mayor. The Joint Legislative Commission on Municipal Incorporations found that the proposed incorporation met the standards required for incorporation under Article 20 of Chapter 120 of the General Statutes.

- The Town of Swannanoa would be located in Buncombe County. The Town of Black Mountain, population 7,511 is within a distance of one mile of the proposed Town boundaries and the City of Asheville, population 68,889 is located within a distance of five miles of the proposed Town boundaries. Both the Town of Black Mountain and the City of Asheville have submitted resolutions expressing approval of the incorporation of the Town.
- The estimated permanent population of the Town of Swannanoa would be 8,667 residents. The estimated population density for the Town would be 448 people per square mile. The estimated assessed property tax valuation would be $819,151,374.
- The Town plans to offer the following services: police protection provided by the Buncombe County Sheriff's Department, fire protection provided by the Swannanoa Volunteer Fire Departments; street maintenance provided through a contract with the Department of Transportation, and street lighting provided by contract with Progress Energy.

[1] In its Report to the General Assembly dated June 17, 2009, the Joint Legislative Commission on Municipal Corporations found that the proposed Town of Swannanoa meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Town of Swannanoa.

[2] A municipality must have a property tax rate greater than $0.05/$100 valuation and provide at least four services to receive the following shared revenues: local sales and use tax, beer and wine excise taxes, sales tax on telecommunications, and Powell Bill allocations.

- The Town would be entitled to the following estimated amounts of revenue from shared tax revenue sources: $512,422 of local sales tax; $312,000 of franchise tax; $39,000 of beer and wine excise taxes if the Town holds a referendum in which the sales of beer and wines are approved; $123,000 of sales tax on telecommunications; and $250,000 of Powell Bill allocations. The Town is proposing a property tax rate of $0.17/$100 valuation for estimated property tax revenue of a little more than $1 million.

EFFECTIVE DATE: SB 553 would become effective when it becomes law.

S553-SMTD-118(CSLMx-16) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 867
PROPOSED COMMITTEE SUBSTITUTE S867-CSRB-52 [v.4]

7/14/2009 12:15:36 PM

Short Title: Suspend ABC Permit for Overdue Tax Debt. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO DIRECT THE SUSPENSION OF AN ABC PERMIT IF THE ABC PERMIT HOLDER HAS AN OVERDUE TAX DEBT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-243.2. Procedure for suspension of ABC permit.**

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

(1) ABC permit. – A permit authorizing the retail sale of mixed beverages, fortified or unfortified wine, or malt beverages issued under G.S. 18B-1001.

(2) Commission. – The North Carolina Alcoholic Beverage Control Commission established G.S. 18B-200.

(3) Overdue tax debt. – Defined in G.S. 105-243.1.

(4) Tax debt. – Defined in G.S. 105-243.1.

(b) Notice of ABC Permit Suspension. – The Secretary may instruct the Commission to suspend the ABC permit of a taxpayer who has an overdue tax debt by sending the Commission a written notice of permit suspension. At least 30 days before the Department sends a notice of an ABC permit suspension to the Commission, the Department must notify the taxpayer by mail that the taxpayer's ABC permit will be suspended if payment is not received within 30 days after the notice is mailed.

(c) Clearance Certificate. – Upon payment of the overdue tax debt or entry into an installment agreement with the taxpayer under G.S. 105-237 for payment of the tax debt, the Department must send the Commission written notice of a clearance certificate instructing the Commission to reinstate the taxpayer's ABC permit."

SECTION 2. G.S. 18B-904(e) reads as rewritten:

"(e) ~~Business or Location No Longer Suitable.~~ Permit Suspension or Revocation. – An ABC permit is subject to suspension or revocation in the circumstances described in one of the following subdivisions:

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood.

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred.

(4) The Commission must suspend a permit authorizing the retail sale of mixed beverages, fortified or unfortified wine, or malt beverages issued under G.S. 18B-1001 when it receives a notice of permit suspension from the Department of Revenue under G.S. 105-243.2 for failure of the permit holder to pay an overdue tax debt. Upon receipt of a notice of a permit suspension, the Commission must notify the permit holder named in the notice of the suspension in writing. The suspension is effective 10 days after the date of the written notice. The suspension remains in effect until the Commission receives a clearance certificate issued by the Department of Revenue stating the permit holder's retail permit may be reinstated. Upon receipt of the certificate, the Commission must reinstate the permit at no additional cost to the permit holder and notify the permit holder of the reinstatement and the effective date of the reinstatement.

SECTION 3. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of ~~G.S. 150B-2,~~ G.S. 150B-2. ~~and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on~~ Except as provided in this section, the issuance, suspension, or revocation of an ABC ~~permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case"~~ permit

is subject to the contested case provisions of Article 3 of Chapter 150B of the General Statutes. ~~except as provided in this section.~~ The following Commission action on ABC permits is not subject to Article 3 of Chapter 150B of the General Statutes:

(1) Issuance of a temporary permit under G.S. 18B-905.

(2) Revocation of a permit under G.S. 18B-904(a)(3).

(3) Suspension of a permit under G.S. 18B-904(a)(4)."

SECTION 4. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(39) To exchange information with the North Carolina Alcoholic Beverage Control Commission for the collection of overdue tax debts pursuant to G.S. 105-243.2."

SECTION 5. The Department of Revenue must report to the Revenue Laws Study Committee the amount of tax revenue collected as a result of G.S. 105-243.2, as enacted by this act. The first report is due by June 1, 2010, and the second report is due by October 1, 2011. The report must include the following information:

(1) The amount of tax collected from taxpayers who receive notice from the Department of Revenue that the taxpayer's ABC permit will be suspended but before the Department sends the North Carolina Alcoholic Beverage Control Commission a notice to suspend the taxpayer's ABC permit.

(2) The number of ABC permit suspension notices sent by the Department of Revenue to the North Carolina Alcoholic Beverage Control Commission.

(3) The number of taxpayers whose ABC permits are suspended pursuant to a notice of ABC permit suspension.

(4) The amount of tax collected from taxpayers whose ABC permits are suspended.

SECTION 6. This act becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.

SENATE BILL 867:
Tax Law Compliance Condition of ABC Permit

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 13, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S867-CSRB-52		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 867 would give the Department of Revenue an additional tool to use in its collection of overdue tax debts. The bill would allow the Department to direct the North Carolina Alcohol Beverage Control Commission to suspend the ABC permit of a permittee who has an overdue tax debt. The bill becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.***

CURRENT LAW: The Department of Revenue may collect a tax when a return is filed showing tax is due, when a taxpayer does not request a review of a proposed assessment, when a settlement concerning the amount of tax due is reached, when a taxpayer does not file a petition for a contested case hearing upon a notice of final determination, or when a final determination is reached after a contested case hearing. The Department may collect a tax debt through the levy and sale of a taxpayer's real or personal property, through the attachment and garnishment of the taxpayer's intangible property such as rents, bank deposits, and wages, and through the outsourcing of the tax debt to a private collection agency.

A tax debt that remains unpaid 90 days or more after it becomes collectible is considered an overdue tax debt. The Department may impose a 20% collection assistance fee on an overdue tax debt that remains unpaid 30 days or more after the fee notice is mailed to the taxpayer.

BILL ANALYSIS: Senate Bill 867 would allow the Department to suspend an ABC permit authorizing the retail sale of mixed beverages, wine, or beer if the holder of the permit fails to pay an overdue tax debt within 30 days after the Department gives the taxpayer written notification of the possible suspension. If the taxpayer fails to pay the overdue tax debt in a timely manner, the Department may instruct the ABC Commission to suspend the taxpayer's ABC permit. Upon receiving the instruction, the Commission must send the permittee written notice that the permit will be suspended 10 days from the date of the notice. The suspension remains in effect until the Commission receives a clearance certificate issued by the Department stating the overdue tax debt has been addressed and the permit may be reinstated. The Commission must reinstate the permit at no additional cost to the permittee and it must notify the permit holder of the reinstatement and the effective date of the reinstatement.

Typically, when a person makes retail sales of alcoholic beverages with a suspended permit, the Commission revokes the person's permit. A revoked permit may not be reissued for at least three years. A distributor may not deliver alcoholic beverages to a person who does not hold an active permit. Whenever a retailer places an order, the distributor is suppose to check the Commission's website to verify that the retailer holds an active permit. A distributor who delivers alcoholic beverages to a retailer whose permit has been suspended may have its own permit suspended for up to five days or be fined up to $500.

EFFECTIVE DATE: The bill becomes effective January 1, 2010, and applies to overdue tax debts on or after that date.

BACKGROUND: About a decade ago, the General Assembly authorized the Department of Revenue and the Office of the State Controller to conduct a study of the Department's delinquent collection

practices. Based on the results of the study conducted by Pricewaterhouse Coopers, the Department centralized its collection process, made technology upgrades, and implemented an automated case management tool with debt scoring and performance measures.

The Department initiated *Project Collect* in 2001 with a goal to produce an additional $150 million in revenue collections. In conjunction with that *Project*, the General Assembly authorized the Department to outsource the collection of tax debts owed by both in-state and out-of-state residents. It also provided the Department with a funding mechanism for some of its collection activities through the imposition of a collection assistance fee[1] of 20% on all tax debts that remain unpaid for 90 days after they become final.

The Department initiated *Project Compliance* in 2003 with a goal to produce an additional $40 million in revenue collections for fiscal year 2003-2004. In conjunction with that *Project*, the General Assembly provided funding for 39 new positions in the Examination Division in 2003 and funding for an additional 47 new positions in the Examinations Division in 2004.

This year, the Governor's budget included an amount of revenue for "Department of Revenue Improved Enforcement". Both the Senate budget and the House budget include a line item in its General Fund Availability Statement attributable to "Improved Enforcement." The amount in the Senate budget attributable to this source is $50,000,000 for FY 2009-2010 and $75,000,000 for FY 2010-2011. The amount in the House budget attributable to this source is $60,000,000 for FY 2009-2010 and $90,000,000 for FY 2010-2011. There are no specific legislative changes contained in any of the three budgets related to the Department's improved enforcement practices.

The Department makes semiannual reports to the General Assembly on its collection of tax debt.[2] In its report dated August 1, 2008, the Department lists its existing initiatives and its long-term collection plan. Although the initiative in this bill is not included in that report, it was mentioned by Secretary Lay in his remarks to the Senate Finance Committee earlier this session. He also mentioned an initiative that focuses on unreported income by individuals using Individual Taxpayer Identification Numbers. Senate Bill 1006, sponsored by Sen. Hoyle and currently in the House Finance Committee, would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation.

S867-SMRB-42(CSRB-52) v2

[1] The proceeds of the fee may be used to pay contractors for collecting overdue tax debts, to pay the fee the US Department of Treasury charges for debt setoff, to pay for taxpayer locater services, to pay for postage or other delivery charges associated with the collection of an overdue tax debt, to pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center, and to pay for expenses of the Examination and Collection Division.
[2] GS 105-243.1(f) and GS 105-256(a)(8).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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DATE: July 14, 2009

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 867

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	*See Assumptions and Methodology*				
	Increases General Fund Availability by $2.5 M to $17.2 M				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
NC Alcoholic Beverage Control Commission, NC Department of Revenue

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY: Senate Bill 867 amends G.S. 18B-903 requiring that compliance with the State's tax law is a condition of holding an Alcoholic Beverage Control (ABC) Permit. The legislation also allows for the revocation of an ABC permit for failure to file a timely tax return or pay an overdue tax debt. Effective January 1, 2010, the bill also modifies G.S. 105-259 (b)

allowing the Department of Revenue to release taxpayer information to the ABC Commission for the purposes of granting or revoking alcohol permits.

ASSUMPTIONS AND METHODOLOGY: The changes set forth in SB 867 aid the North Carolina Department of Revenue (DOR) in collecting unpaid sales and use taxes from ABC license holders. With the ability to revoke permits, DOR expects that tax increased will generate between $2.5 million and $17.2 million in General Fund availability.

Revenue estimates that retailers with the potential of being ABC permit holders owe a total of $43.3 million in delinquent collections. Potential ABC permit holders include grocery and convenience stores with the authority to sell beer and wine for off-premise consumption in addition to hotels, bars and restaurants possessing the licensure to sell mixed drinks as well as beer and wine for on premise consumption. Revenue officials expect the conditions set forth in SB 867 to be most effective in collecting delinquent taxes from two groups of taxpayers, those that have not remitted taxes at all and those that are 30 days overdue in the remittance process. Table 1 lists length of delinquency and total tax liability by business class for these two types of businesses.

Table 1. Tax Delinquency By Business Class, April 2009

Business Class	Balance		Total Tax Liability
	Estimated Non-Filer	0-30 days	
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$1,873,942	$470,724	$2,344,667
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$8,797,808	$2,206,098	$11,003,906
Other - Food & Beverage Group (Canners, Meat Processors)	$401,562	$40,297	$441,859
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$790,377	$178,978	$969,355
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$1,027,192	$9,583	$1,036,775
Hotels, Motels, etc. Resorts	$1,319,348	$52,005	$1,371,353
Total	**$14,210,230**	**$2,957,685**	**$17,167,915**

There are several unknown variables in estimating the Department's ability to collect delinquent taxes under SB 867 most notably, the exact number of businesses with ABC permits and those businesses with past due tax debts ability to pay. The ABC Commission and Department of Revenue currently lack a method to match or merge ABC permittee data with DOR tax payer identification information. Implementation of SB 867 requires the ABC Commission to gather additional permittee information for data matching purposes.

Table 2. Estimated Collections from Increased Enforcement under SB 867			
Business Class	**Unpaid/Overdue Trust Taxes**	**25% increased compliance**	**15% increased compliance**
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$2,344,667	$586,167	$351,700
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$11,003,906	$2,750,977	$1,650,586
Other - Food & Beverage Group (Canners, Meat Processors)	$441,859	$110,465	$66,279
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$969,355	$242,339	$145,403
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$1,036,775	$259,194	$155,516
Hotels, Motels, etc. Resorts	$1,371,353	$342,838	$205,703
Total	**$17,167,915**	**$4,291,979**	**$2,575,187**

In addition to the lack of identifying information, the businesses' ability to pay is also difficult to estimate. DOR, in cases of tax delinquency, has the authority to seize all taxpayer assets within four weeks of notification. DOR collections protocol allows for the confiscation and auction of all assets within a relatively short period of time. Given the Department's current ability to collect past due taxes, the additional leverage that SB 867 provides in increasing compliance is unknown. Table 2 provides several collection scenarios. Should 100% of past due tax payers both hold ABC permits and have the ability to pay delinquent taxes, General Fund availability would increase by $17.2 million annually. If tax compliance increases by 25% General Fund availability would increase by $4.2 million annually.

SOURCES OF DATA: North Carolina Department of Revenue Collections Division

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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DATE: July 15, 2009

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 867 (Unknown Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	*See Assumptions and Methodology*				
	Increases General Fund Availability by $3.3 M to $22.4 M				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
NC Alcoholic Beverage Control Commission, NC Department of Revenue

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY: Senate Bill 867 amends G.S. 18B-903 requiring that compliance with the State's tax law is a condition of holding an Alcoholic Beverage Control (ABC) Permit. The legislation also allows for the suspension of an ABC permit for failure to file a timely tax return or pay an overdue tax debt. Effective January 1, 2010, the bill also modifies G.S. 105-259 (b)

allowing the Department of Revenue to release taxpayer information to the ABC Commission for the purposes of granting or suspending alcohol permits.

ASSUMPTIONS AND METHODOLOGY: The changes set forth in SB 867 aid the North Carolina Department of Revenue (DOR) in collecting unpaid sales and use taxes from ABC license holders. With the ability to suspend permits, DOR expects that increased compliance will generate between $3.3 million and $22.4 million in General Fund availability.

Revenue estimates that retailers with the potential of being ABC permit holders owe a total of $43.3 million in delinquent collections. Potential ABC permit holders include grocery and convenience stores with the authority to sell beer and wine for off-premise consumption in addition to hotels, bars and restaurants with the licensure to sell mixed drinks as well as beer and wine for on-premise consumption. The conditions set forth in SB 867 allow DOR to suspend the ABC licenses from groups with tax debts 90 days overdue or more. Table 1 lists the length of delinquency and total tax liability by business class for all businesses w/ tax liabilities older than 90 days.

Table 1: Unpaid Tax Liabilities By Business Class , April 2009

Business Class	Length of Unpaid Balance			Total
	90 days >1 year	1 year > 2years	>2years	
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$1,528,102	$783,521	$887,436	$3,199,059
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$9,931,820	$4,090,979	$3,129,662	$17,152,461
Other - Food & Beverage Group (Canners, Meat Processors)	$215,499	$77,669	$57,006	$350,174
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$539,881	$324,098	$181,048	$1,045,028
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$37,867	$34,174	$249,475	$321,516
Hotels, Motels, etc. Resorts	$326,769	$44,731	$0	$371,500
Total	**$12,579,938**	**$5,355,171**	**$4,504,627**	**$22,439,736**

There are several unknown variables in estimating the Department's ability to collect delinquent taxes under SB 867 most notably, the exact number of businesses with ABC permits and those businesses with past due tax debts ability to pay. The ABC Commission and Department of Revenue currently lack a method to match or merge ABC permittee data with DOR tax payer identification information. Implementation of SB 867 requires the ABC Commission to gather additional permittee information for data matching purposes.

Table 2. Estimated Collections from Increased Enforcement under SB 867			
Business Class	**Unpaid Trust Taxes> 90 days Overdue**	**25% increased compliance**	**15% increased compliance**
Grocery Stores, Meat Mkts, Fruit/Vegetable Stands, Seafood Mkts, etc.	$3,199,059	$799,765	$479,859
Restaurants, Cafeterias, Grills, Snack Bars, Lunchrooms, etc.	$17,152,461	$4,288,115	$2,572,869
Other - Food & Beverage Group (Canners, Meat Processors)	$350,174	$87,544	$52,526
Taverns, Beer Parlors, Night Clubs, Billiard Rooms, Lounges, Bars, etc	$1,045,028	$261,257	$156,754
Drug Stores, Drug & Medical Supply Houses (Pharmacies, Vet Supply)	$321,516	$80,379	$48,227
Hotels, Motels, etc. Resorts	$371,500	$92,875	$55,725
Total	**$22,439,736**	**$5,609,934**	**$3,365,960**

In addition to the lack of identifying information, the businesses' ability to pay is also difficult to estimate. DOR, in cases of tax delinquency, has the authority to seize all taxpayer assets as well as confiscate and auction of all assets within a relatively short period of time. Given the Department's current ability to collect past due taxes, the additional leverage that SB 867 provides in increasing compliance is unknown. Table 2 provides several collection scenarios. Should 100% of past due tax payers both hold ABC permits and have the ability to pay delinquent taxes, General Fund availability would increase by $22.4 million annually. If tax compliance increases by 25%, General Fund availability would increase by $5.6 million annually.

SOURCES OF DATA: North Carolina Department of Revenue Collections Division

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Wednesday, July 22, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Wednesday, July 22, 2009 at 1:00 p.m. There were twenty-five committee members present. Senator David Hoyle presided.

S.B. 1057 – Sales Tax Incentives for Certain Plane Parts.

Senator Dorsett was recognized to explain the bill. Senator Foriest moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS expands the sales tax exemption for aircraft simulators. Keith Crisco, Department of Commerce's Secretary, was recognized to answer questions and speak in favor of the bill. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

H.B. 819 – Polysomnography Practice Act.

Representative Wainwright was recognized to explain the bill. Senator Clodfelter moved to adopt the PCS for discussion and the motion carried. The PCS establishes the Polysomnography Practice Act. Senator Atwater moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

H.B. 1516 – JDIG Technical Modifications.

Representative Crawford was recognized to explain the bill which makes certain modifications to and extends the sunset of the Job Development Investment Grant Program. Secretary Crisco was recognized to speak in favor of the bill. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill, the summary and a Department of Commerce summary handout is attached.

H.B. 311 – Continue School Construction Funding.

Representative Glazier was recognized to explain the bill which continues the construction funding of schools through the first and the second one-half cent sales and use taxes. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. – 1103 – Update Seed Law/Increase Seed License Fees.

Representative Hill was recognized to explain the bill which updates the North Carolina Seed Law and increases the license fees for wholesale and retail seed dealers. Senator Albertson moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 898 – Development Tier Exception Modification.

This bill was removed from the agenda.

The meeting adjourned at 1:21 p.m.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 22, 2009

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

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

S.B. **1057** Sales Tax Incentives for Certain Plane Parts.

Draft Number:	85269
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 22, 2009

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

FAVORABLE

H.B. **311** Continue School Construction Funding.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1103** Update Seed Law/Increase Seed License Fees.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1516** JDIG Technical Modifications.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **819** Polysomnography Practice Act.
Draft Number: 50774
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:
H311 – Sen. Hartsell
H819 – Sen. Clodfelter
H1103 – Sen. Albertson
H1516 – Sen. Hoyle

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 22, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 291	Hair Braider Licensure/Cosmetic Art Act.	Representative Parmon Representative Womble
HB 311	Continue School Construction Funding.	Representative Yongue Representative Johnson Representative Glazier Representative Wainwright
HB 465	Use of Funds Received From Parking Meters.	Representative Blue Representative Martin Representative Ross Representative Harrell
HB 819	Polysomnography Practice Act.	Representative Alexander Representative Moore Representative Wainwright
HB 1103	Update Seed Law/Increase Seed License Fees.	Representative Hill
HB 1516	JDIG Technical Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III
SB 898	Development Tier Exception Modification.	Senator Soles, Jr.
SB 1057	Sales Tax Incentives for Certain Plane Parts.	Senator Dorsett

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: H465 – Use of Funds Received from Parking Meters has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

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Wednesday	July 22, 2009	1:00 PM	544 LOB

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BILL NO.	SHORT TITLE	SPONSOR
HB 291	Hair Braider Licensure/Cosmetic Art Act.	Representative Parmon Representative Womble
HB 311	Continue School Construction Funding.	Representative Yongue Representative Johnson Representative Glazier Representative Wainwright
HB 819	Polysomnography Practice Act.	Representative Alexander Representative Moore Representative Wainwright
HB 1103	Update Seed Law/Increase Seed License Fees.	Representative Hill
HB 1516	JDIG Technical Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III
SB 898	Development Tier Exception Modification.	Senator Soles, Jr.
SB 1057	Sales Tax Incentives for Certain Plane Parts.	Senator Dorsett

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, July 22, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 311	Continue School Construction Funding.	Rep. Yongue Rep. Johnson Rep. Glazier Rep. Wainwright
HB 819	Polysomnography Practice Act.	Rep. Alexander Rep. Moore Rep. Wainwright
HB 1103	Update Seed Law/Increase Seed License Fees.	Rep. Hill
HB 1516	JDIG Technical Modifications.	Rep. Crawford Rep. Dickson Rep. Gibson
SB 898	Development Tier Exception Modification.	Sen. Soles
SB 1057	Sales Tax Incentives for Certain Plane Parts.	Sen. Dorsett

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Emily Gallimore	NCBA
Ken Arnold	NCBA
Jack Maynard	GRM&A
Patty Mayman	" "
Mica Bailey	Electric Cities of NC, Inc.
Meredith Willford	GPW

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzie Williamson	NC AMPHA
Joyce Peters	JP Assoc
Lu-Ann Bowman	MEIC
Andrew Cagle	DLC & Assoc.
Chuck Allen	US Airways
Justin Smith	Columbus County Econ. Dev.
Bruce Thompson	Parkton Pork
Ben Matthews	NCDPI
L. Andrews	NCFB
Steve Yost	NCSE
Laura Godwin	NC Ports

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	Moore + Van Allen
Katherine W Jaye	NCASA
Cam Cree	BPMHL
Emily Doyle	NCPAPA
Ashley Vroom	NCASA
Tony E. Smith	SEANC
Amber Ernst	SEANC
Suzanne Malysz	SEANC
[illegible]	DPI
Conor Brockett	NCSBA
Emily Milburne	TPG

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brock Davis-Yerumo	Intern-Atwater
Sabra Faires	GA Staff
Peyton Mayman	
	EGHS
	NCSBA
	OTOK
	JD, AL, PA
	Charlotte Smith
	Commerce Dept
Sec Keith Crisco	Commerce Dept

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

July 22, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
JOHN GOODMAN	NC CHAMBER
Rebecca Troutman	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jason Cameron	GSO Partnership
Paul Pulk	PWKL
Laura Monaco Rowe	NCAST
W. Underwood	NCAST
Kathi Dubel	Greensboro Economic Development Alliance
David McLeod	NCDACS
Joy Hatcher	NCDACS
Burton Gunnells	NC Bev A
Leslie Arnold	SOG-Daily Bulletin
Lindsay Clifton	Gov's Office
Abby Elks	NCPAPA

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 22, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NCPCM
Dean Plunkett	NCBWWA.
William Pugh	Doc
Ed Strickland	DOR
Emily Lynch & Thom Mansfield	NCMB
Amy McConkey	Smith Anderson
Amy Schulder	MWC
Ashley [illegible]	Biotech Ctr of NC
Gene Ainsworth	A & A
John Peterson	NCEDA
Scott Hamilton	NCEDA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1057*
PROPOSED COMMITTEE SUBSTITUTE S1057-CSRB-53 [v.4]

7/18/2009 11:25:04 AM

Short Title: Sales Tax Incentives for Flight Simulators. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SALES TAX EXEMPTION FOR AIRCRAFT SIMULATORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(45) Sales of ~~the following items~~ aircraft lubricants, aircraft repair parts, and aircraft accessories to an interstate passenger air carrier for use at its ~~hub:~~hub.

~~a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.~~

~~b. Aircraft simulators for flight crew training.~~

...

(45c) Sales of aircraft simulators.

...."

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

SENATE BILL 1057:
Sales Tax Incentives for Certain Plane Parts

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 21, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1057-CSRB-53		

SUMMARY: ***The proposed committee substitute for Senate Bill 1057 would expand the sales tax exemption for aircraft simulators.***

[As introduced, this bill was identical to H869, as introduced by Reps. Jeffus, Gibson, Jones, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

CURRENT LAW: G.S. 164.13(45) provides a sales tax exemption for sales of the following items to an interstate passenger air carrier for use at its hub:

- Aircraft lubricants, aircraft repair parts, and aircraft accessories.
- Aircraft simulators for flight crew training.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 1057 would extend the sales tax exemption to all flight simulators.

EFFECTIVE DATE: This act is effective October 1, 2009, and applies to sales made on or after that date.

BACKGROUND: In 1999, a sales tax reduction from 6% to 1% with an $80 cap was given to passenger air carriers for purchases of aircraft simulators for flight crew training used at the air carrier's hub. The tax reduction also applied to interstate air couriers.

In 2005, the sales tax reduction was repealed and a sales tax exemption was provided for certain items, including aircraft simulators for flight crew training, for sales to an interstate passenger air carrier for use at its hub.

The proposed changes to the sales tax exemption have been requested as part of a development project for the Piedmont Triad International Airport. The Project seeks to promote creation of a flight training hub in the area by extending the credit to all flight simulators.

S1057-SMTD-129(CSRB-53) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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DATE: July 22, 2009

TO: Senate Finance

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 1057 (Proposed Committee Substitute)

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund Impact	$ (0.129)	$ (0.131)	$ (0.134)	$ (0.137)	$ (0.140)
Local Impact	$ (0.054)	$ (0.055)	$ (0.057)	$ (0.058)	$ (0.059)
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY: This legislation expands eligibility for the sales and use tax exemption under G.S. 105-164.13(45). The existing statute allows interstate passenger air carriers to purchase

"aircraft lubricants, aircraft repair parts, and aircraft accessories" as well as "aircraft simulators for flight crew training" for use at their hubs as tax exempt items. SB 1057 removes the language allowing the exemption to only apply to interstate air passengers, which in turn makes all purchasers of the aforementioned aircraft parts eligible for a sales and use tax exemption.

ASSUMPTIONS AND METHODOLOGY: SB 1057 would reduce General Fund availability by $0.129 million during the 2009-10 fiscal year. Expanding the sales and use tax exemption to all purchases of aircraft simulators, represents a $129,000 annual reduction in General Fund availability.

The Proposed Committee Substitute for SB 1057 modifies G.S. 105-164.13 (45), expanding the sales and use tax exemption originally limited to the sales of aircraft simulators for flight crew training occurring at an air courier's hub, to all simulator purchases. In 1998 and 1999, during the enactment and modification of the Bill Lee Act, Fiscal Research assumed that roughly $10 million dollars in aircraft simulator sales occurred in the state annually. The 1998-99 legislation enacted a 12,500 pound weight requirement restricting the sales and use tax exemption to 80%, or $8 million, of the aircraft sales in the state.

Fiscal Research estimated that 79.8% of total flight simulator sales are covered by the existing tax exemption in G.S. 105-164.13 (45). Expanding this exemption to all purchasers would reduce General Fund availability by an additional $95,000 (in 1999 dollars) ($8.0 million in exempt sales divided by 79.8% (those currently exempted) equals $ 10 million in total sales * 20.2% (additional exemption) equals $2 million in currently taxed sales). Multiplying the $2 million in simulator sales by 4.75%, the 2009-10 State sales and use tax rate, and indexing the figure for an average annual inflation rate of 2.73%, equals $129,000 in 2009 dollars. The reduction in local sales and use tax revenue equals roughly 42% of the General Fund reduction (4.75%--the State sales and use tax rate divided by 2%--the local sales and use tax rate). Exempting aircraft simulators will decrease local sales and use tax revenue by $53,800 during the 2009-10 fiscal year.

SOURCES OF DATA: Conversations with pilots and military personnel, and their review of aircraft documents, suggested that the 12,500-pound weight limit effectively excluded most general aviation aircraft from the exemption. According to the Federal Aviation Administration's (FAA) Administrator's March 2004 Fact Book, approximately 79.8% of all licensed aircraft in the state are non-general aviation. Data from November 2008 Fact Book on Aviation Forecasts and FAA facility workloads suggest that the 79.8% non-general aviation ratio still holds true.

Federal Aviation Administration (FAA) Administrator's November 2008 Fact Book. Available at: http://www.faa.gov/about/office_org/headquarters_offices/aba/admin_factbook/media/November_2008_Fact_Book.pdf)

House Bill 1631. 2004 Session.

Session Law 1999-360.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:
Sandra Johnson, Fiscal Analyst
Economy and Taxation

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 20, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 819*
Committee Substitute Favorable 5/28/09
Committee Substitute #2 Favorable 6/3/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H819-CSRBf-54 [v.5]

7/20/2009 2:36:14 PM

Short Title: Polysomnography Practice Act. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE POLYSOMNOGRAPHY PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 39A.

"Polysomnography Practice Act.

"**§ 90-677.1. Definitions.**

The following definitions apply in this Article:

(1) Board. – The Board of Registered Polysomnographic Technologists (BRPT), a member of the National Organization of Certification Associations and accredited by the National Commission for Certifying Agencies (NCCA), the accreditation body of the National Organization for Competency Assurance (NOCA).

(2) Direct supervision. – An act whereby a registered polysomnographic technologist who is providing supervision is present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

(3) General supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of polysomnography services whereby the physical presence of a licensed physician is not required during the performance of the polysomnographic procedure, but the licensed physician must be available for assistance, if needed.

(4) Licensed physician. – A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes.

(5) Medical Board. – The North Carolina Medical Board established under G.S. 90-2.

(6) Polysomnography. – The allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and

wake disorders and other sleep disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep and wake cycles and activities.

(7) Registered polysomnographic technologist. – A person who is credentialed by the Board as a 'Registered Polysomnographic Technologist' (RPSGT).

(8) Student. – A person who is enrolled in a polysomnography educational program approved by the Board as an acceptable pathway to meet eligibility requirements for credentialing.

"**§ 90-677.2. Practice of polysomnography.**

(a) Practice. – The 'practice of polysomnography' means the performance of any of the following tasks:

(1) Monitoring and recording physiological data during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying the following techniques, equipment, or procedures:

a. Positive airway pressure (PAP) devices, such as continuous positive airway pressure (CPAP), and bilevel and other approved devices, providing forms of pressure support used to treat sleep disordered breathing on patients using a mask or oral appliance; provided, the mask or oral appliance does not attach to an artificial airway or extend into the trachea.

b. Supplemental low flow oxygen therapy, up to eight liters per minute, utilizing nasal cannula or administered with continuous or bilevel positive airway pressure during a polysomnogram.

c. Capnography during a polysomnogram.

d. Cardiopulmonary resuscitation.

e. Pulse oximetry.

f. Gastroesophageal pH monitoring.

g. Esophageal pressure monitoring.

h. Sleep staging, including surface electroencephalography, surface electrooculagraphy, and surface submental or masseter electromyography.

i. Surface electromyography.

j. Electrocardiography.

k. Respiratory effort monitoring, including thoracic and abdominal movement.

l. Plethysmography blood flow monitoring.

m. Snore monitoring.

n. Audio and video monitoring.

o. Body movement.

p. Nocturnal penile tumescence monitoring.

q. Nasal and oral airflow monitoring.

r. Body temperature monitoring.

s. Actigraphy.

(2) Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted based on protocol and physician's order.

(3) Analyzing and scoring data collected during the monitoring described in subdivisions (1) and (2) of this subsection for the purpose of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders.

(4) Implementing a written or verbal order from a licensed physician that requires the practice of polysomnography.

(5) Educating a patient regarding polysomnography and sleep disorders.

(b) Limitations. – The practice of polysomnography shall be performed under the general supervision of a licensed physician. The practice of polysomnography shall take place in a hospital, a stand-alone sleep laboratory or sleep center, or a patient's home. However, the scoring of data and education of patients may take place in settings other than a hospital, stand-alone sleep laboratory or sleep center, or patient's home.

"**§ 90-677.3. Unlawful acts.**

(a) Unlawful Act. – On or after January 1, 2012, it shall be unlawful for a person to do any of the following unless the person is listed with the Medical Board as provided in this Article:

(1) Practice polysomnography.

(2) Represent, orally or in writing, that the person is credentialed to practice polysomnography.

(3) Use the title 'Registered Polysomnographic Technologist' or the initials 'RPSGT'.

(b) Violations. – A violation of this section is a Class 1 misdemeanor. Complaints and investigations of violations of this Article shall be directed to and conducted by the Board. The court may issue injunctions or restraining orders to prevent further violations under this Article.

"**§ 90-677.4. Exemptions.**

The provisions of this Article do not apply to any of the following:

(1) A person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to or within the scope of practice of that profession or occupation and the person does not represent himself or herself as a registered polysomnographic technologist.

(2) An individual employed by the United States government when performing duties associated with that employment.

(3) Research investigation that monitors physiological parameters during sleep or wakefulness provided that the research investigation has been approved and deemed acceptable by an institutional review board, follows conventional safety measures required for the procedures, and the information is not obtained or used for the practice of clinical medicine.

(4) A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes or a physician assistant or nurse practitioner licensed to perform medical acts, tasks, and functions under Article 1 of Chapter 90 of the General Statutes.

(5) A student actively enrolled in a polysomnography education program if:

a. Polysomnographic services and post-training experience are performed by the student as an integral part of the student's course of study;

b. The polysomnographic services are performed under the direct supervision of a registered polysomnographic technologist; and

c. The student adheres to post-training examination guidelines established by the Board.

"**§ 90-677.5. Listing requirements.**

(a) Annual Listing. – A person may not practice polysomnography under this Article unless the person is listed with the Medical Board. In order to be listed with the Medical Board,

a person must annually submit on or before September 1 of each year all of the following information to the Medical Board in the manner prescribed by the Medical Board:

(1) The person's full legal name.

(2) The person's complete address and telephone number.

(3) Evidence that the person is currently credentialed in good standing by the Board as a Registered Polysomnographic Technologist (RPSGT).

(4) The date the person was credentialed by the Board to practice polysomnography.

(5) A nonrefundable listing fee of fifty dollars ($50).

(b) Listing. – The Medical Board must maintain a listing of polysomnographic technologists that have submitted proof of credentials under this section. The Board must promptly notify the Medical Board, by mail or electronic means, when a person's credential is revoked or no longer in effect. Upon receipt of this notification, the Medical Board must remove the person's name from the list."

SECTION 2. No later than six months from the effective date of this act, the North Carolina Medical Board shall identify the standards of physician supervision of persons registered to practice as registered polysomnographic technologists under Article 39A of Chapter 90 of the General Statutes, as enacted in Section 1 of this act. The North Carolina Medical Board shall communicate the standards of supervision to all physicians licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes.

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

HOUSE BILL 819:
Polysomnography Practice Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 22, 2009
Introduced by:	Reps. M. Alexander, Wainwright, Moore	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H819-CSRBf-54		

SUMMARY: ***The proposed committee substitute to House Bill 819 makes it unlawful for a person to practice polysomnography, or to represent that they are credentialed to practice polysomnography, unless the person has filed a copy of their credentials as a registered polysomnologist from the Board of Registered Polysomnographic Technologists (BRPT)[1] with the Medical Board and paid a $50 filing fee by January 1, 2012. Polysomnography is defined as an allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and sleep related disorders.***

[As introduced, this bill was identical to S892, as introduced by Sen. Atwater, which is currently in Senate Ref to Health Care. If fav, re-ref to Finance.]

BILL ANALYSIS:

Section 1: Adds a new Article 39A to Chapter 90 of the General Statutes, the Polysomnography Practice Act.

G.S. 90-677.1 sets forth definitions of terms used in the act, including the definition of "polysomnography," the "Board of Registered Polysomnographic Technologists" (BRPT), and "registered polysomnographic technologist." Polysomnography is defined as an allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and wake disorders and dysfunctions that are sleep related. The BRPT is the credentialing organization for registered polysomnographic technologists. A "registered polysomnographic technologist" is a person credentialed by the Board.

G.S. 90-677.2 defines the practice of polysomnography to include:

- Monitoring and recording physiological data during the evaluation of sleep-related disorders through listed procedures, techniques, and equipment.
- Observing and monitoring physical signs and symptoms, general behavior and physical response to polysonmographic evaluation and determining treatment regimens based on protocols and physician order.
- Analyzing and scoring data collected during monitoring.
- Implementing physician orders that require the practice of polysomnography.
- Patient education regarding sleep disorders and polysomnography.

Except for the scoring of data and patient education, the practice of polysomnography shall take place in a hospital, sleep laboratory or clinic or in the patient's home.

[1] The Board of Registered Polysomnographic Technologists is an independent nonprofit certification Board, it is not a State Board.

G.S. 90-677.3 makes it unlawful, on or after January 1, 2012, to practice polysomnography, or to represent that one is credentialed to practice unless the person is listed with the Medical Board. Complaints and investigations of violations of the Article shall be directed to and conducted by the Board. The practice of polysomnography without listing with the Medical Board is a Class 1 misdemeanor, and a court may issue an injunction or restraining order to prevent further violations.

G.S. 90-677.4 lists the exemptions to the Article. Exemptions include:

- Persons registered, credentialed or licensed to engage in another profession or occupation, or person working under the supervision of such a person, if the person is performing work incidental to or within the scope of practice of that profession or occupation and the person does not represent themselves to be a registered polysomnographic technologist.
- A person employed by the federal government when performing their government duties.
- Research investigations that monitor physiological parameters during sleep/wakefulness provided the research investigations have been approved by an institutional review board, follow conventional safety measures, and are not obtained/used for the practice of clinical medicine.
- A licensed physician, physician's assistant, or nurse practitioner.
- A student in a polysomnographic education program if the activities are part of the student's course of study, are performed under direct supervision, and the student adheres to post training examination guidelines established by the Board.

G.S. 90-677.5 requires a person to file a copy of their Board credentialing document with the Medical Board and pay a $50 fee. This is an annual fee. The Medical Board is to develop a form for applicants seeking to file and may require electronic filing and electronic fee payment.

The Medical Board is to maintain a listing of all current registered polysomnographic technologists. Fees are to used to pay the costs incurred in administering the Article. The Board shall notify the Medical Board when a person's credentials have been revoked or are no longer in effect and the Medical Board shall promptly amend the listing.

Listings automatically expire on September 30 each year. Listings must be renewed annually by filing a new listing form, credential verification and payment of the filing fee.

Section 2: Directs the North Carolina Medical Board, within 6 months of the effective date of the act, to identify the standards of physician supervision of persons registered to practice as registered polysomnographic technologists. The Medical Board shall communicate those standards to all licensed physicians in the State.

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

Barbara Riley, counsel to House Judiciary I, and Martha Walston, counsel to House Finance, substantially contributed to this summary.

H819-SMTD-127(CSRBf-54) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 819 (Third Edition)

SHORT TITLE: Polysomnography Practice Act.

SPONSOR(S): Representatives M. Alexander, Wainwright, and Moore

FISCAL IMPACT ($)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES					
NC Secretary of State	**$25,750+**	**$27,750+**	**$29,750+**	**$31,750+**	**$33,750+**

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

Section 1 of House Bill 819 adds a new Article 39A to Chapter 90 of the General Statutes, the Polysomnography Practice Act.

G.S. 90-677.1 sets forth definitions of terms used in the act, including the definition of "polysomnography", the "Board of Registered Polysomnographic Technologists" (BRPT), and "registered polysomnographic technologist". Polysomnography is defined as an allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and wake disorders and dysfunctions that are sleep related. The BRPT is the credentialing organization for registered polysomnographic technologists. A "registered polysomnographic technologist" is a person credentialed by the Board.

G.S. 90-677.2 defines the practice of polysomnography to include:

- Monitoring and recording physiological data during the evaluation of sleep-related disorders through listed procedures, techniques, and equipment.
- Observing and monitoring physical signs and symptoms, general behavior and physical response to polysomnographic evaluation and determining treatment regimens based on protocols and physician order.
- Analyzing and scoring data collected during monitoring.
- Implementing physician orders that require the practice of polysomnography.

- Patient education regarding sleep disorders and polysomnography.

Except for the scoring of data and patient education, the practice of polysomnography shall take place in a hospital, sleep laboratory or clinic or in the patient's home.

G.S. 90-677.3 makes it unlawful, on or after January 1, 2012, to practice polysomnography, or to represent that one is credentialed to practice unless the person is listed with the Secretary of State. Complaints and investigations of violations of the Article shall be directed to and conducted by the Board. The practice of polysomnography without listing with the Secretary is a Class 1 misdemeanor, and a court may issue an injunction or restraining order to prevent further violations.

G.S. 90-677.4 lists the exemptions to the Article. Exemptions include:

- Persons registered, credentialed or licensed to engage in another profession or occupation, or person working under the supervision of such a person, if the person is performing work incidental to or within the scope of practice of that profession or occupation and the person does not represent themselves to be a registered polysomnographic technologist.
- A person employed by the federal government when performing their government duties.
- Research investigations that monitor physiological parameters during sleep/wakefulness provided the research investigations have been approved by an institutional review board, follow conventional safety measures, and are not obtained/used for the practice of clinical medicine.
- A licensed physician, physician's assistant, or nurse practitioner.
- A student in a polysomnographic education program if the activities are part of the student's course of study, are performed under direct supervision, and the student adheres to post training examination guidelines established by the Board.

G.S. 90-677.5 requires a person to file a copy of their Board credentialing document with the Secretary of State and pay a $50 fee. This is an annual fee. The Secretary is to develop a form for applicants seeking to file and may require electronic filing and electronic fee payment.

The Secretary is to maintain a listing of all current registered polysomnographic technologists. Fees are to be used to pay the costs incurred in administering the Article. The Board shall notify the Secretary when a person's credentials have been revoked or are no longer in effect and the Secretary shall promptly amend the listing.

Listings automatically expire on September 30 each year. Listings must be renewed annually by filing a new listing form, credential verification and payment of the filing fee.

Section 2 of House Bill 819 directs the North Carolina Medical Board, within 6 months of the effective date of the act, to identify the standards of physician supervision of persons registered to practice as registered polysomnographic technologists. The Medical Board shall communicate those standards to all licensed physicians in the State.

Source: Adopted from the bill analysis done by the Committee Counsel to House Finance on June 3, 2009.

ASSUMPTIONS AND METHODOLOGY:
House Bill 819 makes it unlawful for a person to practice polysomnography, or to imply that they are credentialed to practice polysomnography, unless the person has filed a copy of their

credentials as a registered polysomnologist from the Board of Registered Polysomnographic Technologists (BRPT) with the Secretary of State and paid an annual $50 filing fee by January 1, 2012. However, the Secretary of State's office will not list an individual as a certified polysomnologist until they have filed their credentials. According to the Board of Registered Polysomnographic Technologists, the Board currently certifies 515 polysomnologists in North Carolina. Individuals practicing polysomnography are not currently required to be certified by the Board. Therefore, this number likely underestimates the number of polysomnologists practicing in the state. According to the NC Respiratory Care Board, approximately 40 new polysomnologists begin practicing each year. House Bill 895 will result in an increase in revenues equal to the number of polysomnologists multiplied by the $50 filing fee. Assuming most individuals will want their names listed with the Secretary of State as soon as possible, this will result in at least a $25,750 revenue increase in FY 2009-10. The expected increase in the number of practicing polysomnologists each year will cause this revenue increase to grow by an additional $2,000 in FY 2010-11 and each of the years following. While the bill makes other changes, they are not expected to generate a significant fiscal impact.

SOURCES OF DATA: Board of Registered Polysomnographic Technologists, NC Respiratory Care Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 4, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1516
Committee Substitute Favorable 4/30/09

Short Title: JDIG Technical Modifications. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into ~~negotiated~~ agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of ~~agreements~~ grants the Committee may ~~enter into~~award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~The maximum amount of total annual liability for grants ~~for agreements entered into~~awarded in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). ~~The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000).~~ No agreement may be entered into that, when considered together with other existing agreements ~~entered into~~ governing grants awarded during ~~that~~ a single calendar year, could

cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that~~ a single calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 2. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.

(4) The number of eligible positions proposed to be created for the project and the salaries for these positions.

(5) An estimate of the total withholdings.

(6) Certification that the business will provide health insurance to full-time employees of the project as required by G.S. 143B-437.53(c).

(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.

(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.

(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant ~~on its own behalf as a business and for grants on behalf of the~~that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for ~~grants on behalf~~ a grant that includes performance of its related members only if the related members for whom the application is submitted ~~have assigned~~assign to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and ~~have agreed~~agree to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant ~~on behalf of~~that includes performance by its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements

of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The ~~grants~~ grant awarded shall be paid to the ~~applicant business.~~approved grantee business only. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

...

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each ~~community economic development agreement negotiated and entered into~~grant awarded during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the ~~agreement,~~grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the ~~amount of the grant made~~maximum total lifetime State liability under the ~~agreement during that year.~~grant.

(2) An update on the status of projects under ~~agreements entered into~~grants awarded before the preceding calendar year.

(3) The number and development tier area of eligible positions to be created by projects with respect to which grants ~~were~~ have been awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions to be created by projects with respect to which grants ~~are~~ have been awarded, aggregated and listed in increments of ~~five thousand dollars ($5,000).~~ten thousand dollars ($10,000) or other appropriate increments.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants ~~were~~ have been awarded.

(6) ~~The~~ For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this ~~Part and~~ Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.

(7) The ~~effectiveness of the program in recruiting~~number of awards made to new businesses and the number of awards made to existing, expanding ~~businesses.~~businesses in the preceding calendar year.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

~~(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.~~

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

(12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.
(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each ~~community economic development agreement negotiated and entered into~~grant awarded during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

...

(9) A provision that requires the Committee to ~~amend an agreement~~reduce the amount or term of a grant pursuant to G.S. 143B-437.59.

...

(13) A provision stating that unless the agreement is ~~amended or~~ terminated pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to ~~amendment~~ grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.

...

(21) A provision stating that any recapture of a grant and any ~~amendment to an agreement reducing~~reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

...."

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee ~~a~~ an annual payroll report showing withholdings as a condition of its continuation in the grant ~~program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the~~program and identifying eligible positions that have been created during the ~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions~~base period that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the

allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 5. G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall ~~amend the agreement to~~ reduce the amount of the grant or the term of the ~~agreement and~~agreement, may terminate the ~~agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 6. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award new ~~agreements~~ grants expires January 1, ~~2010~~2016."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1516:
JDIG Technical Modifications

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 22, 2009
Introduced by:	Reps. Crawford, Dickson, Gibson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1516 makes clarifying and technical changes to JDIG and extends the sunset of the program to 2016.***

CURRENT LAW: In 2002, the General Assembly created a new economic development tool for new and expanding businesses in North Carolina, the Job Development Investment Grant (JDIG) Program. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The grants may be awarded over as many as 12 years and the amounts of the grants are based on income tax withholdings from new jobs created by the businesses. The committee may enter into no more than 25 agreements per calendar year and may commit no more than $15 million in any fiscal year under all agreements entered into during a single calendar year.[1] When the General Assembly created the program it imposed a two-year sunset on the authority of the committee to enter into new grant agreements. The General Assembly has voted to extend this sunset three times since its enactment (S.L. 2004-124, S.L. 2005-241, S.L. 2006-168).

BILL ANALYSIS:

Section 1: Makes the following clarifying and technical changes to the program:

- Clarifies that the JDIG program awards grants, and that the Program may entered into agreements with businesses to provide grants.
- Removes language that refers to the cap on annual grants for the year 2006.
- Clarifies that a business may apply for grants that include performance by related members of the business in one consolidated application.

Section 2: Clarifies the annual report of the JDIG program shall include, in addition to the existing requirements, the following:

1. The annual maximum State liability under the grant and the maximum total lifetime State liability under the grant.
2. The wage levels of jobs created by projects that received grants, listed in increments of $10,000. Previously the wage levels were reported in increments of $5,000.
3. Reports subsequent to the first report must identify of any changes in criteria developed to implement the program.
4. Clarifies that report lists the awards given to both new and existing businesses.

Section 3: Clarifies required terms of each grant agreement in the following ways:

1. The grant amount or term must be reduced if a grantee fails to comply with the agreement.

[1] Originally, the committee was limited to 15 agreements per year with a total cost not to exceed $10 million in any fiscal year for agreements entered into in any one year. These amounts were increased to $15 million in 2004. The amount was increased in 2006 to $30 million for that fiscal year only.

2. Agreements are binding unless all amendments as well as the initial agreement, is terminated.
3. Reductions in agreements must be proportional to the failure to comply with the agreements.

Section 4: Clarifies that the grantees must provide annual reports showing withholding as well as identifying positions created during the year that remained filled at the end of the year.

Section 5: Clarifies that grants may be both reduced and terminated for grantees that fail to comply with the agreement. Provides the procedure by which a grant can be reduced.

Section 6: Extends the sunset of the program from 2010 to 2016.

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

H1516-SMRB-44(e2) v1

HOUSE BILL 1516
JDIG Technical Modifications/Extension to 2016

Proposed JDIG Technical Changes/Sunset Extension (N.C. Department of Commerce)

- ***Removes reference to "negotiated" agreements*** – The form of the basic agreement must be standard for all grantees. Having the term, "negotiated" in the statute has led grantees to believe they may negotiate the terms required by the State; this language clarifies the General Assembly's original intent.

- ***Changes certain existing references to "agreements" to "grants"*** – "Agreements" reflecting grant terms are typically entered in the year of award or in the following year (particularly when a grant is made at the end of the year), so it would be more accurate to use the term "grants" to reflect what the program does and to conform with the reports of grants made to the General Assembly, which have always been based on grants awarded.

- ***Grants including related members*** – These changes clarify that the Economic Investment Committee considers applications that "include performance by" a grantee's related member (affiliate), rather than "on behalf of" a related member. The purpose is to make it clear that that the grantee is not the legal representative of the related member and that the related member has no legal right to grant payments. Only the grantee has a right to a grant payment.

- ***Method for reducing grants upon default*** – The current method requires EIC approval of a formal amendment to the grant agreement, which then must be executed by multiple parties involved, which can take some time. This change would streamline the process and allow the EIC and its staff to more efficiently to handle default situations. In addition, the change would provide for a reduced payment due to default in the payment for the year in which the default occurred, rather than the following year.

  Clarifying reporting requirements – These changes reflect actual useful wage increments reported; identify changes to criteria in reports; correct grantee annual report requirements to reflect the company's report of jobs that exist on December 31 of a grant year, which were created during the base period *(and not those created the previous calendar year)*, clarify the grant agreement is binding as it may be amended *(rather than existing language that says it is binding unless amended)*; and general clarify language that has been subject to different interpretations.

- ***Extension of JDIG Sunset*** **to Jan. 1, 2016** – This is a valuable program for attracting new businesses and helping existing North Carolina businesses expand, providing good jobs and capital investment here. The State's ability to retain and recruit jobs would be enhanced by demonstrating the State's strong and ongoing commitment to the JDIG program. Over 12 thousand jobs have been created by this program.

Net State Revenues Generated by JDIG through Withholding Tax Since Program's Inception (2003)

	Amount	% of Total Withholdings
TOTAL WITHHOLDINGS OF JDIG PROJECT-RELATED JOBS	$68,220,722	100%
LESS: COMPANY PAYMENTS (Over 12,000 jobs)	$25,013,816	37%
REVENUE TO THE STATE	**$43,206,906**	**63%**
LESS TRANSFERS TO THE STATE'S UTILITY FUND*	$8,104,446	12%
NET REVENUE TO THE STATE'S GENERAL FUND	**$35,102,460**	**51%**

* The State's Industrial Development Fund (IDF) provides grants to local municipal or county government applicants located in the State's 65 most economically distressed counties. When a JDIG is awarded to one of the state's more prosperous counties, a percentage of the grant amount is allocated to IDF/Utility to assist with infrastructure needs in the less prosperous counties.

N.C. Department of Commerce, June 30, 2009

Job Development Investment Grant (JDIG)

as of 6/10/09

Grant disbursements since the inception of the program

Company Name	County	Disbursed to Company	Disbursed to Utility Fund	Total Disbursem
Qimonda North America Corp (Infineon)	Wake	$949,285	$316,428	$1,265,
R.H. Donnelley, Inc.	Wake	$1,575,000	$525,000	$2,100,
General Dynamics Armament and Technical Products, Inc.	Mecklenburg	$2,316,327	$772,109	$3,088,436
General Electric Company I	New Hanover	$2,178,575	$729,524	$2,918,099
A.F.G. Wipes, Inc.	Rockingham	$89,930	$0	$89,930
Goodrich Corporation	Union	$827,228	$275,743	$1,102,970
Time Warner Cable, L.P. I	Mecklenburg	$1,359,000	$453,000	$1,812,000
Cellco Partnership d/b/a Verizon Wireless	New Hanover	$2,440,000	$813,331	$3,253,331
Unilin Flooring NC, LLC	Davidson	$299,000	$99,665	$398,665
Harris Stratex Networks Operating Corporation	Durham	$442,343	$147,448	$589,791
Citicorp Credit Services, Inc.	Guilford	$570,985	$190,328	$761,313
ZF Lemforder Corporation	Catawba	$3,685	$1,229	$4,914
Merck & Co., Inc	Durham	$140,999	$47,000	$187,999
Prairie Packaging, Inc.	Mecklenburg	$136,999	$45,666	$182,665
Getrag Corporation	Catawba	$219,847	$73,282	$293,129
Network Appliance, Inc. I	Wake	$1,312,500	$437,500	$1,750,000
Cree, Inc.	Durham	$1,033,599	$344,532	$1,378,131
Novo Nordisk Pharmaceutical Industries, Inc. I	Johnston	$129,750	$43,250	$173,000
PCB Piezotronics of North Carolina, Inc.	Halifax	$169,621	$0	$169,621
Altec Industries	Yancey	$125,000	$0	$125,000
Credit Suisse Securities (USA) LLC I	Wake	$1,344,800	$448,266	$1,493,066
Sysco Food Services of Raleigh, LLC	Johnston	$481,213	$160,405	$641,618
Dell Products LP	Forsyth	$1,512,000	$504,000	$2,016,000
Hospira, Inc.	Johnston	$79,750	$26,584	$106,334
Maverick Boat Company, Inc (Cobia Boat)	McDowell	$130,716	$0	$130,716
American Institute of Certified Accountants, Inc.	Durham	$788,781	$262,593	$1,051,374
General Electric Company II	New Hanover	$411,692	$140,897	$562,589
Headway Corporate Resources, Inc.	Wake/Edgecombe	$50,175	$13,375	$63,550
AAR Manufacturing, Inc.	Wayne	$110,000	$0	$110,(
Stiefel Laboratories, Inc.	Wake	$295,000	$97,000	$392,(
PGT Industries, Inc.	Rowan	$35,689	$0	$35,6
RF Micro Devices, Inc. I	Guilford	$427,143	$143,047	$570,190
Volvo Construction Equipment	Buncombe	$69,247	$23,082	$92,329
Chris-Craft Corporation	Cleveland	$54,212	$0	$54,212
Indian Motorcycles	Cleveland	$62,870	$0	$62,870
Fidelity Global Brokerage Group, Inc.I	Wake	$2,527,057	$842,352	$3,369,409
Newell Rubbermaid, Inc.	Mecklenburg	$299,908	$99,969	$399,877
ITG Automotive Safety Textiles, LLC (Narricot Industries)	Richmond	$13,890	$0	$13,890
Brunswick Corporation	Brunswick	$0	$27,841	$27,841
		$25,013,816	$8,104,446	$32,838,261

Summary of net State revenues generated by JDIG program through withholding tax since inception

	Amount	% of Total Withholdings
TOTAL WITHHOLDINGS OF **JDIG PROJECT RELATED JOBS**	$68,220,722	100%
LESS: TOTAL COMPANY PAYMENTS	$25,013,816	37%
REVENUE TO THE STATE	**$43,206,906**	**63%**
LESS TRANSFERS TO THE STATE'S UTILITY FUND	$8,104,446	12%
NET REVENUE TO THE STATE'S GENERAL FUND	**$35,102,460**	**51%**

CONCLUSION

The JDIG program generated **$68.2 million of direct revenue through withholding tax since its inception** and has created over 12 thousand jobs.

Of the $68.2 million generated:

$25 million (37%) was paid to JDIG companies

$8.1 million (12%) transferred to **Utility Fund to support infrastructure projects in tier 1& 2 counties**

$35.1 million (51%) remained in the State's General Fund

HOUSE BILL 311

Short Title:	Continue School Construction Funding.	(Public)
Sponsors:	Representatives Yongue, Glazier, Johnson, Wainwright (Primary Sponsors); England, Faison, E. Floyd, Lucas, and Pierce.	
Referred to:	Education, if favorable, Finance.	

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CONTINUE THE CONSTRUCTION FUNDING OF SCHOOLS THROUGH THE FIRST AND THE SECOND ONE-HALF CENT SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-487(a) reads as rewritten:

"**§ 105-487. Use of additional tax revenue by counties.**

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes ~~in the next 23~~ after the first five fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

SECTION 2. G.S. 105-502(a) reads as rewritten:

"**§ 105-502. (Effective October 1, 2009) Use of additional tax revenue by counties.**

(a) Restriction. – ~~For the first 25 fiscal years in which taxes levied under this Article by a county are in effect, the~~ The county must use sixty percent (60%) of the amount of revenue specified in this subsection for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect:

(1) The amount of revenue the county receives under this Article.

(2) If the amount allocated to the county under G.S. 105-486 is greater than the amount allocated to the county under G.S. 105-501(a), the difference between the two amounts."

SECTION 3. This act becomes effective January 1, 2010, and applies to sales made on or after that date.

HOUSE BILL 311:
Continue School Construction Funding

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 22, 2009
Introduced by:	Reps. Yongue, Glazier, Johnson, Wainwright	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***HB 311 makes permanent the requirement that a certain percentage of revenue from local sales and use taxes remain designated for public school capital outlay purposes or related debt retirement, by eliminating the sunsets on those requirements.***[1]

CURRENT LAW:

First ½ Percent Sales and Use Tax: Article 40 of Chapter 105 provides counties which levy a one percent (1%) sales and use tax the authority to levy an additional one-half percent (1/2%) sales and use tax. G.S. 105-487 provides that a percentage of the revenue of that tax must be used by the county only for public school outlay purposes or to retire indebtedness incurred for that purpose, according to the following schedule:

1st 5 Years of Tax - 40% of revenue for public school capital outlay.

Next 23 Years of Tax - 30% of revenue for public school capital outlay.

Second ½ Percent Sales and Use Tax: Article 42 of Chapter 105 provides counties which levy the one percent (1%) sales tax and the additional first one-half percent (1/2%) sales and use tax the authority to levy a second one-half percent (1/2%) sales and use tax. G.S. 105-502 (effective October 1, 2009) requires that for the first 25 years the tax is levied, a certain amount must be used by the county only for public school outlay purposes or to retire indebtedness incurred for that purpose during the five years before the indebtedness took effect. That amount is sixty percent (60%) of:

- The amount of revenue received from the second one-half percent sales and use tax, or,
- If the amount allocated to the county under the first one-half percent (1/2%) is greater than the amount allocated under the second one-half percent (1/2%) sales tax, the difference between the two amounts.

If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission to authorize it to use the money for any public purposes. In making its decision, the Commission must consider not only the public school capital needs but also the other capital needs of the county.

BILL ANALYSIS: HB 311 would amend G.S. 105-487 to require that after the first 5 years that the first one-half percent (1/2%) sales tax is in effect, 30% of the revenue must always be used for public school capital outlay or indebtedness.

G.S. 105-502 (as effective October 1, 2009) would also be amended to require that sixty percent of the revenue from the second one-half percent (1/2%) sales tax, as designated in that section, must always be used for public school outlay purposes or to retire indebtedness incurred for that purpose during the five years before the indebtedness took effect.

EFFECTIVE DATE: HB 311 would become effective January 1, 2010, and would apply to sales made on or after that date.

Kara McCraw, counsel to House Education, substantially contributed to this summary.

H311-SMTD-120(e1) v4

[1] These requirements have been extended twice before in S.L. 1993-255 and S.L. 1998-186.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 311 (First Edition)

SHORT TITLE: Continue School Construction Funding

SPONSOR(S): Representatives Yongue, Glazier, Johnson, and Wainwright

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	**No Fiscal Impact**				
Continues to Earmark County Sales and Use Tax for School Construction					
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, County Government

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY: HB 311 removes the requirement that 30% of the revenue received under Article 40 in the first 23 years of the Article's enactment be used only for capital outlay purposes. Removing the 23 year provision, requires an indefinite allocation of 30% of Article 40 revenues toward public school construction. Provisions set forth in GS 105-487(c) allow counties to allocate the earmarked funds elsewhere given approval of the Local Government Commission.

The legislation also amends Article 42, the second additional ½% sales and use tax levy, GS 105-502 (effective October 1, 2009) eliminating the 25 year sunset which earmarks a portion of county revenue for school capital purposes. Sixty percent of the revenue raised under Article 42 is earmarked for public school capital outlay or associated indebtedness. HB 311 removes the 25 year sunset, requiring an indefinite allocation of sales and use tax funds toward public school construction unless otherwise indicated through provisions set forth in GS 105-502 (b).

This bill becomes effective for sales made on or after January 1, 2010.

ASSUMPTIONS AND METHODOLOGY:
HB 311 has no General Fund impact, but extends the requirement that schools allocate a certain proportion of sales and use tax revenue to public school construction. The legislation modifies the language of the first and second ½ cent sales and use tax articles, Articles 40 and 42. At the articles' inception, the legislature also enacted a provisional earmark of the sales and use tax revenue received by counties for school construction.

HB 311 removes the provisional language under Articles 40 and 42 making the revenue allocations towards school construction permanent. As shown in Table 1 below, earmarking 30% of the revenue received under Article 40 and 60% of the revenue received under Article 42 designates approximately $496.2 million in local sales and use tax revenue towards public school capital outlay purposes annually. Table 2 highlights the projected amount of sales and use tax revenue earmarked toward public school capital outlay purposes should HB 311 be enacted.

Table 1: Local Sales and Use Tax Revenue Earmarked for Public School Construction Related Expenditures, FY 2007-08 ($In Millions)

Article Name	Rate	FY 2007-08 Local Sales and Use Tax Revenue (Actual Received)	Percent Allocated to Public School Funding	FY 2007-08 Local Sales and Use Tax Revenue Earmarked Toward School Construction (Estimated)
Art. 40	1/2%	554.7	30%	**$166.4**
Art. 42	1/2%	549.5	60%	**$329.7**
Total				**$496.2**

Table 2: Projected Local Sales and Use Tax Revenue Earmarks Toward Public School Capital Outlay Purposes, FY 2009-10 through FY 2010-11 ($ In Millions)

Article Name	Rate	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Art. 40	1/2%	149.38	152.52	160.91	169.76	179.09
Art. 42	1/2%	295.97	302.19	318.81	336.34	354.84
Total		**$445.35**	**$454.70**	**$479.71**	**$506.10**	**$533.93**

SOURCES OF DATA: North Carolina Department of Revenue. Table: Certification of Amounts Disbursed During the Twelve-Month Period Ending June 30, 2008. Available at: http://www.dornc.com/publications/reimbursement.html. Last accessed: July 2009.

NC General Assembly Fiscal Research Division. State's Revenue Outlook. Published May 2009. Available at: http://www.ncleg.net/fiscalresearch/generalfund_outlook/generalfund_outlook_pdfs/General%20Fund%20Revenue%20Outlook_2009_05_15_May.pdf.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:
Sandra Johnson, Fiscal Analyst

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 20, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1103
Committee Substitute Favorable 5/21/09

Short Title: Update Seed Law/Increase Seed License Fees. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE SEED LAW AND TO INCREASE FEES FOR SEED DEALER LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-277 reads as rewritten:

"**§ 106-277. Purpose.**

The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale or otherwise providing for planting purposes of agricultural ~~seeds,~~seeds and vegetable ~~seeds and screenings;~~ seeds; to prevent misrepresentation thereof; and for other purposes."

SECTION 2. G.S. 106-277.2 reads as rewritten:

"**§ 106-277.2. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

...

(7a) The term "conditioning" means cleaning, scarifying, or blending to obtain uniform quality and other operations that would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind, or kind and variety, without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

...

(21) The term "North Carolina seed analysis tag" ~~shall mean~~means the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis ~~tag, said tag to be purchased from the Commissioner.~~ tag.

...

~~(27) The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.~~

...

~~(31) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.~~

...."

SECTION 3. G.S. 106-277.5(2) reads as rewritten:

"(2) Lot ~~number or other lot~~ identification."

SECTION 4. G.S. 106-277.6 reads as rewritten:

"**§ 106-277.6. Labels for vegetable seeds in containers of one pound or less.**

Labels for vegetable seeds in containers of one pound or less shall show the following information:

(1) Name of kind and variety of seed.

~~(2) Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.~~

(2a) Lot identification.

~~(3) The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.~~

(3a) One of the following, as applicable:

a. The statement "Packed for (year)" or "Sell by (year)."

b. The statement "Sell by (month) (year)" where the month and year in which the germination test was complete is no more than 12 months from the date of the test, exclusive of the month and year of the test.

c. The percentage germination and the calendar month and year that the test was completed to determine the percentage, provided that the germination test was completed within 12 months, exclusive of the month and year of the test.

...."

SECTION 5. G.S. 106-277.7 reads as rewritten:

"**§ 106-277.7. Labels for vegetable seeds in containers of more than one pound.**

Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

(1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.

(2) Lot ~~number or other lot~~ identification.

~~(3) Origin, for snap bean and pepper seed only. If unknown, so stated.~~

...."

SECTION 6. G.S. 106-277.9 reads as rewritten:

"**§ 106-277.9. Prohibitions.**

It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, distribute, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:

a. Unless a seed license has been obtained in accordance with the provisions of this Article.

b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed (i) on agricultural seed within a nine-month period, exclusive of the calendar month in which the test was completed, (ii) on cool season lawn seeds and mixtures of cool season lawn seeds, including, but not limited to, Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bent grass, and creeping bent grass, within a 15-month period, exclusive of the calendar month in which the test was completed, and (iii) on vegetable seed within a 12-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or

transportation; provided, the North Carolina Board of Agriculture may adopt ~~after a public hearing, following public notice,~~ rules ~~and regulations~~ to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

...

~~i. Pepper seed in containers holding one ounce or more of seed, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.~~

...

(2) To transport, offer for transportation, sell, offer for ~~sale~~ sale, or expose for sale seeds, whole grain ~~and screenings~~ not for seeding purposes unless labeled "not for seeding purposes."

(3) To detach, alter, ~~deface~~ deface, or destroy any label provided for in this Article or the rules and regulations promulgated hereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.

(4) To disseminate false or misleading advertisement in any manner concerning agricultural ~~seeds,~~ seeds or vegetable ~~seeds or screenings.~~ seeds.

...."

SECTION 7. G.S. 106-277.10(c)(1) reads as rewritten:

"(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

(1) Lot ~~number or other~~ identification."

SECTION 8. G.S. 106-277.10(d) reads as rewritten:

"(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:

(1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.

(2) To seed for ~~processing~~ conditioning when consigned to, being transported to or stored in an approved ~~processing~~ conditioning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for ~~processing"~~ conditioning" and provided further that other labeling or representation which may be made with respect to the unlearned or ~~unprocessed~~ unconditioned seed shall be subject to this Article.

(3) To seed sold by a farmer grower to a seed dealer or ~~processor,~~ conditioner, or to seed in storage in or consigned to a seed-cleaning or ~~processing~~ conditioning plant; provided that any labeling or other representation which may be made with respect to the unlearned or ~~unprocessed~~ unconditioned seed shall be subject to this Article.

(4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, ~~processing~~ conditioning, or marketing agricultural or vegetable seeds ~~or screenings~~ subject to provisions of this Article."

SECTION 9. G.S. 106-277.23 reads as rewritten:

"**§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.**

It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, or mixtures of such seeds, ~~or~~

~~screenings~~ to the person in whose hands such seeds ~~or screenings~~ are found, and to send copies of such notice to the shipper of such seed ~~or screenings~~ and to the person whose "analysis tag or label" is attached to the container of such ~~seeds or screenings,~~ seeds, in which notice he may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning."

SECTION 10. G.S. 106-277.25 reads as rewritten:

"**§ 106-277.25. Seizure and disposition of seeds violating Article.**

Any lot of agricultural or vegetable seeds, mixtures of such seeds ~~or screenings~~ being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the ~~seeds,~~ seeds or mixtures of such seeds ~~or screenings~~ are located. In the event the court finds the seeds ~~or screenings~~ to be in violation of the provisions of this Article and orders the condemnation thereof, such seeds ~~or screenings~~ shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, ~~mixtures of such seeds or screenings~~ with permission to process or relabel to bring them into compliance with the provisions of this Article."

SECTION 11. G.S. 106-277.28(2) reads as rewritten:

"(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:

a. Wholesale or combined wholesale and retail seed dealer ..... ~~$100.00~~ $125.00

b. Retail seed dealer ~~with sales of no more than $500.00~~ ..... ~~5.00~~

~~c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 ..... 15.00~~

~~d. Retail seed dealer with sales of more than $1,000 ..... 25.00.~~ $30.00."

SECTION 12. This act becomes effective October 1, 2009.

HOUSE BILL 1103:
Update Seed Law/Increase Seed License Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 22, 2009
Introduced by:	Rep. Hill	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1103 updates the North Carolina Seed Law and increases the license fees for wholesale and retail seed dealers.[1]

CURRENT LAW: Article 31 of Chapter 106 is the North Carolina Seed Law. The law governs the transportation, distribution, testing, labeling, and tagging of agricultural and vegetable seeds. The Commissioner of Agriculture is authorized to register, after field testing for performance and trueness to variety, any variety, blend, or hybrid seed and to prohibit the sale of inferior or misrepresented seed. All seed dealers are required to register with the Department and obtain a license for which they pay a fee. Actions prohibited under the statutes include the transportation, distribution, or sale of seed unless a license has been obtained, a germination test has been completed within a nine-month period immediately prior to sale; and the seed is properly labeled. Sale of seed containing noxious weed seed is also prohibited. Violation of the Seed Law is a Class 3 misdemeanor and punishable by a fine of not more than $500.

BILL ANALYSIS: House Bill 1103 makes several changes to the NC Seed Law.

Section 1 amends G.S. 106-277 to delete regulation of "screenings" from the law. Screenings are seed, inert matter, and other materials removed from seeds by cleaning or processing.

Section 2 of the bill amends the definitions section by replacing the term "processing" with the term "conditioning", meaning the cleaning, scarifying or blending to obtain uniform quality or other operations that would change the seed such that retesting is required to determine the quality of the seed.

Agricultural seeds that are sold, transported for sale, or otherwise distributed must be labeled with certain information. **Section 3** amends the labeling statute by changing the lot identification requirement to "lot number."

Section 4 changes the label requirements for vegetable seeds in containers of one pound or less. The changes include deleting the requirement to include the origin of pepper seed and including a lot identification and information regarding "Packed" or "Sell By" date or germination rate and month and year the test was completed.

Section 5 changes the label requirements for vegetable seeds in containers of more than one pound by deleting a requirement to include origin of pepper seed and by clarifying that labels should contain lot identification.

Section 6 amends G.S. 106-277.9, which sets out prohibited acts with regard to seeds. It changes the time frames in which the germination tests must be conducted on different types of seeds. Germination tests on agricultural seed must be completed within a nine-month period immediately prior to sale or offering for sale. Germination tests on cool season lawn seeds or mixtures of such seeds must be completed within a 15-month period and vegetable seed within a 12-month period. The changes also delete the requirement for public hearing to designate a longer time period and eliminate the treatment requirements for pepper seed.

[1] These fee increases have been included in the Budget estimates.

Sections 7 and 8 amend G.S. 277.10, Exemptions. G.S. 106-277.10(c) is amended by changing the requirements on lot identification for labels for peanuts, cotton and tobacco seed to "lot number." Subsection (d) is amended by deleting the term "processing" and substituting the term "conditioning" as per the change in definitions in Section 2 of the bill.

Section 9 amends G.S. 106-277.23, Notice of violations, and **Section 10** amends G.S. 106-277.25 by deleting the term "screenings" consistent with the changes made in Section 1 of the bill that eliminates screenings from the Seed Law.

Section 11 amends G.S. 106-277.28 to change the license fees for various categories of seed dealers. Wholesale or combined wholesale retail dealers increase from $100 to $125. The license fee structure for retail seed dealers by level of sales is eliminated and replaced by a single license, Retail Seed Dealer, with a license fee of $30. The fees previously ranged from $5 to $25. These fees were last increased in 1988.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1103 (Second Edition)

SHORT TITLE: Update Seed Law/Increase Seed License Fees.

SPONSOR(S): Representative Hill

FISCAL IMPACT ($)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
NC Department of Agriculture and Consumer Services	**$70,039**	**$70,039**	**$70,039**	**$70,039**	**$70,039**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Agriculture and Consumer Services

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

House Bill 1103 makes several changes to the NC Seed Law.

Section 1 amends G.S. 106-277 to delete regulation of "screenings" from the law. Screenings are seed, inert matter, and other materials removed from seeds by cleaning or processing.

Section 2 of the bill amends the definitions section by replacing the term "processing" with the term "conditioning", meaning the cleaning, scarifying or blending to obtain uniform quality or other operations that would change the seed such that retesting is required to determine the quality of the seed. Agricultural seeds that are sold, transported for sale, or otherwise distributed must be labeled with certain information.

Section 3 amends the labeling statute by changing the lot identification requirement to "lot number."

Section 4 changes the label requirements for vegetable seeds in containers of one pound or less. The changes include deleting the requirement to include the origin of pepper seed and including a lot identification and information regarding "Packed" or "Sell By" date or germination rate and month and year the test was completed.

Section 5 changes the label requirements for vegetable seeds in containers of more than one pound by deleting a requirement to include origin of pepper seed and by clarifying that labels should contain lot identification.

Section 6 amends G.S. 106-277.9, which sets out prohibited acts with regard to seeds. It changes the time frames in which the germination tests must be conducted on different types of seeds. Germination tests on agricultural seed must be completed within a nine-month period immediately prior to sale or offering for sale. Germination tests on cool season lawn seeds or mixtures of such seeds must be completed within a 15-month period and vegetable seed within a 12-month period. The changes also delete the requirement for public hearing to designate a longer time period and eliminate the treatment requirements for pepper seed.

Sections 7 and 8 amend G.S. 277.10, Exemptions. G.S. 106-277.10(c) is amended by changing the requirements on lot identification for labels for peanuts, cotton and tobacco seed to "lot number." Subsection (d) is amended by deleting the term "processing" and substituting the term "conditioning" as per the change in definitions in Section 2 of the bill.

Section 9 amends G.S. 106-277.23, Notice of violations, and **Section 10** amends G.S. 106-277.25 by deleting the term "screenings" consistent with the changes made in Section 1 of the bill that eliminates screenings from the Seed Law.

Section 11 amends G.S. 106-277.28 to change the license fees for various categories of seed dealers. Wholesale or combined wholesale retail dealers increase from $100 to $125. The license fee structure for retail seed dealers by level of sales is eliminated and replaced by a single license, Retail Seed Dealer, with a license fee of $30. The fees previously ranged from $5 to $25. These fees were last increased in 1988.

Source: Adopted from the Bill Analysis done by the Committee Counsel to House Finance 05/20/2009

ASSUMPTIONS AND METHODOLOGY:

House Bill 1103 makes several changes to NC Seed Law. As outlined, the bill revises definitions and text in order to bring NC Seed Law in compliance with industry standard language. These changes include increasing the testing period for vegetable seed from nine to 12 months and providing related language to be used by the industry in seed packaging. The bill extends the testing required for cool season lawn seeds from nine to 15 months. According to the NC Department of Agriculture and Consumer Services, these extensions will not have any direct measurable impact on operating expenses.

House Bill 1103 increases licensing fees for wholesale or combines wholesale retail seed dealers from $100 to $125. According to the NC Department of Agriculture and Consumer Services, there are approximately 160 wholesale or combined wholesale retail seed dealers and this number remains fairly constant over time. The number of wholesale dealers multiplied by the $25 fee increase results in the increase in revenues due to this change. This will result $4000 revenue increase for Fiscal Year 2009-10.

House Bill 1103 consolidates the three categories of retail seed dealers into one group that pays a licensing fee of $30. The previous licensing fees ranged between $5 and $25. The NC Department of Agriculture and Consumer Services estimates that this change will impact 4,119 individuals.

This number is expected to remain roughly constant in the future. Based on previous collections from this group, NCDA&CS estimates that this change will result in a $66,039 revenue increase for FY 2009-10. All together, the license fee changes result in a total revenue increase of $70,039.

SOURCES OF DATA: NC Department of Agriculture & Consumer Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

Marilyn Chism

DATE: May 22, 2009

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 898*

Short Title:	Development Tier Exception Modification.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.08(g) reads as rewritten:

"(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least ~~one-third~~one-fifth of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation."

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

SENATE BILL 898:
Development Tier Exception Modification

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 22, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 898[1] would reduce the percentage of a two-county industrial park that must be located in the lower tier county to qualify the park for the lower development tier designation. The bill would become effective when it becomes law.

[As introduced, this bill was identical to H829, as introduced by Reps. Hill, Stiller, which is currently in House Finance.]

CURRENT LAW: The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each county. A development tier designation is effective only for the calendar year following the designation. The 40 most distress counties are designated as Tier 1, the next 40 are designated Tier 2, and the remaining 20 counties are designated Tier 3. This tier system is incorporated into various State incentive programs to encourage economic activity in the less prosperous areas of the State.

The ranking system is based upon a county's development factor[2] and statutorily mandated adjustments. One of the statutorily mandated adjustments[3] is for a two-county industrial park. An eligible two-county industrial park has the lower development tier designation of the two counties in which it is located. An eligible two-county industrial park is one that meets all of the following conditions:

- It is located in two contiguous counties.
- *At least 1/3 of the park is located in the county with the lower tier designation.*
- It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

BILL ANALYSIS: Senate Bill 898 would amend the second condition by requiring that 1/5 of the property, rather than 1/3 of the property, be located in the lower tier county.

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

BACKGROUND: Columbus and Brunswick Counties are building a two-county industrial park and desire to take advantage of the lower tier designation of Columbus County. Columbus County is a development tier 1 county and Brunswick County is a development tier 3 county. The two counties are planning to develop the "International Logistics Park of North Carolina". This industrial park would be

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[1] As introduced, this bill was identical to H829, as introduced by Reps. Hill, Stiller, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

[2] A county's development factor is the sum of the county's rank in the following areas: average rate of unemployment for the most recent 12 month period, median household income for the most recent 12 month period, percentage growth in population for the most recent 36 months, and adjusted assessed property value per capita for the most recent taxable year.

[3] Other statutorily mandated adjustments include those for small counties, development tier 1 areas, and multijurisdictional industrial parks.

the first at-port distribution center in North Carolina. The 1000-acre park will be located along Highway 74 (future I-74) and within 16 miles of the Port of Wilmington. The park would house a series of large distribution centers from which goods coming into the State Port at Wilmington could be distributed to retail outlets or regional distribution centers. The ports located in Charleston, SC, Norfolk, VA, and Savannah, GA all have at-port distribution centers located near them.

The International Logistics Park will straddle the Brunswick and Columbus County line with approximately 200 acres located in Columbus County and the remaining 800 acres or so located in Brunswick County. The counties anticipate that the park will create 4000 new jobs for the area and incur at least $300 million in private investments.

The lower tier designation would allow businesses locating in the International Logistics Park to qualify for the larger tax credits available under Article 3J for tier 1 counties and other incentives available to tier 1 counties:

- Credit for creating jobs. – The job threshold and the credit amount per job is determined by the tier designation of the county in which the jobs are created. For a tier 1 county, the minimum number of jobs that must be created is five and the credit amount per job is $12,500; for a tier 2 county, the minimum number of jobs is 10 and the credit amount per job is $5,000; for a tier 3 county, the minimum is 15 and the credit amount is $500.
- Credit for investing in business property. – The credit percentage and threshold are based on the tier designation of the county where the property is placed in service. For a tier 1 county, there is no threshold and the credit percentage is 7% of the cost of capitalized tangible personal property; for a tier 2 county, the threshold is $1 million and the credit percentage is 5%; for a tier 3 county, the threshold is $2 million and the credit percentage is 3.5%.
- Credit for investing in real property. – This credit is only available for an eligible establishment located in a Tier 1 county. To be eligible, the taxpayer must invest at least $100 million in real property within a 3-year period and create at least 200 new jobs within 2 years.
- Credit for research and development. – The credit for expenses for research performed in a tier 1 county is 3.25% of the expenses, regardless of the amount of expenses incurred. For research performed in a tier 2 or tier 3 county, the percentage varies depending upon the amount of expense occurred.
- Job development investment grant. – This discretionary incentive program provides a limited number of cash grants directly to new and expanding businesses. The grants are based on job creation and investment commitment. The minimum number of jobs that must be created to qualify for a grant varies depending upon the development tier designation of the county where the jobs are created: the minimum number of jobs that must be created in a tier 1 county is 10 and for all other counties the minimum number of jobs that must be created is 20.
- Industrial development fund. – This fund provides grants and loans for infrastructure development in the 66 most distressed counties. There is no local match requirement in the 26 most distress counties.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S898-SMTD-125(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 22, 2009

TO: Senate Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 898 (First Edition)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund	*** Potential Loss of $58 million over 9 years ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce; Department of Revenue

EFFECTIVE DATE: Becomes effective when law.

BACKGROUND:
The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each county. A development tier designation is effective only for the calendar year following the designation. The 40 most distressed counties are designated as Tier 1, the next 40 are designated Tier 2, and the remaining 20 counties are designated Tier 3. This tier system is incorporated into various State incentive programs to encourage economic activity in the less prosperous areas of the State.

The ranking system is based upon a county's development factor[1] and statutorily mandated adjustments. One of the statutorily mandated adjustments[2] is for a two-county industrial park. An eligible two-county industrial park has the lower development tier designation of the two counties in which it is located. An eligible two-county industrial park is one that meets all of the following conditions:

- It is located in two contiguous counties.
- *At least 1/3 of the park is located in the county with the lower tier designation.*
- It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

BILL ANALYSIS:
Senate Bill 898 would amend the second condition by requiring that 1/5 of the property, rather than 1/3 of the property, be located in the lower tier county.

ASSUMPTIONS AND METHODOLOGY:
Columbus and Brunswick Counties are building a two-county industrial park and desire to take advantage of the lower tier designation of Columbus County. Columbus County is a development tier 1 county and Brunswick County is a development tier 3 county. The two counties are planning to develop the International Logistics Park of North Carolina.

The International Logistics Park will straddle the Brunswick and Columbus County line with approximately 200 acres located in Columbus County and the remaining 800 acres or so located in Brunswick County. The counties anticipate that the park will create 4,000 new jobs for the area and incur at least $300 million in private investments.

The lower tier designation would allow businesses locating in the International Logistics Park to qualify for the larger tax credits available under Article 3J for tier 1 counties and other incentives available to tier 1 counties:

Credit for Creating Jobs

For the credit for creating jobs, the minimum number of jobs that must be created in a tier one county is five and the credit amount per job is $12,500; for a tier 2 county, the minimum number of jobs is 10 and the credit amount per job is $5,000; for a tier 3 county, the minimum is 15 and the credit amount is $500. The tier one designation would allow for a credit amount per job of $12,000 more for each job created than would be allowed in a tier three county. Assuming 4,000 new jobs are created and all of the jobs would have otherwise been created in a tier three county, this portion of the bill would have a cost of $48 million to the General Fund ($12,000 per job * 4,000 jobs).

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[1] A county's development factor is the sum of the county's rank in the following areas: average rate of unemployment for the most recent 12 month period, median household income for the most recent 12 month period, percentage growth in population for the most recent 36 months, and adjusted assessed property value per capita for the most recent taxable year.

[2] Other statutorily mandated adjustments include those for small counties, development tier 1 areas, and multijurisdictional industrial parks.

Credit for Investing in Business Property

For the credit for investing in business property, there is no threshold for a tier one county and the credit percentage is 7% of the cost of capitalized tangible personal property; for a tier 2 county, the threshold is $1 million and the credit percentage is 5%; for a tier 3 county, the threshold is $2 million and the credit percentage is 3.5%. The tier one designation will allow for an additional credit of 3.5%. Assuming that $300 million is invested in the area of the park that would have otherwise been designated as tier 3, this portion of the bill will have a cost of $10.5 million to the General Fund ($300 million investment * 3.5%).

Additional costs would be incurred if other qualifying projects were developed. The cost of the bill could also increase if the proposed project generates other types of credits, including the credit for investing in real property and the credit for research and development. All of these credits vary depending on the tier designation of the county in which the project is located.

The Article 3J credits taken may not exceed 50% of tax liability in any year and must be taken in equal installments over the four years following the taxable year in which the credits are generated. Any unused credits may be carried forward for five years. As a result, the impact of the bill is considered to be spread over a nine-year period, however, the full value of the credits generated may not be taken if the taxpayers have insufficient tax liability.

SOURCES OF DATA: Department of Commerce

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Thursday, July 23, 2009 at 10:00 a.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Thursday, July 23, 2009 at 10:00 a.m. There were twenty-four committee members present. Senator Clark Jenkins presided.

H.B. 291 – Hair Braider Licensure/Cosmetic Art Act.

Representative Parmon was recognized to explain the bill. Senator Purcell moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the Cosmetic Art Act to provide for licensure of persons engaging in the practice of natural hair care. Senator Tillman, Senator Weinstein and Senator Berger moved for a favorable report and the motion carried. A copy of the bill, the PCS, the summary and the fiscal memo is attached.

S.B. 563 – Regulation of Golf Carts by Local Governments.

Senator Davis was recognized to explain the bill. Senator Soles moved to adopt the PCS for discussion and the motion carried. The PCS requires pyrotechnics at concerts and public displays must be exhibited under the supervision of a display operator who has a permit issued by the State Fire Marshall. It requires individuals exhibiting pyrotechnics receive training developed by the State Fire Marshal. It also sets minimum insurance requirements that are verified at the local level. Cindy Avrette, staff attorney with the Research Division, was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 898 – Development Tier Exception Modification.

Senator Soles was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS modifies the exception for tow-county industrial parks for development tier designation purposes. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS and the fiscal note is attached.

The meeting adjourned at 10:27 a.m.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, July 23, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **563** Pyrotechnics Safety Permitting Act.

Draft Number:	15320
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **291** Hair Braider Licensure/Cosmetic Art Act.

Draft Number:	80494
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:
H291 – Sen. Garrou

Senate Finance Committee
Thursday, July 23, 2009, 10:00 AM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 291	Hair Braider Licensure/Cosmetic Art Act.	Rep. Parmon Rep. Womble
SB 563	Regulation of Golf Carts by Local Governments.	Sen. Davis
SB 898	Development Tier Exception Modification.	Sen. Soles

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Justin Smith	Columbus County
Steve Yost	NC's Southeast
Rita Harris	NC Commerce Dept
Ray Mitchell	Cosmetic Art Board
Damien Graham	TTA
DAVID BARNES	Poyner Spruill
Jan Hanft	NCPC/FB
Bill Rustin	ACP
PDP	NCAFP

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rob Boutwell	Civitas
Zach McMichael	Civitas
Cam Cone	BPMLL
Penny Griffin	School of Gov.
Bob Laegner	Department of Insurance
Chris Noles	Pat Ioseph
Stephen Wohlers	NCDOT
Chris Dillon	PRO TEM
Will Culpepper	NVA
Amy Schulder	MWC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 291

Committee Substitute Favorable 5/20/09
Third Edition Engrossed 5/26/09
Senate Commerce Committee Substitute Adopted 6/30/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H291-CSTDf-71 [v.4]

7/22/2009 5:46:24 PM

Short Title: Natural Hair Care Licensure/Cosmetic Art Act. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR CARE.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 88B-2 reads as rewritten:

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. – The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. – A person who rents a booth in a cosmetic art shop.

(5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, natural hair care, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.

(6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.

(7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

(8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical

apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.

(9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.

(13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.

(14a) Natural hair care. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, or locking hair by hand or mechanical device. For purposes of this definition, the phrase 'natural hair care' shall include the use of artificial or natural hair.

(14b) Natural hair care specialist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes natural hair care.

(14c) Natural hair care teacher. – An individual licensed by the Board to teach natural hair care.

(15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 1.2. G.S. 88B-6 reads as rewritten:

"**§ 88B-6. Board office, employees, funds, budget requirements.**

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board. The executive director shall serve at the pleasure of the Board.

(c) ~~With the approval of the Director of the Budget and the Office of State Personnel, the~~ The Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

~~(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.~~

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The provisions of the Executive Budget Act ~~and the State Personnel Act~~ apply to the administration of this Chapter."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"**§ 88B-10.1. Qualifications for licensing natural hair care specialists.**

The Board shall issue a license to practice as a natural hair care specialist to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a natural hair care curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a natural hair care teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a natural hair care license issued by the Board.

(2) Submits proof of either practice as a natural hair care specialist in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, natural hair care specialist, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"**§ 88B-13. Applicants licensed in other states.**

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.
(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.
(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, natural hair care specialist, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"**§ 88B-18. Examinations.**

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, natural hair care specialist, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, natural hair care specialist, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"**§ 88B-20. Fees required.**

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, natural hair care specialist, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:
(1) Inspection of a newly established cosmetic art shop ..... $ 25.00
(2) Reciprocity applicant under G.S. 88B-13 ..... $ 15.00.

(c) The Board may charge license fees as follows:
(1) Cosmetologist ..... $ 39.00 every 3 years
(2) Apprentice ..... $ 10.00 per year
(3) Esthetician ..... $ 10.00 per year
(4) Manicurist ..... $ 10.00 per year
(4a) Natural hair care specialist ..... $ 10.00 per year
(5) Teacher ..... $ 10.00 every 2 years
(6) Cosmetic art shop per active booth ..... $ 3.00 per year
(7) Cosmetic art school ..... $ 50.00 per year
(8) Duplicate license ..... $ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, and teacher late renewal ..... $ 10.00
(2) Cosmetic art schools and shops late renewal ..... $ 10.00
(3) Reinstatement – cosmetic art schools and shops ..... $ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, natural hair care specialist, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care specialist, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~ profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for

one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, natural hair care specialist, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, natural hair care specialist, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any natural hair care specialist who submits proof to the Board that the natural hair care specialist is actively engaged in the practice of a natural hair care specialist on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices natural hair care only and that submits proof to the Board that the shop is actively engaged in the practice of natural hair care on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training

and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. Section 1.2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2010, and applies to acts occurring on or after that date.

HOUSE BILL 291:
Natural Hair Care Licensure/Cosmetic Art Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 23, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fourth Edition H291-CSTDf-71		

SUMMARY: ***The proposed committee substitute to House Bill 291 would require that persons engaging in the practice of natural hair care be licensed by the NC Board of Cosmetic Art Examiners, and gives the Board more authority over its employees.***

CURRENT LAW: The North Carolina Cosmetic Art Act sets out the qualifications for licensing cosmetologists, estheticians, and manicurists. The Board of Cosmetic Art Examiners (Board) is responsible for examining and determining the qualifications and fitness of applicants for licensure, and has the power to issue, renew, deny, restrict, suspend, or revoke licenses. The NC Administrative Code sets out the following definition of "natural hair braiding" as it pertains to the Board:

> "'Natural hair braiding' is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is *not subject to regulation pursuant to G.S. 88B*, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair." (21 NCAC 14A.0101)

BILL ANALYSIS: HB 291 would amend the Cosmetic Art Act to require the licensure of persons engaged in the practice of natural hair care.

Definition of natural hair care – HB 291 includes natural hair care within the definition of cosmetic art. This means that the activity of natural hair care would be regulated by the Board, and that natural hair care shops would have to comply with the same requirements that apply to all other cosmetic art shops – including licensing and sanitation requirements. "Natural hair care" is defined as a service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device -- including the use of artificial or natural hair.

Qualifications for licensure as a natural hair care specialist – Licensure requires successful completion of at least 300 hours of a natural hair care specialist curriculum in an approved cosmetic art school, passage of an examination conducted by the Board, and payment of a $10 license fee and other applicable fees.[1] The license must be renewed on or before October 1.

Qualifications for licensure as a natural hair care teacher - A natural hair care teacher must hold a natural hair care license, and must submit proof of either (1) practice as a natural hair care specialist for a period equivalent to two years of full-time work immediately prior to the time of the application, or (2) successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school. The applicant may pay $10 license fee by October 1 every two years.

Punishment for practicing without a license - As with other professions that must be licensed by the Board, ***practicing natural hair care without a license would be a Class 3 misdemeanor.*** A Class 3 misdemeanor, assuming the person has no prior convictions, is punishable by 1-10 days of community punishment and/or a fine up to $200.

[1] The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations.

Exemptions – The bill provides the following exemptions:

- A person who submits proof to the Board that he or she is actively engaged in the practice of natural hair care on the effective date of the bill is exempt from the education requirement; however, the person must pass an examination and pay the required licensing fee.
- There is a one-year grace period for a natural hair care shop to comply with licensing requirements for cosmetic art shops, if the shop submits proof that it is actively engaged in the practice of natural hair care on the effective date of the bill. All persons who do not apply to the Board within one year of the effective date of the bill would be required to complete all training and examination requirements, and to otherwise comply with the provisions of Chapter 88B of the General Statutes.
- A licensee who is in active practice as a natural hair care specialist, has practiced for at least 10 years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements.[2]

Section 1.2: This section amends the law with regard to the employees of the Board. Currently, the Board must obtain the approval of the Director of the Budget and the Office of State Personnel to employ inspectors, investigators and other staff. In addition, the salaries of its employees are subject to the State Personnel Act. The bill removes the requirement of approval for hiring employees and also removes all references to the State Personnel Act.

EFFECTIVE DATE: Section 1.2 of the bill would become effective when it becomes law. The emainder of the bill would become effective October 1, 2009 and apply to acts occurring on or after hat date.

BACKGROUND: A 2008 report prepared by the Colorado Department of Regulatory Agencies indicates that although all 50 states regulate barbers and cosmetologists, regulation of hair braiders/natural hairstylists in other states is widely divergent. Following are the different ways states address this issue.

Hair braiding/natural hairstyling not addressed in statute. In the most common scenario, evident in 23 states, the law is silent on the issue of hair braiding/natural hairstyling. These practices are neither included in the definitions of cosmetology or hairstyling, nor are they specifically excluded. In practical terms, this means that state cosmetology boards deal with this issue on a case-by-case basis. These states include Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Indiana, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Utah, Vermont, Washington, West Virginia and Wisconsin.

Cosmetologist/hairstylist license specifically required. In Colorado and six other states, current law requires individuals to obtain a cosmetology or hairstyling license to practice hair braiding/natural hairstyling. These states include Illinois, Iowa, Missouri, Oregon, South Dakota and Wyoming.

Qualified exemption. Three states—Kansas, Minnesota, and Mississippi—essentially exempt natural hair care specialists/natural hairstylists from the barber/cosmetology law on the condition that applicants

[2] This exemption currently applies to cosmetologists, estheticians, and manicurists. All other natural hair care specialists, teachers, cosmetologists, and estheticians must annually complete eight hours of Board-approved continuing education for each year of the licensing cycle.

complete a health and sanitation course or complete a self-test demonstrating an understanding of correct sanitation practices.

Specialized hair braiding/natural hairstyling license required. Eleven jurisdictions have a specialized hair braiding/natural hairstyling license, including the District of Columbia, Florida, Louisiana, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Virginia.

Exemption. Arizona, California, Connecticut, Georgia, Maryland, Michigan, and North Carolina exempt hair braiders/natural hairstylists from the barber/cosmetology law. Michigan does issue a natural hair culturist license, but such license is optional, not required.

The Colorado report indicates that the requirements of these licensing programs vary widely. For example, Louisiana requires applicants to complete a total of 1,000 hours in training to qualify for an alternative hair design permit, while Texas requires just 35 hours of training to qualify for a hair braiding specialty certificate of registration. Ohio requires 450 hours of training. The scope of practice permitted by the various specialty licenses also varies. In both Florida and South Carolina, the use of extensions and wefts are excluded from the practice of hair braiders. Because use of extensions and wefts is widespread among hair braiders/natural hairstylists, this limitation effectively compels individuals wishing to provide these services to seek a traditional barber or cosmetologist license.

Brenda Carter, counsel to House Ways and Means/Broadband Connectivity, and Karen Cochrane-Brown, counsel to Senate Commerce, substantially contributed to this summary.

H291-SMTD-130(CSTDf-71) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 21, 2009

TO: Representatives Parmon and Womble

FROM: Marjorie Rutherford
Fiscal Research Division

RE: House Bill 291 (Fourth Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	*No Estimate Available* *See Assumptions and Methodology*				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Cosmetic Examiners

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY:
House Bill 291 adds hair braiding to the list of cosmetic arts that are regulated by the Board of Cosmetic Art Examiners. The bill would require the licensure of individuals engaged in the practice of hair braiding and sets up qualifications for this licensure. The bill creates a $10 license fee for hair braiders.

ASSUMPTIONS AND METHODOLOGY:
Because the Board of Cosmetic Examiners does not currently license hair braiders, the creation of a new $10 license fee for hair braiders will result in an increase in revenues for the Board. However, it is impossible to estimate exactly how much this increase will be. This is due to the fact that the Board does not currently track the number of hair braiders in North Carolina and that there is not currently an association that tracks these numbers.

SOURCES OF DATA: North Carolina Board of Cosmetic Examiners

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

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HOUSE BILL 291

Committee Substitute Favorable 5/20/09
Third Edition Engrossed 5/26/09
Senate Commerce Committee Substitute Adopted 6/30/09

Short Title: Hair Braider Licensure/Cosmetic Art Act. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR BRAIDING.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 88B-2 reads as rewritten:

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. – The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. – A person who rents a booth in a cosmetic art shop.

(4a) Braiding teacher. – An individual licensed by the Board to teach hair braiding.

(5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, hair braiding, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.

(6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.

(7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

(8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.

(9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(11b) Hair braider. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes hair braiding.

(12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.

(13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.

(14a) Hair braiding. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, or locking hair by hand or mechanical device. For purposes of this definition, the phrase 'hair braiding' shall include the use of artificial or natural hair.

(15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 1.2. G.S. 88B-6 reads as rewritten:

"**§ 88B-6. Board office, employees, funds, budget requirements.**

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board. The executive director shall serve at the pleasure of the Board.

(c) ~~With the approval of the Director of the Budget and the Office of State Personnel, the~~ The Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

~~(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.~~

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to

the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The provisions of the Executive Budget Act ~~and the State Personnel Act~~ apply to the administration of this Chapter."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"**§ 88B-10.1. Qualifications for licensing hair braiders.**

The Board shall issue a license to practice as a hair braider to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a hair braiding teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a hair braiding license issued by the Board.

(2) Submits proof of either practice as a hair braider in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, hair braider, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, hair braider, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"**§ 88B-13. Applicants licensed in other states.**

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, hair braider, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"**§ 88B-18. Examinations.**

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, hair braider, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, hair braider, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"**§ 88B-20. Fees required.**

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, hair braiders, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:

(1) Inspection of a newly established cosmetic art shop ..... $ 25.00
(2) Reciprocity applicant under G.S. 88B-13 ..... $ 15.00.

(c) The Board may charge license fees as follows:

(1) Cosmetologist ..... $ 39.00 every 3 years
(2) Apprentice ..... $ 10.00 per year
(3) Esthetician ..... $ 10.00 per year
(4) Manicurist ..... $ 10.00 per year
(4a) Hair braider ..... $ 10.00 per year
(5) Teacher ..... $ 10.00 every 2 years
(6) Cosmetic art shop per active booth ..... $ 3.00 per year
(7) Cosmetic art school ..... $ 50.00 per year
(8) Duplicate license ..... $ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher late renewal ..... $ 10.00
(2) Cosmetic art schools and shops late renewal ..... $ 10.00
(3) Reinstatement – cosmetic art schools and shops ..... $ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for

licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, hair braider, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, hair braider, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, hair braider, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~ profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, hair braider, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, hair braider, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, hair braider, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any hair braider who submits proof to the Board that the hair braider is actively engaged in the practice of hair braiding on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices hair braiding only and that submits proof to the Board that the shop is actively engaged in the practice of hair braiding on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. Section 1.2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2010, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 563
State and Local Government Committee Substitute Adopted 7/22/09
PROPOSED COMMITTEE SUBSTITUTE S563-CSRBf-60 [v.1]

7/23/2009 8:50:02 AM

Short Title: Pyrotechnics Safety Permitting Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPROVE PYROTECHNICS SAFETY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-410 reads as rewritten:

"**§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; permit required; sale to persons under the age of 16 prohibited.**

(a) ~~It~~ Except as otherwise provided in this section, it shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, ~~use~~ use, handle, exhibit, or ~~cause to be discharged~~discharge any pyrotechnics of any description whatsoever within the State of North ~~Carolina: provided, however, that it~~Carolina.

(a1) It shall be permissible for pyrotechnics to be exhibited, ~~used~~ used, handled, or discharged ~~at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts~~ within the State, provided all of the following apply:

(1) The exhibition, use, or discharge is at a concert or public exhibition.

(2) All individuals who exhibit, use, handle, or discharge pyrotechnics in connection with a concert or public exhibition have completed the training required under G.S. 58-82A-2 and are under the direct supervision and control of a display operator who holds a display operator permit issued by the State Fire Marshal under G.S. 58-82A-3. The display operator must be present at the concert or public exhibition and must personally direct all aspects of exhibiting, using, handling, or discharging the pyrotechnics.

(3) The display operator has ~~who have previously~~ secured written authority under G.S. 14-413 from the board of county commissioners of the county, or the city if authorized under G.S. 14-413(a1), in which ~~said~~ the pyrotechnics are to be exhibited, used or discharged. Written authority from the board of commissioners or city is not ~~required, however,~~ required under this subdivision for a concert or public exhibition ~~authorized by~~provided the display operator has secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill under

G.S. 14-413, and pyrotechnics are exhibited ~~conducted~~ on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at ~~Chapel Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at~~ Chapel Hill.

(a2) Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

(a3) The requirements of this section apply to G.S. 14-413(b) and ~~G.S. 14-413(c) apply to this section~~ G.S. 14-413(c).

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414(2), (3), (4)c., (5), or (6) to persons under the age of 16.

(c) The following definitions apply in this Article:

(1) Concert or public exhibition. – A fair, carnival, show of any description, or public celebration.

(2) Display operator. – An individual issued a display operator permit under G.S. 58-82A-3.

(3) State Fire Marshal. – Defined in G.S. 58-80-1."

SECTION 2. G.S. 14-413 is amended by adding a new subsection to read:

"(d) A board of county commissioners or the governing board of a city shall not issue a permit under this section unless the display operator provides proof of insurance in the amount of at least five hundred thousand dollars ($500,000) or the minimum amount required under the North Carolina State Building Code pursuant to G.S. 143-138(e), whichever is greater. A board of county commissioners or the governing board of a city may require proof of insurance that exceeds these minimum requirements."

SECTION 3. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 82A.

"Pyrotechnics Training and Permitting.

"**§ 58-82A-1. State Fire Marshal establish pyrotechnic safety guidelines.**

(a) Guidelines. – The State Fire Marshal, in consultation with the State Fire and Rescue Commission, must establish guidelines, testing, and training requirements for the following:

(1) Individuals who assist a display operator with the exhibition, use, handling, or discharge of pyrotechnics in connection with a concert or public exhibition authorized under Article 54 of Chapter 14 of the General Statutes.

(2) Individuals seeking to obtain a display operator permit under this Article.

(b) Definitions. – The definitions in G.S. 14-410 apply in this Article.

(c) Rulemaking. – The Commissioner may adopt rules to implement this Article."

"**§ 58-82A-2. Individual training requirements.**

An individual may not use, handle, exhibit, or discharge pyrotechnics in connection with a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General Statutes, unless the individual successfully completes the training approved or offered by the Commissioner of Insurance through the Office of State Fire Marshal or meets all of the following conditions:

(1) Is an active member in good standing with a local fire or rescue department that has experience in pyrotechnics or explosives, as verified by the State Fire Marshal.

(2) Possesses the professional qualifications required by the State Fire Marshal or the professional qualifications required by the jurisdiction where permitting is being sought, whichever is greater. The professional

qualifications set by the State Fire Marshal may not be less than the voluntary minimum professional qualifications for all levels of fire service and rescue service personnel established by the State Fire and Rescue Commission under G.S. 58-78-5.

"**§ 58-82A-3. Display operator permit.**

(a) Permit Required. – A display operator permit issued by the State Fire Marshal is required for an individual to obtain the necessary authorization under Article 54 of Chapter 14 of the General Statutes to exhibit, use, handle, or discharge pyrotechnics at a concert or public exhibition in this State. A permit issued under this section is valid for two years unless it is revoked by the State Fire Marshal.

(b) Requirements. – The State Fire Marshal may issue a display operator permit to an individual if all of the following conditions are met:

(1) The individual is at least 21 years of age.

(2) The individual has assisted with the exhibition, use, or display of pyrotechnics at a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General Statutes, on at least three occasions.

(3) The individual successfully completes the minimum training requirements established by the State Fire Marshal.

(4) The individual successfully passes an examination approved by the State Fire Marshal that demonstrates the individual has the knowledge to safely handle, store, and exhibit Class 1.3g and 1.4g pyrotechnics or provides satisfactory evidence of current certification by a third party acceptable to the State Fire Marshal.

(5) The individual pays the cost of the examination and an application fee not to exceed one hundred dollars ($100.00).

(c) Reciprocity. – The State Fire Marshal may issue a display operator permit to an individual who holds a permit or certification issued by another state provided the minimum requirements of that state are at least equal to the minimum requirements under this section and the person pays the application fee required under subsection (b) of this section.

(d) Refusal and Revocation. – The State Fire Marshal may refuse to issue a permit or may revoke a permit issued under this section if any of the following apply:

(1) The display operator violates any provision of this Article.

(2) The display operator violates any requirement of a permit issued under G.S. 14-413.

(3) The display operator fails to provide direct supervision and control over individuals who assist the permit operator handle, use, exhibit, or display pyrotechnics.

(4) The display operator is convicted of a crime under Article 54 of Chapter 14 of the General Statutes.

(5) Another state revokes the permit or certification issued to that display operator by that state."

SECTION 5. The Commissioner of Insurance must report to the General Assembly by May 1, 2010, on the implementation of this act and may make recommendations regarding additional statutory changes and the need for additional personnel or other resources to implement the act.

SECTION 6. This act becomes effective July 1, 2010, and applies to offenses committed on or after that date.

SENATE BILL 563:
Pyrotechnics Safety Permitting Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 23, 2009
Introduced by:	Sen. Davis	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S563-CSRBf-60		

SUMMARY: ***Senate Bill 563 requires pyrotechnics at concerts and public displays must be exhibited under the supervision of a display operator who has a permit issued by the State Fire Marshal. It requires individuals exhibiting pyrotechnics receive training developed by the State Fire Marshal. It also sets minimum insurance requirements that are verified at the local level.***

The PCS moves the permitting requirements to Chapter 58, and removes references to transportation or pyrotechnics. The transportation of pyrotechnics is covered by the commercial drivers license statutes.

CURRENT LAW: Current law generally prohibits the manufacture, transportation (except by a common carrier), sale, or use of pyrotechnics, except in connection with approved concerts and public displays. The law requires that approved public displays of pyrotechnics be under the supervision of experts who have previously been issued permits by cities and counties to discharge pyrotechnics. Pursuant to G.S. 58-80-1, the Commissioner of Insurance is the State Fire Marshal.

BILL ANALYSIS:

"Display Operator" Must Supervise. Section 1 of the bill would amend G.S. 14-410 to provide that pyrotechnics may be exhibited, used, handled, or discharged in connection with an approved concert or public display only if all those acts are done under the personal supervision of a "display operator" who has a permit from the State Fire Marshal. Individuals supervised by the display operator would be required to obtain training or be a current active member in good standing with any local fire or rescue department with experience in pyrotechnics or explosives. The county commissioners or city council would still have to authorize the specific exhibition.

Insurance Requirements. Section 2 of the bill amends G.S. 14-413 to provide that the county commissioners or city council shall not issue a permit unless the display operator provides proof of insurance of $500,000, or the minimum required under the State Building Code, whichever is greater. The city or county may set a greater insurance requirement.

Authority of Fire Marshal. Section 3 of the bill adds a new Article in Chapter 58 (Insurance), including G.S. 58-82A-2 requiring the State Fire Marshal to set minimum training requirements for individuals who will be supervised by a display operator and testing standards for display operators. It also authorizes the Commissioner to set a fee not to exceed $100 for a permit.

State Permit. Section 3 of the bill adds a new G.S. 58-82A-3, providing for the issuance of display-operator permits by the State Fire Marshal. It provides that the permittee must be 21, must have assisted with authorized displays at least 3 times, must have completed minimum training, must have passed an approved examination, and must have paid a fee. There is a reciprocity provision allowing the State Fire Marshal to issue a permit based on the applicant holding a permit in another state. The permit would be valid for 2 years. The Fire Marshal could deny or revoke a permit for certain violations.

EFFECTIVE DATE: The bill is effective July 1, 2010, and applies to offenses committee on or after that date.

Bill Gilkeson, counsel to Senate State and Local Government, substantially contributed to this summary.

S563-SMTD-131(CSRBf-60) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 23, 2009

TO: Sen. Davis

FROM: Sarah Poteat
Fiscal Research Division

RE: Senate Bill 563 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES:	$25,000	$25,000	$40,000	$40,000	$40,000
EXPENDITURES:	$141,787	$143,517	$149,689	$148,197	$148,139
POSITIONS (cumulative):	1.75	1.75	1.75	1.75	1.75

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance

EFFECTIVE DATE: This act becomes effective January 2, 2010, and applies to offenses committed on or after that date.

BILL SUMMARY:
This Proposed Committee Substitute for Senate Bill 563 would require that, when pyrotechnics are used at concerts and public displays, they are used under the supervision of a display operator who has a permit issued by the State Fire Marshal. It requires that individuals supervised by a display

operator receive training developed by the State Fire Marshal. It also sets minimum insurance requirements that are verified at the local level.

"Display Operator" Must Supervise. Section 1 of the bill would amend G.S. 14-410 to provide that pyrotechnics may be transported, exhibited, used, handled, or discharged in connection with an approved concert or public display only if all those acts are done under the personal supervision of a "display operator" who has a permit from the State Fire Marshal. Individuals supervised by the display operator would be required to obtain training or be a current active member in good standing with any local fire or rescue department with experience in pyrotechnics or explosives. The county commissioners or city council would still have to authorize the specific exhibition.

State Permit. Section 2 of the bill adds a new G.S. 14-410.1, providing for the issuance of display operator permits by the State Fire Marshal. It provides that the permittee must be 21, must have assisted with authorized displays at least 3 times, must have completed minimum training, must have passed an approved examination, and must have paid a fee. There is a reciprocity provision allowing the State Fire Marshal to issue a permit based on the applicant holding a permit in another state. The permit would be valid for 2 years. The Fire Marshal could deny or revoke a permit for certain violations.

Insurance Requirements. Section 3 of the bill amends G.S. 14-413 to provide that the county commissioners or city council shall not issue a permit unless the display operator provides proof of insurance of $500,000, or the minimum required under the State Building Code, whichever is greater. The city or county may set a greater insurance requirement.

Authority of Fire Marshal. Section 4 of the bill adds a new Article in Chapter 58 (Insurance) requiring the State Fire Marshal to set minimum training requirements for individuals who will be supervised by a display operator and testing standards for display operators. It also authorizes the Commissioner to set a fee not to exceed $100 for a permit. Section 5 of the bill provides that the Commissioner of Insurance shall not charge a fee for display operator permits issued prior to July 1, 2011.

ASSUMPTIONS AND METHODOLOGY:

Expenses

According to the Department of Insurance (DOI), the implementation of the proposed legislation will equate to $141,787 in total recurring expenses in FY 2009-10. This total includes $109,787 for 1.75 additional positions and $32,000 for various operating expenses.

In terms of the additional positions, the Department estimates that it will need an additional engineering position (1.0 FTE) at a total recurring cost of $77,172 and an additional Program Assistant IV (0.75 FTE), a part-time administrative position, at a total recurring cost of $32,615. The total cost for the engineering position includes $62,523 for salary; $4,783 for Social Security at 7.65%; $5,340 for Retirement at 8.54%; and $4,527 for Medical. The total cost for the Program Assistant IV includes $24,174 for salary; $1,849 for Social Security at 7.65%; $2,065 for Retirement at 8.54%; and $4,527 for Medical. The Department of Insurance stated that engineering positions are banded; therefore, the Department's estimate assumes the Journey

market rate. For the Program Assistant IV position, the Department is estimating the salary to be the midpoint of a grade 59 position.

In terms of the various operating expenses, the Department of Insurance also estimates that it will need approximately $12,000 for programming costs for certification tracking, test bank database, and accounting; approximately $1,000 for certificates, such as paper, seals, or permits; approximately $2,000 for notifications and publications including safety and notification of new law; approximately $4,000 for travel accommodations for committee members to create test questions; approximately $1,000 for travel expenses associated with audits, education, and training activities; and approximately $2,000 for mailing, phones, and administrative expenses. This equates to a total of $32,000 in recurring expenses.

In FY 2010-11, the total recurring expenses associated with the implementation of the proposed legislation will equate to $143,517. This total includes $110,938 for 1.75 additional positions and $32,579, accounting for inflation, for various operating expenses. The increase in the total for additional positions compared to FY 2009-10 accounts for the benefits for Retirement increasing from 8.54% to 8.94% and benefits for Medical increasing from $4,527 to $4,929.

Accounting for inflation, the total expenses for salaries would increase to $117,106 in FY 2011-12; $115,106 in FY 2012-13; and $115,576 in FY 2013-14. Accounting for inflation, the total for various operating expenses would increase to $32,592 in FY 2011-12; $32,554 in FY 2012-13; and $32,563 in FY 2013-14.

Revenue

The Department of Insurance anticipates that the first two years of the program will result in approximately 250 permits at $100 a piece for a total of $25,000 in receipts. By the third year, the Department anticipates that the program will result in 400 permits at $100 a piece for a total of $40,000 in receipts. If this estimate is correct, the net of the expenses and revenue equates to $116,787 in FY 2009-10; $117,938 in FY 2010-11; $109,698 in FY 2011-12; $108,197 in FY 2012-13; and $108,139 in FY 2013-14.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 898*
PROPOSED COMMITTEE SUBSTITUTE S898-CSRB-62 [v.1]

7/23/2009 9:59:37 AM

Short Title: Development Tier Exception Modification. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.08(g) reads as rewritten:

"(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least ~~one-third~~one-fifth of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(5) For parks established on or after August 1, 2009, when more than one-half of the park is located in the higher-tiered county, the counties have entered into an inter-local agreement that provides that the incremental increase in property tax revenues within the park shall be shared equally by the counties."

SECTION 2. This act is effective when it becomes law and expires on July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 22, 2009

TO: Senate Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to S898

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund	*** Revenue loss of $23.4 million over 9 years (based on additional information) – See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce; Department of Revenue; Columbus County; Brunswick County

EFFECTIVE DATE: Becomes effective when law.

BACKGROUND:

The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each county. A development tier designation is effective only for the calendar year following the designation. The 40 most distressed counties are designated as Tier 1, the next 40 are designated Tier 2, and the remaining 20 counties are designated Tier 3. This tier system is incorporated into various State incentive programs to encourage economic activity in the less prosperous areas of the State.

The ranking system is based upon a county's development factor[1] and statutorily mandated adjustments. One of the statutorily mandated adjustments[2] is for a two-county industrial park. An eligible two-county industrial park has the lower development tier designation of the two counties in which it is located. An eligible two-county industrial park is one that meets all of the following conditions:

- It is located in two contiguous counties.
- *At least 1/3 of the park is located in the county with the lower tier designation.*
- It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

BILL ANALYSIS:
Senate Bill 898 would amend the second condition by requiring that 1/5 of the property, rather than 1/3 of the property, be located in the lower tier county. The PCS adds a sunset after three years.

ASSUMPTIONS AND METHODOLOGY:
Columbus and Brunswick Counties are building a two-county industrial park and desire to take advantage of the lower tier designation of Columbus County. Columbus County is a development tier 1 county and Brunswick County is a development tier 3 county. The two counties are planning to develop the International Logistics Park of North Carolina.

The International Logistics Park will straddle the Brunswick and Columbus County line with approximately 200 acres located in Columbus County and the remaining 800 acres or so located in Brunswick County. The counties anticipate that the park will create 4,000 new jobs for the area and incur at least $300 million in private investments.

The lower tier designation would allow businesses locating in the International Logistics Park to qualify for the larger tax credits available under Article 3J and other incentives for tier 1 counties. The most significant fiscal impact is related to the credit for creating jobs and the credit for business investments.

Credit for Creating Jobs

For the credit for creating jobs, the minimum number of jobs that must be created in a tier one county is five and the credit amount per job is $12,500; for a tier 2 county, the minimum number of jobs is 10 and the credit amount per job is $5,000; for a tier 3 county, the minimum is 15 and the credit amount is $500. The tier 1 designation would allow for a credit amount per job of $12,000

[1] A county's development factor is the sum of the county's rank in the following areas: average rate of unemployment for the most recent 12 month period, median household income for the most recent 12 month period, percentage growth in population for the most recent 36 months, and adjusted assessed property value per capita for the most recent taxable year.
[2] Other statutorily mandated adjustments include those for small counties, development tier 1 areas, and multijurisdictional industrial parks.

more for each job created than would be allowed in a tier 3 county. The fiscal impact of the job creation credit is determined by the number of jobs created in the proposed industrial park that would have otherwise been created in a tier three area.

Based on information from the Columbus County Economic Development Commission, under current law the project could be developed as a 1,000-acre park consisting of a 600-acre portion that satisfies the current 2-county industrial park eligibility criteria, plus a second 400-acre portion in Brunswick County that would be categorized as tier three. In this scenario, the 600-acre portion would satisfy the current requirement that 1/3 of the property must be situated in a tier one county. Thus, 600 acres, or 60% would be classified as tier one and the remainder, or 40% would be classified as tier 3.

Under S898, all of the proposed industrial park would be considered tier 1, including the 40% portion designated as tier 3 under the current law scenario. Assuming that 4,000 jobs are created evenly throughout the project, the expanded tier one area would contain 40% of the jobs created, or 1,600 jobs, with a cost to the General Fund of $19.2 million (1,600 jobs * $12,000).

Credit for Investing in Business Property

For the credit for investing in business property, there is no threshold for a tier one county and the credit percentage is 7% of the cost of capitalized tangible personal property; for a tier 2 county, the threshold is $1 million and the credit percentage is 5%; for a tier 3 county, the threshold is $2 million and the credit percentage is 3.5%. Thus, the tier 1 designation allows for an additional credit of 3.5% compared to the tier 3 credit.

Assuming that 40% of the park would have been classified as tier three under current law, a commensurate portion of the business investment would equal $120 million ($300 million * 40%). The General Fund cost related of the tier one treatment of this area for purposes of the business investment credit would be $4.2 million ($120 million *3.5%).

The total cost of the jobs and business investment credits is $23.4 million ($19.2 + $4.2). Additional costs would be incurred if other qualifying projects were developed. The cost of the bill could also increase if the proposed project generates other types of credits, including the credit for investing in real property and the credit for research and development. All of these credits vary depending on the tier designation of the county in which the project is located.

The Article 3J credits taken may not exceed 50% of tax liability in any year and must be taken in equal installments over the four years following the taxable year in which the credits are generated. Any unused credits may be carried forward for five years. As a result, the impact of the bill is considered to be spread over a nine-year period, however, the full value of the credits generated may not be taken if the taxpayers have insufficient tax liability.

SOURCES OF DATA: Department of Commerce; Columbus County Economic Development Commission

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Tuesday, July 28, 2009 at 1:00 PM
Room 643, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on July 28, 2009, in Room 643 of the Legislative Office Building. Thirty-two members of the committee were present. Senator David Hoyle presided.

Opening Remarks of the Committee Chairs.

Senator Hoyle, Senator Jenkins and Senator Clodfelter offered brief remarks on the need to update current, but outdated Revenue Laws.

State Tax Reform Ideas for North Carolina.

Cindy Avrette, Senate Finance Committee Counsel, was recognized. She outlined the features of a sound tax system, why recent revenue has been insufficient, why revenue laws need to be restructured, the findings of past fiscal reform studies and guidelines for successful reform. A copy of her power point is attached.

Institute for Emerging Issues, Business Committee on Financing the Future.

John McNairy, President of Tidewater Transit Company and a Cochair of the Business Committee on Financing the Future, was recognized. He stated the purpose of the committee and the findings. He urged the members to update Revenue Laws.

Jack Cecil, President of Biltmore Farms, Inc. and a Cochair of the Business Committee on Financing the Future, was recognized. He said that current, up-to-date revenue laws would benefit businesses and citizens.

Richard Vinroot, former mayor of Charlotte and a Cochair of the Business Committee on Financing the Future, was recognized. He asked that the members think about what was best for the State of North Carolina, not what was best for re-election. He reiterated that Revenue Laws were outdated and the State would benefit if the Legislative members would pass legislation that modernized tax laws.

2002 Governor's Commission to Modernize State Finances and 2006-2008 State and Local Fiscal Modernization Study Commission

John Medlin, Wachovia former Chief Executive Officer, was recognized. He said that the legislators have been dealing with fiscal urgency, not fiscal importance. Modernizing revenue laws is still important, but now urgent.

Mr. McNairy, Mr. Cecil, Mr. Vinroot and Mr. Medlin then answered questions from committee and legislative members.

Financing the Future

Roby Sawyers, CPA, PhD, College of Management, North Carolina State University, was recognized. He discussed how to provide and create revenue in the State's current fiscal situation. A copy of his power point is attached.

The meeting adjourned at 2:35 PM.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 28, 2009	1:00 PM	544 LOB

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

21st CENTURY PLAN

Tax Rate Reduction & Modernization

Senate Finance Committee Meeting

Tuesday, July 28, 2009
1:00 pm
Room 643 of the Legislative Office Building

- Welcome and Introduction of Pages
- Opening Remarks of the Committee Chairs
- State Tax Reform Ideas for North Carolina, *Cindy Avrette, Committee Counsel, NCGA*
- Institute for Emerging Issues, Business Committee on Financing the Future
  - John McNairy, Co-chair
  - Jack Cecil, Co-chair
  - Richard Vinroot, Co-chair
- Former Study Commission Members: 2002 Governor's Commission to Modernize State Finances and 2006-2008 State and Local Fiscal Modernization Commission
  - Tom Ross
  - John Medlin
- Financing the Future, *Roby Sawyers, CPA, PhD, College of Management, NCSU*
- Adjournment

State Tax Reform Ideas for North Carolina

Cindy Avrette, NCGA

Senate Finance Meeting

July 28, 2009

Features of a Sound Tax System

- Promotes equity
- Relatively simple to administer
- Ease of compliance
- Minimizes economic distortions
- Delivers fairly reliable revenue stream during economic downturns
  - *Ad hoc* "fixes"
  - Tax Reform

Recent Revenue Insufficiency

- Business cycles & State revenues
  - 8.1% shortfall in fiscal year 1990-1991
  - 10.8% shortfall in fiscal year 2001-2002
  - 15.2% shortfall in fiscal year 2008-2009
- Legislative action
  - Increase taxes
  - Form a study commission
- Similar study commission charges
  - Review tax structure
  - Adapt tax structure
  - Provide stable revenues

Fiscal Realities for the 90s

- State's revenue structure should be modernized
  - Reflect changes in the economic environment
  - Generate sufficient revenues without repeatedly resorting to *ad hoc* revenue adjustments
- Expand sales tax base to services
- Eliminate corporate tax incentives

Governor's Commission (2001)

- Equalize tax rates on amusements and entertainments
- Include limited liability companies in the franchise tax base
- Conform PIT to federal law on taxation of social security
- Expand sales tax base to include repair and installation of tangible personal property and other services

Modernize State Finances (2002)

- Broad base, low rates
- Expand sales tax base to services
- Use AGI as starting point for PIT
- "No-tax" threshold
- Eliminate CIT credits
- Retain R&D credit
- Combined reporting
- Impose franchise tax on all types of business entities
- Clarify DOR's authority to address inappropriate tax planning strategies

Fiscal Modernization (2006)

- Tax structure out dated and complicated
- Economy has changed
- Revenue is insufficient
- Relative high PIT and CIT rates
- Broaden income and sales tax bases
- Additional revenue should be used to lower rates
- ***"The Commission believes that in order to be effective, tax reform must be comprehensive."***

IEI's Financing the Future (2005-2009)

- Multi-year program of work on tax and finance
- Working groups convened on issue of State tax modernization
- Forum in 2006
- Business Committee on Financing the Future
- Three basic principles
  - Simplicity
  - Fairness
  - Minimal number of exemptions

Guidelines for Successful Reform

- Start with principles
- Apply principles to the whole, not the parts
- Push for broader bases, lower rates
- Strive for revenue neutrality
- Acknowledge reforms involve losers
- Educate
- Listen

The Need for Fiscal Modernization in North Carolina

Roby B. Sawyers, CPA, Ph.D.
College of Management

NC STATE UNIVERSITY

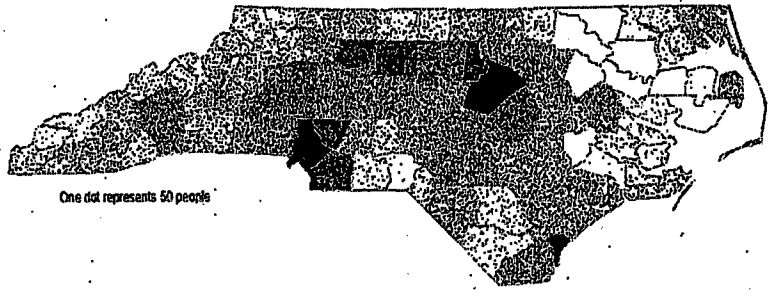
The Argument for Fiscal Modernization

- North Carolina's tax system was largely set in place in the 1920s and 1930s.
- North Carolina is changing - we are growing bigger, growing older, and becoming more diverse.
- Our economy is no longer dominated by tobacco, textiles and furniture
- These demographic changes and changes in the NC economy have resulted in a "structural deficit" - tax revenues are not able to keep up with a growing economy and basic expenditures.

NC STATE UNIVERSITY

North Carolina in the Year 2030

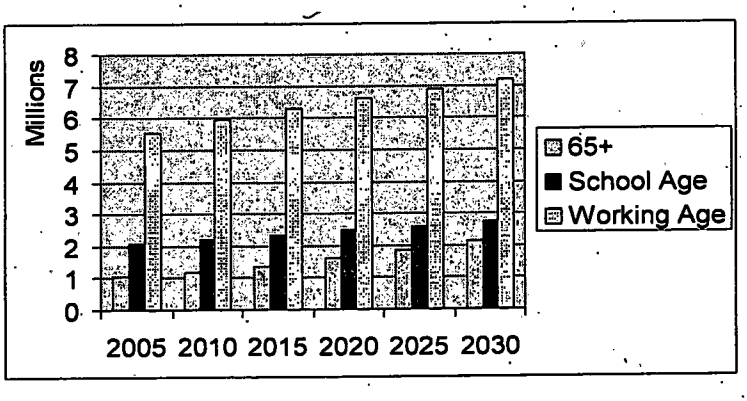
Population growth will not be evenly distributed across the state.



NC STATE UNIVERSITY

North Carolina in the Year 2030

The population is aging, especially in rural areas.



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Shift to a Knowledge Economy

% Share of NC's Economy: Old Versus New Sectors

Sectors	1977	2005
Tobacco, Textiles and Apparel	22%	7%
Pharma, Technology, Food, Finance, Auto Parts	10%	17%
Total	**32%**	**24%**

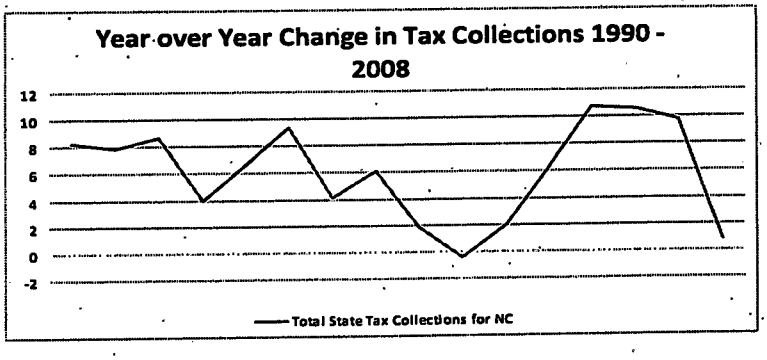
Source: *North Carolina in the Connected Age* by Michael Walden (UNC Press, 2008)

The Argument for Fiscal Modernization

- High statutory rates and narrow tax bases contribute to volatility
- Over the last 50 years, the relative importance of various sources of tax revenue has changed dramatically
- Today, we rely much more on the individual income tax than in the past
- We rely much more on the individual income tax than other states with an income tax.

State Revenues Overall

High rates and narrow bases contribute to volatility:



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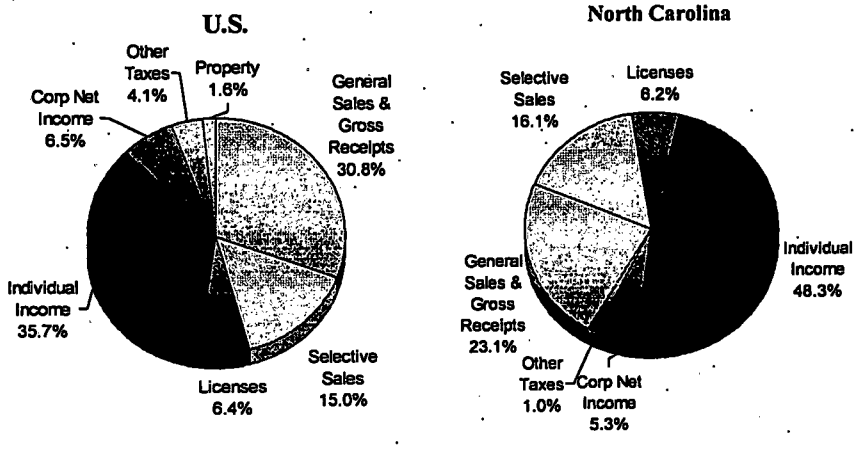
Changes in Sources of Tax Revenue

Percent of Total NC State and Local Tax Revenue from Various Sources

	1957	2006
Sales Taxes	41.4%	34.4%
Property Taxes	26.8%	23.3%
Individual Income Taxes	**10.5%**	**31.5%**
Corporate Income Taxes	9.1%	4.6%
Other Taxes	12.2%	6.2%

NC STATE UNIVERSITY

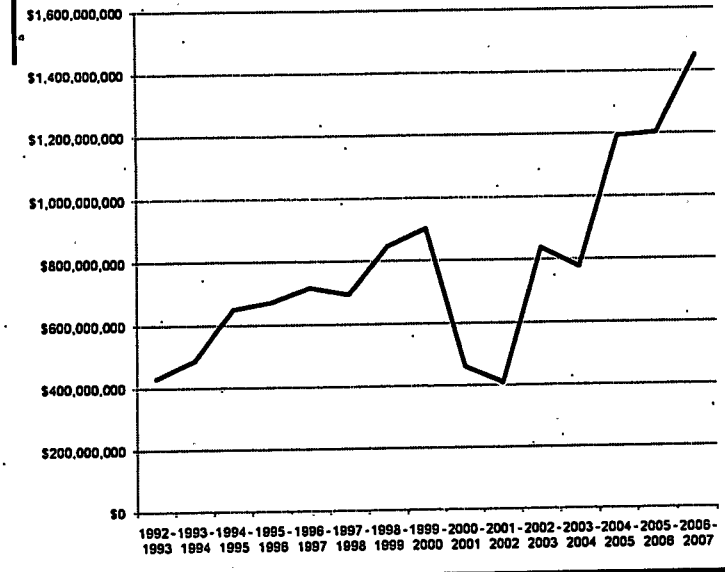
STATE TAX COLLECTIONS (2008)



Problems with the Corporate Income Tax

- The most volatile of our state taxes – accounts for between 4% and 8% of general fund revenues
- As a separate entity state, provides opportunities for multi-state corporations to shift income out of state
- A variety of tax credits are used to reduce the statutory rate

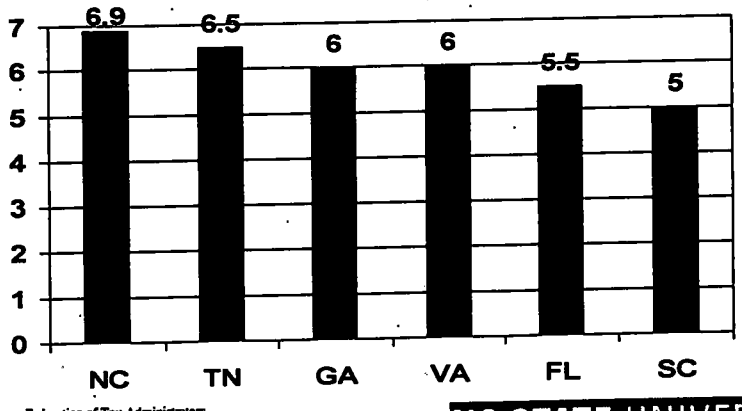
Corporate Income Tax



NC STATE UNIVERSITY

Corporate Income Tax

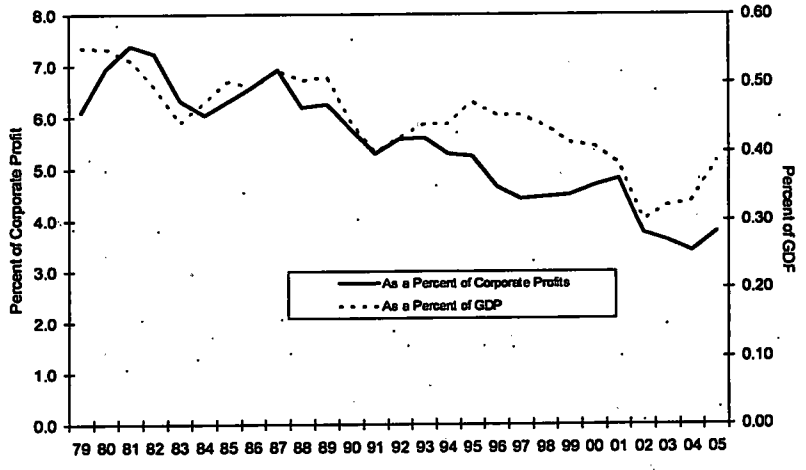
Corporate Income Tax Rate (TY 2008)



Source: Federation of Tax Administrators

NC STATE UNIVERSITY

Corporate Income Tax



Corporate Income Tax

Causes of shrinking base:

- State credits and exemptions
- Tax planning
- Federal policy (depreciation etc.)

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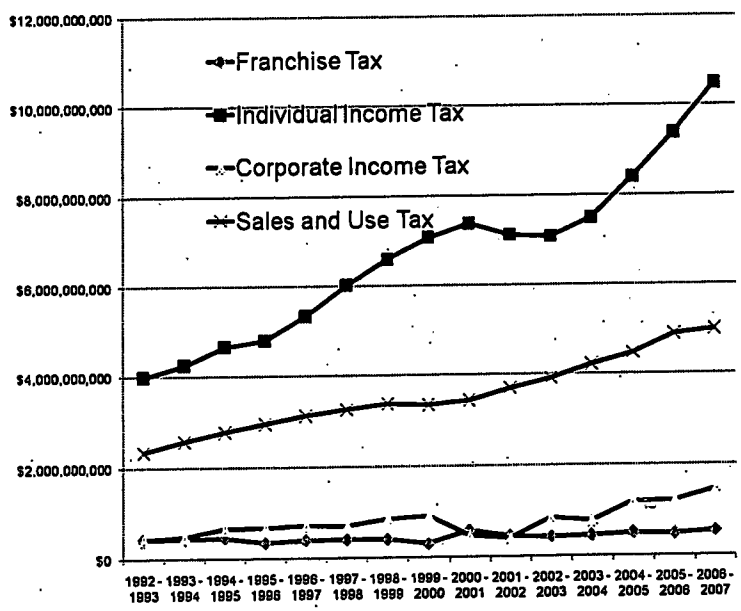
Problems with the Individual Income Tax

- Volatile
- Depends on "bracket creep"
- Uncompetitive: High rates, paid by small businesses operating as proprietorships and owners of flow through entities as well as individuals



Taxes as % of Income

North Carolina - 10% (Ranked 28th in nation)

GA: 9.8%

SC: 9.7%

VA: 9.7%

FL: 9.2%

TN: 8.3%

Source: Prof. Michael Walden, NC State

SPECIFIC TAXES - % OF INCOME

Tax	Rank in SE
Property	5
Sales	5
Individual Income Tax	**1**
Corporate Income Tax	2

Source: Prof. Michael Walden, NC State

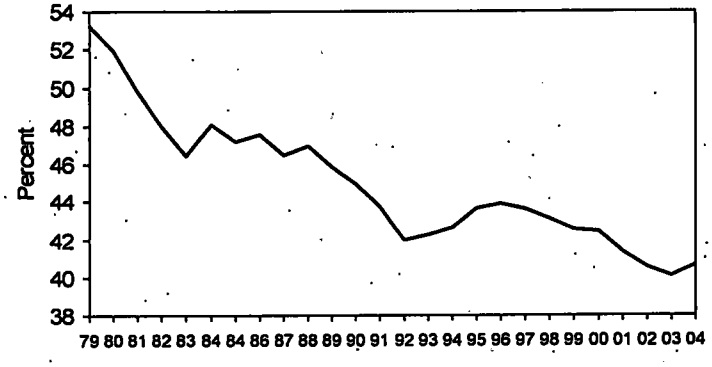
Problems with the Sales Tax

- Discriminates against manufacturing (services are largely not subject to tax)
- Relies on a shrinking and volatile base
- Regressive dependence on tangible goods

Sales Tax

- FTA catalogs 168 separate services
- NC taxes 30 services
- Average services taxed by a state = 56
- 18 states tax fewer services than NC
- 4 states tax over 140 services

The Eroding Sales Tax Base as a Percent of Personal Income

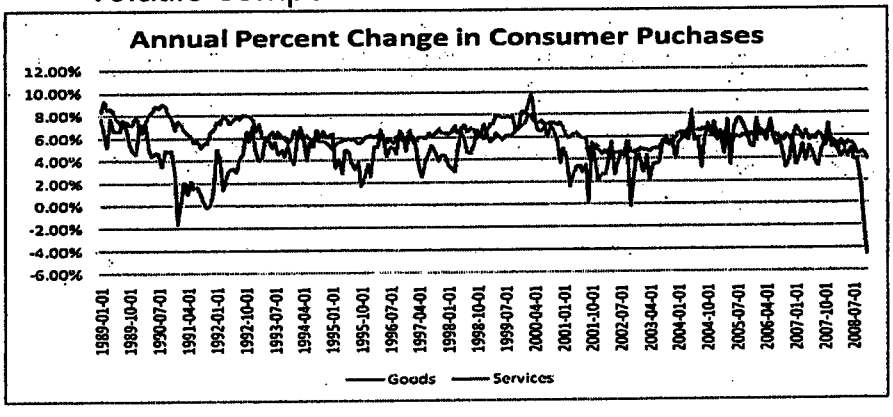


Personal Consumption Expenditures 1979 and 2007

	1979 Percent	2007 Percent
Total Expenditures	100.0	100.0
Durable Goods	13.4	11.1
Nondurable Goods	39.1	29.2
Services	47.4	59.7

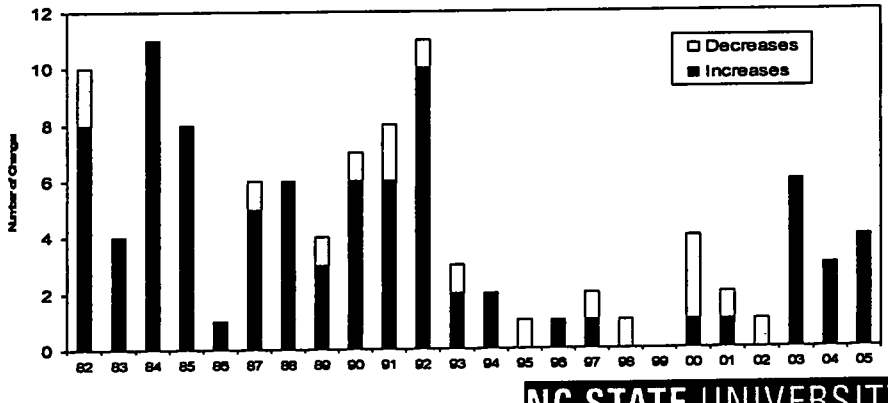
Sales Tax

The NC sales tax base rests on the more volatile component.



Sales Tax

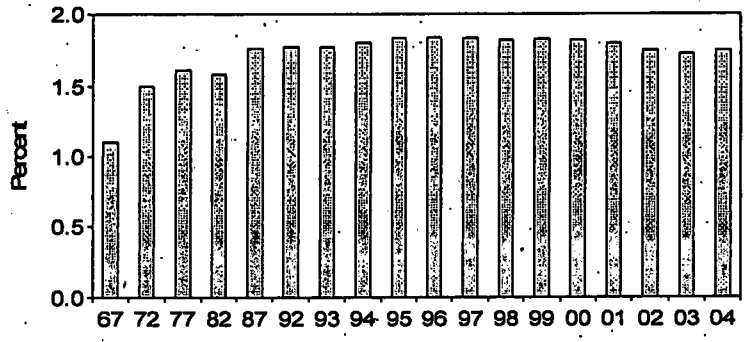
As a result sales tax rates are constantly raised.



Sales Tax

Yet rate increases do not raise total revenues

National sales tax revenues as % GDP.



VISITOR REGISTRATION SHEET

Senate Finance Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Larry Pearsall, Jr.	N. C. Retired School Personnel
[signature]	NCICU
[signature]	EGHS
Chuck Allen	US Airways
Jim Steggall	U.C.P.S.
Bill Rustin	AT&T
Paul Stark	NCBA
Betty Turner	BAC
John McAlister	NC Chamber
Stan Williams	NCS
Conor Brockett	NCSBA

VISITOR REGISTRATIÓN SHEET

Senate Finance Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Public School Forum
Katherine Joyce	NCASA
[signature]	WCPSS
Chris Minard	NC State Bd of Ed
Ashley Vroom	NCASA
Allison Waller	Charlotte Chamber
Christine Craig	WakeMed
Wendy Kelly	S20 Wicker
Joe Lunier	S20 Wicker
Jim Johnson	BSA
Daniel Amburn	Electricities of N.C., Inc.
Drew Moretz	Raleigh Chamber
Damian Graham	YPA

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Progress Energy
[signature]	NMRS
[signature]	Blue & T PLLC
Rochelle Mark	Millercoors
[signature]	WCSR
ANN LUCE	DUKE
[signature]	NCRMA
[signature]	TPCT
[signature]	CJTPC
LANIECE BEAN	CITY OF WILMINGTON
David Baker	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
D. Parker	UNC - Chapel Hill
Erin Schweitzer	UNC - GA

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Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Gene Causby	NCMA
Vb McBride	~~NCMA~~
R Rogers	CWMTF
Tom Cors	TNC
Will Snyderwine	CINC
Ashley Love	Biofuels Ctr of NC
Leslie Bevacqua Coman	Capstrat
Brian Walker	Civitas
Sammy Corbett	TNC
Brad Phillips	TNC
K Howell	NC State

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Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Steve Walker	NC Fed. Dog Clubs
Cindy [illegible]	NCFDC
M.H Gentile	Ernst + Young
Elizabeth Biser	DENR
Jonathan Tart	McGladrey
Amanda Arrington	HRLB
Victoria Hawkins	Bone + Assoc
Joseph Poole	Staff
Rick [illegible]	NCAg
Ted Thompson	Covenant w/ NC's Children
Carol Barbo	NCAE
Mark [illegible]	AT&T

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Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
David Rice	Manning Fulton
Laura Baeringer	John Locke Foundation
Gail Beamon	NC Dept of Revenue
Mary Selvidge	IFNC
Jennifer Cohen	IFNC
Chris Valauri	Carolina's Golf Course Superintendents
Gene Ainsworth	A & A
Will Culpepper	NVA
George Teague	PBV
Butch Gunnells	NC Bev A
Tommy Hunter	N.C.B.A.

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Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
	DMV - [illegible]
	MNC
Michael Hauser	NCDOR
	NC DOR
Kay Hobart	DOJ
JOHN SADOFF	NCDOR
Linda Millsaps	NCDOR
Amy McLemore	NCDOR
	NCDOR
Dona Powell	NCDOR
AL MILAK	NCDOR

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Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Meg Greg Wiehe	NC Budget & Tax Center
Henry Jones	Attorney - Raleigh
Bob Ford	NC Poultry Fed
Andy Ellen	NCRMA
Lenne E Winner	NCSBA
Dana Simpson	Smith Anderson
John Pollard	NCBIA
Chris Hollis	K & L Gates
Daniel Baum	K+L GATES
Christopher Kennard	NC ACC
Amy McConkey	Smith Anderson

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Senate Finance Committee — July 28, 2009

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VISITOR REGISTRATION SHEET

Senate Finance Committee — July 28, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
John Shaw	Wake Up Wake Co.
L. Andrews	NCFB
P. Damid	NCFB
Biz Sawitt	NCCCC
Cam Cove	3PMHL
Kathy Hawkins	PE
Tim Burgess	PE
George Everett	Duke Energy
Alice Barlana	NCEL
Matt Arendt	TPG
Jon Lambert	NCPC/FBA

SENATE FINANCE COMMITTEE
Tuesday, August 4, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Tuesday, August 4, 2009 at 1:00 p.m. There were thirty committee members present. Senator David Hoyle presided. Elizabeth Rodgers of Thomasville, Yates Parrish of Raleigh, Daniel Smith of Holly Springs, and Emily Costello of Greensboro served as pages.

H.B. 148 – Congestion Relief/Intermodal Transport Fund.

Representative Carney and Representative McGee were recognized to explain the bill. It establishes a Congestion Relief and Intermodal Transportation 21st Century Fund, provides for allocation of those funds to: (1) local governments and transportation authorities for public transportation purposes, (2) short-line railroads, for assistance in maintaining and expanding freight service statewide, (3) railroads for intermodal facilities, multimodal facilities, and inland ports, (4) make capital improvements on rail lines to allow improved freight service to the ports and military installations, (5) expand intercity passenger rail service; extends levels of local transit funding authorizations to three urban regions; and allows other local governments options for local transit funding. Senator Stevens participated via speaker phone and was recognized to speak in favor of the bill. Senator Stein distributed a list of organizations in favor of the bill. Senator Jenkins offered a clarifying amendment and moved for its adoption. The motion carried. Senator Dannelly moved to report the bill favorable as amended and the motion carried. A copy of the bill, the summary, the fiscal note, the amendment and Senator Stein's handout is attached.

H.B. 1514 – IDF Changes/Research and Products Service Districts.

Representative Crawford was recognized to explain the bill. It expands economically distressed counties to include all tier one and tier two counties, increases the maximum expenditure of funds from the industrial development fund, exempts from rule making the customized training program under the Community College System, and amends the County Service District Act of 1973 to allow additional county research and production service districts. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the summary, the fiscal note and a Department of Commerce handout is attached.

S.B. 20 – Voter-Owned Election for Treasurer.

Senator Doug Berger was recognized to explain the bill. Senator Jenkins moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS adds the Office of State Treasurer to the Council of State offices subject to the Voter-Owned Elections Act; makes technical changes to the Act; and provides funding for the Act. Treasurer Cowell was recognized to answer questions and speak in favor of the bill. Bob Hall, President of Democracy North Carolina, was recognized to answer

questions. Senator Rand offered a technical amendment and moved for its adoption. The motion carried. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note, and the amendment is attached.

H.B. 565 – Union Fire Fees.

Representative Gibson was recognized to explain the bill which allows Union County to adjust its fire protection fees. Senator Goodall offered a technical amendment and moved for its adoption. The motion carried. Representative Blackwood was recognized to ask questions. Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the amendment is attached.

H.B. 512 – Incentives for Energy Conservation.

Representative Luebke and Representative Harrison were recognized to explain the bill. Senator Clodfelter moved to adopt the PCS for discussion and the motion carried. The PCS extends the credit for investing in renewable energy property to geothermal heat pumps and equipment, allows the credit to be taken against the gross premiums tax, and extends the sunset for the credit. Senator Brock moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

H.B. 1389 – Finance Energy Improvements with Assessments.

Representative Fisher was recognized to explain the bill. Senator Foriest moved to adopt the PCS for discussion and the motion carried. The PCS authorizes cities and counties to establish loan programs to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to real property. Senator Rand and Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 829 – Regulation of Appraisal Management Companies.

Senator Jenkins was recognized to explain the bill which regulates real estate appraisal management companies. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

The meeting adjourned at 1:37 p.m.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, August 04, 2009

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

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

S.B. **20** Voter-Owned Election for Treasurer.

Draft Number:	35382
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **512** Incentives for Energy Conservation.

Draft Number:	50784
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1389** Finance Energy Improvement with Assessments.

Draft Number:	30447
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
H512 – Sen. Clodfelter
H1389 – Sen. Stein

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, August 04, 2009

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

FAVORABLE

S.B.(CS #1) **829** Regulation of Appraisal Management Companies.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1514** IDF Changes/Research & Prod. Serv. Districts.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B.(CS #2) **148** Congestion Relief/Intermodal Transport Fund.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS #1) **565** Union Fire Fees.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:
H148 – Sen. Garrou
H565 – Sen. Goodall
H1514 – Sen. Hoyle

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	August 4, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 148	Congestion Relief/Intermodal Transport Fund.	Representative Carney Representative Ross Representative Allen Representative McGee
HB 512	Incentives for Energy Conservation.	Representative Holliman Representative Luebke Representative Harrison
HB 1389	Finance Energy Improvement with Assessments.	Representative Harrison Representative Rapp Representative Fisher
HB 1514	IDF Changes/Research & Prod. Serv. Districts.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: H565 Union Fire Fees, S20 – Voter-Owned Election for Treasurer, and S829 – Regulation of Appraisal Management Companies have been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
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HB 1389	Finance Energy Improvement with Assessments.	Representative Harrison Representative Rapp Representative Fisher
HB 1514	IDF Changes/Research & Prod. Serv. Districts.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III
HB 565	Union Fire Fees.	Representative Gibson, III
SB 20	Voter-Owned Election for Treasurer.	Senator Berger
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Tuesday, August 4, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 148	Congestion Relief/Intermodal Transport Fund.	Rep. Carney Rep. Ross Rep. Allen Rep. McGee
HB 512	Incentives for Energy Conservation.	Rep. Holliman Rep. Luebke Rep. Harrison
HB 565	Union Fire Fees.	Rep. Gibson
HB 1389	Finance Energy Improvement with Assessments.	Rep. Harrison Rep. Rapp Rep. Fisher
HB 1514	IDF Changes/Research & Prod. Serv. Districts.	Rep. Crawford Rep. Dickson Rep. Gibson
SB 20	Voter-Owned Election for Treasurer.	Sen. Berger
SB 829	Regulation of Appraisal Management Companies.	Sen. Jenkins

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — August 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hanby	Electricities of NC
DANIEL BLUM	K+L GATES
Damien Graham	TTA
Drew Ball	Sierra Club
[illegible]	[illegible]
Will Culpepper	MVL
Charles Hodges	NC Gov/Capstone
Desmond Laughinghouse	NS
SETH EFFRON	ENERGY OFFICE
DAVID BARNES	Progress Energy
[illegible]	TPG
Carley Ruff	NCAE

VISITOR REGISTRATION SHEET

Senate Finance Committee — August 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	JDALPA
Betty Garner	Bank of America
Annie W. McAuliffe	GM Fasts
Allison Waller	Charlotte Chamber
Danielle Nathan	NC Sierra Club
Annaliese Dolph	DRNC
Com Crum	BPMHC
Ed Morton	~~RETIRED~~
Kim Hibbard	NCLM
Jim Blackburn	friend of Emily Costello
Kevin Beaumont	NCACC
John Maddux	City of Raleigh

VISITOR REGISTRATION SHEET

Senate Finance Committee — August 4, 2009

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Willis	NCCCS
Ford Byrum	Byrum & Assoc
Debra DeCamillis	UNC. LOG
Laura Godwin	NCSPA
Jamey Barnhardt	LAB
Gene Ainsworth	A&A
Nathan Batts	NCBA
Paul Stock	NCBA
Dan McLawhorn	Ballard
R Mac	Miller Cook
Tracy Kimbrell	Parker Poe
Chris Valaris	Lori Ward Tobacco
Sayre Peters	JPACCA

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Senate Finance Committee — August 4, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Dan Conrad	NCCN
Sean Quinn	Sierra Club
Ed Strickland	NCDOR
David Crawford	AIA NC
Chuck Hall	SEANC
Laurie Stradley	Be Active NC
Jennifer Emerson-Ray	AHA
Stephen Wohlers	NCDOT
Betsy Vetter	AHA
Pam Seamons	NC Alliance For Health
DAVID KING	Triangle Transit
Susan C. Coward	NCDOT

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Senate Finance Committee — August 4, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
ZACH REITHETT	AAA
DAVE SIMPSON	CAC
BERRY JENKINS	CAROLINAS AGC
Boyd Gamble	City of Charlotte
GREG FLYNN	Self
Steve Jadoson	NC Justice Center
Steven Waters	Self
JOHN SHAW	WWC
Don Radgen	NC Appraisal Board
Philip Humphries	NC Appraisal Board
Dan Crawford	CCNC

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Senate Finance Committee — August 4, 2009

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Canales	Biscar
John Boerdeck	AstraZeneca
Michael Houser	NC DSR
David Amborn	Electri Cities
	RTRC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 148*
Committee Substitute Favorable 3/11/09
Committee Substitute #2 Favorable 4/15/09
Fourth Edition Engrossed 4/22/09

Short Title: Congestion Relief/Intermodal Transport Fund. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CONGESTION RELIEF AND INTERMODAL TRANSPORTATION 21ST CENTURY FUND; TO PROVIDE FOR ALLOCATION OF THOSE FUNDS TO: (1) LOCAL GOVERNMENTS AND TRANSPORTATION AUTHORITIES FOR PUBLIC TRANSPORTATION PURPOSES, (2) SHORT-LINE RAILROADS, FOR ASSISTANCE IN MAINTAINING AND EXPANDING FREIGHT SERVICE STATEWIDE, (3) RAILROADS FOR INTERMODAL FACILITIES, MULTIMODAL FACILITIES, AND INLAND PORTS, (4) MAKE CAPITAL IMPROVEMENTS ON RAIL LINES TO ALLOW IMPROVED FREIGHT SERVICE TO THE PORTS AND MILITARY INSTALLATIONS, (5) EXPAND INTERCITY PASSENGER RAIL SERVICE; TO EXTEND LEVELS OF LOCAL TRANSIT FUNDING AUTHORIZATION TO THREE URBAN REGIONS; AND TO ALLOW OTHER LOCAL GOVERNMENTS OPTIONS FOR LOCAL TRANSIT FUNDING.

The General Assembly of North Carolina enacts:

FUND ESTABLISHED

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 19.

"Congestion Relief and Intermodal 21st Century Transportation Fund.

"**§ 136-250. Congestion Relief and Intermodal Transportation 21st Century Fund.**

There is established in the State treasury the Congestion Relief and Intermodal Transportation 21st Century Fund, hereinafter referred to as the Fund. The Fund shall consist of all revenues appropriated and allocated to it. Interest on earnings of the Fund shall remain within the Fund.

"**§ 136-251. Findings of fact.**

The General Assembly finds that:

(1) Increased use of rail for transport of freight will reduce highway congestion as well as allow economic expansion in a way that lessens the impact on the State highway system.

(2) Public transportation, in addition to a program of urban loops and toll roads, will enable North Carolina to have a balanced 21st century transportation system.

(3) As part of its initial program of internal improvements, the State capitalized the North Carolina Railroad in the 1840s and invested in other railroads, and those internal improvements led to North Carolina's rapid economic development. The North Carolina Railroad, with a 317-mile corridor from Charlotte to Morehead City, is still owned by the State.

(4) Improved rail facilities and restoration of abandoned rail lines can allow increased access to the North Carolina State ports and military installations located within the State.

(5) Session Law 2005-222 found that expanding and upgrading passenger, freight, commuter, and short-line rail service is important to the economy of North Carolina; and provided that the State would seek to provide matching funds partly so it can leverage the maximum federal and private participation to fund needed rail initiatives, such as the restoration of the rail corridor from Wallace to Castle Hayne and a rail connection between north-south and east-west routes in the vicinity of Pembroke.

(6) Rail freight plays a vital role in economic development throughout the State. Intermodal service depends on partnerships with railroads, trucking companies, seaports, and others in the transportation logistics chain. North Carolina has 3,250 mainline miles of track, with Class I railroads holding seventy-nine percent (79%) of the trackage rights, the remainder controlled by local railroads and switching and terminal railroads. The 2006 Mid-Cycle Update to the North Carolina Statewide Intermodal Transportation Plan identified seven hundred ninety-nine million dollars ($799,000,000) in freight rail needs over the next 25 years, including maintenance and preservation, modernization, and expansion.

(7) North Carolina's short-line railroads play a key role in the State's economic development and transportation service and are needed to provide essential services to other modes of transportation and the North Carolina port system. North Carolina agriculture is dependent upon essential service by short-line railroads. State funds are needed to maintain short-line railroads as viable contributors to economic development, agriculture, and transportation in this State in order to prevent the loss of regional rail service. The Department of Transportation reported that 44,992 rail cars handled by short-lines kept 179,688 trucks off North Carolina highways. Short-line railroads are essential to preserve and develop jobs in rural and small urban areas of North Carolina.

(8) Intermodal facilities and inland ports can greatly reduce freight traffic on North Carolina's highway system, reducing demand, congestion, and damage.

(9) The proposed North Carolina International Terminal will need high-capacity intermodal access.

(10) Most of North Carolina's growth is in its urban regions. According to the State Data Center, during the first decade of the 21st century, sixty-six percent (66%) of the projected 1,270,000 growth in population is in 15 urban counties surrounding Charlotte, Raleigh, and the Triad, while forty percent (40%) is in just six counties: Mecklenburg, Wake, Durham, Orange, Forsyth, and Guilford.

(11) This large urban population growth greatly taxes resources. Despite the visionary creation of the Highway Trust Fund by the 1989 General Assembly and the funding of urban loop highways, congestion continues to worsen. Creation of a special fund to help meet urban transportation needs

with alternatives such as rail transit and buses, coupled with land-use planning, will spur and guide economic development in a more economically and environmentally sound manner. Investment in public transportation facilitates economic opportunity to the State through job creation, access to employment, and residential and commercial development. Public transportation also protects the public health by decreasing air pollution and reducing carbon emissions. It reduces traffic congestion, road expenditures, public and private parking costs, and the number of traffic accidents. Charlotte's recent success in opening the first phase of its light rail system, with ridership significantly over projections, shows that North Carolinians are willing to use transportation alternatives.

(12) Significant local revenues are needed to match State funds so that a major portion of the expenses is borne by the localities receiving the majority of the benefits. A local option sales tax for public transportation was approved by a fifty-eight percent (58%) favorable vote in Mecklenburg County in 1998 and reaffirmed by a seventy percent (70%) favorable vote in 2007. Extending this authority to additional jurisdictions, along with other revenue options, will enable localities to demonstrate local support for additional transit options.

(13) Surveys have indicated broad public support for providing additional public transportation options and for allowing localities to generate revenue to match State grants.

"**§ 136-252. Grants to local governments and transportation authorities.**

(a) Eligible Entities. – The following entities are eligible to receive grants under this section from the Fund for public transportation purposes, which includes planning and engineering:

(1) Cities.

(2) Counties.

(3) Public transportation authorities under Article 25 of Chapter 160A of the General Statutes.

(4) Regional public transportation authorities under Article 26 of Chapter 160A of the General Statutes.

(5) Regional transportation authorities under Article 27 of Chapter 160A of the General Statutes.

(b) Requirements. – A grant may be approved from the Fund only if all of the following conditions are met:

(1) The application is approved by all Metropolitan Planning Organizations under Article 16 of this Chapter whose jurisdiction includes any of the service area of the grant applicant.

(2) The applicant has approved a transit plan that includes the following:

a. Relief of anticipated traffic congestion.

b. Improvement of air quality.

c. Reduction in anticipated energy consumption.

d. Promotion of a pedestrian- and bike-friendly environment around and connected to transit stations.

e. Promotion of mixed-use and transit-oriented developments and other land-use tools that encourage multimodal mobility.

f. Coordination with the housing needs assessment and plan provided in subdivision (3) of this subsection.

g. Promotion of access to public transportation for individuals who reside in areas with a disproportionate number of households below the area median income.

h. Coordination and planning with local education agencies to reduce transportation costs.

i. Coordination with local governments with zoning jurisdiction to carry out elements of the plan.

The applicant may also include plans for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

(3) The applicant has approved a housing needs assessment and plan, or includes with its application such assessment and plan (or assessments and plans) approved by another unit or units of local government within its service area, that includes the following:

a. A housing inventory of market rate, assisted housing units, and vacant residential parcels.

b. An analysis of existing housing conditions, affordable housing needs, and housing needs for specific population groups, such as people who are elderly, are disabled, have special needs, or are homeless.

c. A catalogue of available resources to address housing needs.

d. Identification of potential resources and a strategy to provide replacement housing for low-income residents displaced by transit development and to increase stock of affordable housing to at least fifteen percent (15%) within a one-half mile radius of each transit station and bus hub to be affordable to families with income less than sixty percent (60%) of area median income.

e. Goals, strategies, and actions to address housing needs over a five-year period.

(4) The applicant has an adequate and sustainable source of funding established for its share of project costs.

(5) The applicant agrees to submit to both the Secretary and each Metropolitan Planning Organization that approved the application a periodic update of the implementation of both the transit plan and the housing needs assessment and plan. Each Metropolitan Planning Organization receiving such update shall afford interested parties the opportunity to comment on the update.

(c) Multiyear Allotments. – Grants from the Fund may be committed for a multiyear basis to stabilize the phased implementation of a plan, including multiyear allotments. The Secretary of Transportation, after consultation with the Board of Transportation, shall approve, and amend from time to time, a rolling multiyear projection of up to 15 years for allocation of funds under this section. No applicant is eligible under the 15-year plan projection for more than one-third of the total funds to be granted under this Article during that 15-year period.

(d) Cap; Matching Requirement. – A grant under this section may not exceed twenty-five percent (25%) of the cost of the project and must be matched by an equal or greater amount of funds by the applicant. In evaluating projects, qualification for federal funding shall be considered.

"**§ 136-253. Grants to other units.**

(a) Eligible Entities; Purposes. – State agencies and railroads are eligible to receive grants under this section from the Fund for any of the following purposes:

(1) Assistance to short-line railroads to continue and enhance rail service in the State so as to assist in economic development and access to ports and military installations. This may involve both the Rail Industrial Access Program and the Short Line Infrastructure Access Program, as well as other innovative programs. Grants under this subdivision shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed five million dollars ($5,000,000) per fiscal year.

(2) Assistance to any railroad in the construction of rail improvements, intermodal or multimodal facilities or restorations to (i) serve ports, military installations, inland ports or (ii) improve rail infrastructure to reduce or mitigate truck traffic on the highway system. Grants under this subdivision shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed ten million dollars ($10,000,000) per fiscal year.

(3) Assistance (i) to the State ports in terminal railroad facilities and operations, (ii) to improve access to military installations, and (iii) to the North Carolina International Terminal. Grants under this subdivision shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed ten million dollars ($10,000,000) per fiscal year.

(4) Expansion of intercity passenger rail service, including increased frequency and additional cities serviced. Routes under this subdivision must extend beyond the territorial jurisdiction of a transportation authority.

(b) Commuter Rail Service Grants. – State agencies, railroads, transportation authorities under Article 25 of Chapter 160A of the General Statutes, regional public transportation authorities under Article 26 of Chapter 160A of the General Statutes, and regional transportation authorities under Article 27 of Chapter 160A of the General Statutes are eligible to receive grants under this section from the Fund for the introduction of commuter rail service. Routes under this subsection must extend beyond the territorial jurisdiction of a transportation authority.

"**§ 136-254. Grant approval.**

All grants made under this Article are subject to approval of the Secretary of Transportation after consultation with the Board of Transportation. The Fund may be administered in conjunction with G.S. 136-44.20 and G.S. 136-44.36, but any funds allocated under those sections shall continue to be available as provided therein.

"**§ 136-254.1. Expenditure.**

No monies shall be expended from the Fund until appropriated by the General Assembly.

"**§ 136-255. Funds remain available until expended.**

Appropriations to the Fund remain available until expended."

PUBLIC TRANSPORTATION SALES TAX AUTHORIZED

SECTION 2.(a) Section 1(a) of S.L. 1997-417 is recodified as G.S. 105-510.1.

SECTION 2.(b) Article 43 of Chapter 105 of the General Statutes, as enacted by S.L. 1997-417 and amended by Section 13(f) of S.L. 2001-427, Section 74 of S.L. 2008-134, and by subsection (a) of this section, reads as rewritten:

"Article 43.

"Local Government Sales and Use Taxes for Public Transportation.

"Part 1. General.

"**§ 105-505. Short title; purpose.**

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the ~~counties~~ counties and transportation authorities of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides ~~counties~~ them with authority to levy ~~one-half percent (1/2%)~~ sales and use taxes. All such taxes must be approved in a referendum.

"§ 105-506. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Board of trustees. – The governing body of a transportation authority.

~~(1)~~(2) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.

~~(2)~~(3) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, and the interconnected bicycle and pedestrian infrastructure that supports public transportation, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(4) Transportation authority. – For the purposes of Parts 3 and 3A of this Article, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes; and for the purposes of Parts 3 and 3B of this Article, a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

"§ 105-506.1. Exemption of food.

A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a).

"Part 2. Mecklenburg County.

"§ 105-507. Limitations.

A county may not levy a tax under this ~~Article~~ Part unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this ~~Article~~ Part unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county.

"§ 105-508. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this ~~Article.~~ Part. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current ~~two percent (2%)~~ local sales and use taxes, to be used only for public transportation systems.'

"§ 105-509. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to ~~this Article~~ G.S. 105-508 vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this ~~Article,~~ Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this ~~Article~~Part, references to 'this Article' mean 'Part 1 of Article 43 of Chapter 105 of the General Statutes'.

"§ 105-510. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this ~~Article~~ Part by that county. If the Secretary collects taxes under this ~~Article~~ Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this ~~Article~~ Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this ~~Article~~ Part only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems.

"§ 105-510.1. Applicability.

This ~~section~~ Part applies only to Mecklenburg County.

"Part 3. Transportation Authorities.

"§ 105-510.5. Special districts.

(a) Authority. – A transportation authority may create a special district as provided in Parts 3A and 3B of this Article. A special district is subject to the provisions of this Part as well as the Part under which it was created. A special district created under this Article is a local government body corporate and politic and has the power to carry out the purposes of the Part under which it is established.

(b) Governance. – The following entity shall serve ex officio as the governing board and be responsible for budget adoption and the operation and management of the transit services provided by the district:

(1) The board of trustees of the transportation authority, if the special district consists of multiple counties. If the special district is expanded under G.S. 105-510.8(d) or G.S. 105-510.10(d) to include more than one county, then the board of trustees of the transportation authority shall become the governing board of the district beginning on the first day of the next fiscal year after expansion of the district.

(2) The county board of commissioners, if the special district consists of one county. The board may contract with the transportation authority as needed.

(c) Filing Requirement. – The transportation authority creating a special district shall name it and file with the Secretary of State the documents creating the district, and shall also file notice of the addition to and removal from the district of any counties, or of the abolition of the special district.

"**§ 105-510.6. Limitations.**

A transportation authority may not levy a tax under Part 3A or 3B of this Article unless:

(1) It operates a public transportation system.

(2) It has developed a financial plan and distributed it to each unit of local government located within its territorial jurisdiction. The plan must be approved by the board of commissioners of each county in the district prior to the levy of the tax. If the board of commissioners of a county in a multicounty district does not adopt the plan, the transportation authority may remove that county from the district, and no tax may be levied in that county under this Part. The financial plan must provide for equitable use of the net proceeds within or to benefit the special district created under Part 3A or Part 3B of this Article and consider (i) the identified needs of local public transportation systems in the district, (ii) human service transportation systems within the district, and (iii) expansion of public transportation systems to underserved areas of the district. The financial plan must also be approved by all Metropolitan Planning Organizations under Article 16 of Chapter 136 of the General Statutes whose jurisdiction includes any of the area of the special district. The plan may be revised from time to time. An interlocal agreement between the transportation authority and all the counties in the special district may require periodic review and approval of the financial plan.

(3) The tax is approved by the voters.

"**§ 105-510.7. Distribution and use of taxes.**

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each special district the net proceeds of the tax levied under this Part within the special tax district, to be used for the benefit of that district.

(b) Use. – A special district must expend the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-510.6 and use the net proceeds only for financing, constructing, operating, and maintaining public transportation systems. The special district shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems.

"Part 3A. Regional Public Transportation Authority (Triangle).

"**§ 105-510.8. Local election on adoption of sales and use tax – regional public transportation authority.**

(a) Special District. – A regional public transportation authority may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails in all the counties in the district, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional public transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter

approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:

a. A majority vote of each of the county boards of commissioners within the special district, if it is a multicounty special district.

b. A majority of the county board of commissioners within the special district, if it is a single-county special district.

(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

(d) Expansion. – If a special district created under this Part does not include all the counties in the territorial jurisdiction of a transportation authority, it may be expanded to include an additional whole county or counties by joint action of the board of trustees of the transportation authority and the board of commissioners of the county or boards of commissioners of the counties to be added, with the approval of the voters in the county or counties to be added. The procedure for expansion of a district is the same as for the initial creation of the district, but the referendum shall be held separately within each of the counties to be added.

"§ 105-510.9. Levy and collection of sales and use tax – regional public transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-510.8 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one or more but not all of the counties, the counties in which the referendum was not approved are removed from the special district upon certification of the election result and the county or counties that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Part 3A of Article 43 of Chapter 105 of the General Statutes.' Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district.

"Part 3B. Regional Transportation Authority (Triad).

"§ 105-510.10. Local election on adoption of sales and use tax – regional transportation authority.

(a) Special District. – A regional transportation authority may create a special district that consists of the entire area of one or two counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The special district may not include counties other than Forsyth and Guilford. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:

a. A majority vote of both of the county boards of commissioners within the special district, if it is a multicounty special district.

b. A majority of the county board of commissioners within the special district, if it is a single-county special district.

(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

(d) Expansion. – If a special district created under this Part does not include both of the eligible counties under subsection (a) of this section, it may be expanded to include the other county by joint action of the board of trustees of the transportation authority and the board of commissioners of the county to be added, with the approval of the voters in the county to be added. The procedure for expansion of the district is the same as for the initial creation of the district, but the referendum shall be held separately in the county to be added.

"**§ 105-510.11. Levy and collection of sales and use tax – regional transportation authority.**

If the majority of those voting in a referendum held pursuant to G.S. 105-510.10 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one but not both of the counties, the county in which the referendum was not approved is removed from the special district upon certification of the election result and the county that approved the referendum

shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Part 3B of Article 43 of Chapter 105 of the General Statutes.' Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district.

"Part 4. Other Counties.

"**§ 105-510.12. Applicability.**

This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg, Orange, or Wake.

"**§ 105-510.13. Limitations.**

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. As used in this Part, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this Part, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

"**§ 105-510.14. Local election on adoption of sales and use tax.**

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-quarter percent (1/4%) may be levied in accordance with this Part. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-quarter percent (1/4%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

"**§ 105-510.15. Levy and collection of sales and use tax.**

If the majority of those voting in a referendum held pursuant to this Part vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-quarter percent (1/4%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to 'this Article' mean 'Part 4 of Article 43 of Chapter 105 of the General Statutes.'

"**§ 105-510.16. Distribution and use of taxes.**

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a

particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate a public transportation system as follows:

(1) To the county based on the population of the county that is not in an incorporated area, and to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection.

(3) Notwithstanding subdivision (1) of this subsection, if a county to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection.

If a county or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate or contract for the operation of a public transportation system, that county or municipality shall begin receiving funds beginning the first day of July that is more than 30 days thereafter.

(b) Use. – A county or municipality may use funds received under this Part only for financing, constructing, operating, and maintaining public transportation systems. Every unit of government shall use funds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

SECTION 2.(c) Section 7 of S.L. 1997-417 reads as rewritten:

"Section 7. A tax levied under Article 43 of Chapter 105 of the General ~~Statutes, as enacted by this act,~~ Statutes does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes."

SECTION 2.(d) G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...

(23) A special district created under Article 43 of this Chapter."

SECTION 2.(e) G.S. 159-81(1) reads as rewritten:

"The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government.

...."

SECTION 2.(f) G.S. 160A-460 reads as rewritten:

"**§ 160A-460. Definitions.**

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government."

SECTION 2.(g) G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(14) A special district created under Article 43 of Chapter 105 of the General Statutes."

SECTION 2.(h) Section 3.1 of S.L. 1997-417, as added by Section 30 of S.L. 2006-162, reads as rewritten:

"**SECTION 3.1.** A county authorized to impose a tax under Part 2 of Article 43 of Chapter 105 of the General ~~Statutes as enacted by Part 1 of this act,~~ Statutes is considered an authority under Article 50 of Chapter 105 of the General Statutes, as enacted by Section 3 of this of this act, and the board of commissioners of that county is considered the board of trustees of the authority under Article 50. G.S. 105-554 of Article 50 does not apply to the proceeds of a tax imposed by county considered an authority under this section. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for a public transportation system. The term 'public transportation system' has the same meaning as defined in ~~G.S. 105-506 of Article 43.~~G.S. 105-506."

LOCAL VEHICLE REGISTRATION CHARGE ADJUSTED FOR INFLATION

SECTION 3.(a) G.S. 105-561(a) reads as rewritten:

"(a) Tax Authorized. – The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed ~~five dollars ($5.00)~~ seven dollars ($7.00) a year."

SECTION 3.(b) Effective July 1, 2010, G.S. 105-561(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) Tax Authorized. – The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed ~~seven dollars ($7.00)~~ eight dollars ($8.00) a year."

SECTION 3.(c) G.S. 105-561(d) reads as rewritten:

"(d) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than ~~five dollars ($5.00)~~ seven dollars ($7.00), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority; exceed ~~five dollars ($5.00).~~ seven dollars ($7.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

SECTION 3.(d) Effective July 1, 2010, G.S. 105-561(d), as amended by subsection (c) of this section, reads as rewritten:

"(d) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than ~~seven dollars ($7.00),~~ eight dollars ($8.00), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority; exceed ~~seven dollars ($7.00).~~ eight dollars ($8.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided

in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

ADDITIONAL VEHICLE REGISTRATION CHARGE AUTHORIZED

SECTION 4. Subchapter IX of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 52. County Vehicle Registration Tax.

"**§ 105-557. County Vehicle Registration Tax; shared with municipalities.**

(a) A county is considered an authority under Article 51 of this Chapter, and the board of commissioners of that county is considered the board of trustees of the authority under Article 51, except that the maximum tax that may be levied by a county under this Article is seven dollars ($7.00) per year.

(b) A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

(c) Any tax levied under this Article shall, after the receipt of those funds from the Division of Motor Vehicles, be retained or distributed by the county on a per capita basis as it receives those funds as follows:

(1) Pro rata (i) retained by the county based on the population of the county that is not in an incorporated area, and (ii) distributed to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and municipality, the county shall use the most recent annual estimate of population certified by the State Budget Officer.

(2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be distributed does not operate a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection and no distribution shall be made to that municipality.

(3) Notwithstanding subdivision (1) of this subsection, if a county for which funds are to be retained does not operate a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection, and the county shall not retain any funds.

If a county that does not retain funds or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate a public transportation system, that county or municipality shall begin retaining or receiving funds beginning the first day of July that is more than 30 days thereafter.

(d) The proceeds of a tax imposed under this Article may be used by that county or municipality only to operate a public transportation system, including financing, constructing, operating, and maintaining that public transportation system. The term 'public transportation system' has the same meaning as defined in G.S. 105-506.

(e) As used in this section, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this section, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

(f) An interlocal agreement under this section may also deal with allocation of funds between a municipality and county for operation by the county of a human services public transportation system within the municipality when the municipality also operates a public transportation system.

(g) This Article is supplemental to Article 51 of this Chapter."

VEHICLE REGISTRATION TAX CONFORMED TO NEW REGISTRATION SYSTEM DEADLINES

SECTION 5.(a) G.S. 105-562(a) reads as rewritten:

"(a) Collection. – A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the ~~third~~ sixth calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article."

SECTION 5.(b) G.S. 105-563 reads as rewritten:

"**§ 105-563. Modification or repeal of tax.**

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the ~~third~~ sixth calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

RTP SERVICE DISTRICT AUTHORIZATION EXTENDED

SECTION 6. G.S. 153A-317 reads as rewritten:

"**§ 153A-317. Taxes authorized; rate limitation.**

(a) A ~~county~~county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

(b) Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation.

(c) For the purpose of constructing, maintaining, or operating public transportation as defined by G.S. 153A-149(c)(27), in addition to the additional property taxes levied under subsections (a) and (b) of this section, a county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy additional property taxes within

any service district established pursuant to this Article not in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation. Such property taxes for public transportation may only be used within the service district, or to provide for public transportation from the service district to other public transportation systems or to other places outside the service district including airports."

EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 148:
Congestion Relief/Intermodal Transport Fund

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 3, 2009
Introduced by:	Reps. Carney, Allen, Ross, McGee	**Prepared by:**	Cindy Avrette
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 148 does the following:

- ***It establishes a Congestion Relief and Intermodal Transportation 21st Century Fund to provide grants for:***
  - ***Public transportation. Short line railroads for maintenance and expansion of freight service.***
  - ***Railroads for Intermodal and multimodal facilities and inland ports.***
  - ***State ports for terminal railroads and improved access to military facilities.***
  - ***Expansion of intercity passenger rail service.***
- ***It gives transportation authorities the power, with voter approval, to levy a 1/2% local sales tax to be used only for public transportation systems. (Applies to Triangle Transit Authority for Wake, Durham, and Orange Counties and Piedmont Authority for Regional Transportation for Forsyth and Guildford Counties). Mecklenburg County already has such authority.***
- ***It gives any of the other 94 counties that operate a public transportation system or have a municipality in that county that operates a public transportation system the power, with voter approval, to adopt a ¼% local sales tax to be used only for public transportation systems.***
- ***It authorizes regional transit authorities to increase the local vehicle registration tax from a maximum of $5.00 to a maximum of $7.00 to adjust for inflation. The authorization is increased to $8.00, effective July 1, 2010.***
- ***It authorizes counties with a county or municipal transit system to levy a maximum local vehicle registration tax of $7.00 per year.***
- ***It authorizes a county to levy an additional property tax within a research and production service district not in excess of 10¢ on each $100 of value to be used only for public transportation. This property tax applies to the Research Triangle Park special tax district.***
- ***It adds special districts that levy a local sales tax for public transportation purposes to the list of governmental entities allowed an annual sales tax refund.***

BILL ANALYSIS:

Part 1. State grant program for intermodal transit)

House Bill 148 creates the Congestion Relief and Intermodal 21st Century Transportation Fund and authorizes the Secretary of Transportation, after consultation with the Board of Transportation, to make grants from the fund to the following:

1) Local governments and transportation authorities for public transportation. The grant requires (i) approval of the application by the Metropolitan Planning Organizations covering the applicant; and (ii)

transit plan covering various planning policies and housing needs. Grant can not exceed 25% of project cost.

2) Short line railroads to assist in economic development and access to ports and military installations. Grant can not exceed 50% of project cost and total annual grants limited to $5 million.

3) Railroads to assist in rail improvements, intermodal or multimodal facilities or restorations to (i) serve ports, military installations, inland ports or (ii) improve rail infrastructure to reduce or mitigate truck traffic on the highway system. Grant can not exceed 50% of project cost and total annual grants limited to $10 million.

4) State ports for terminal railroads and improved access to military facilities and Intermodal or multimodal facilities. Grant can not exceed 50% of project cost and total annual grants limited to $10 million.

5) Expansion of intercity passenger rail service.

Part 2. Sales tax authorization

House Bill 148 authorizes counties to levy additional sales and use tax for public transportation purposes. The rate of tax varies as described below. This part also allows special districts created to levy a sales tax to receive an annual refund of sales and use tax paid by the district.

Mecklenburg

No change from current law (1997 transit tax legislation) except that funds can be used for bicycle and pedestrian infrastructure that supports public transportation.

Triangle and Triad ½% sales tax

1) A 1/2% sales tax may be levied in one or more of Durham, Orange and Wake Counties (Triangle), or one or more of Forsyth and Guilford (Triad), to be used only for public transportation.

2) To authorize tax, the board of Triangle Transit for the Triangle and PART (Piedmont Authority for Regional Transportation) for the Triad, and the county board(s) of commissioners of the counties where the taxes to be levied must jointly agree to establish a special tax district and conduct a referendum. The date of the referendum is to be agreed on jointly by the transit authority board, the county board(s) of elections, and the county board(s) of commissioners.

3) If the tax is approved in all the counties voting, the tax will apply in all those counties. If the tax is approved in less than all the counties voting, the tax may be levied in any county that approves it. If a particular county votes no, the tax can not be levied in that county. After a successful referendum, the transit authority board may levy the tax.

4) Prior to levy of the tax, (which could be before or after the referendum) a financial plan must be approved by (i) the transit authority board (ii) the board of commissioners of each county where the tax is to be levied, and (iii) all Metropolitan Planning Organizations whose jurisdiction includes any of the area of the special district.

5) The financial plan must provide for equitable use of the net proceeds within or to benefit the special district and consider (i) the identified needs of local public transportation systems in the district, (ii) human service transportation systems within the district, and (iii) expansion of public transportation systems to underserved areas of the district. The plan may be revised from time to time. An interlocal agreement between the transportation authority and all the counties in the special district may require periodic review and approval of the financial plan.

6) The transit authority board will be the management agency for any multi-county district. The county board of commissioners is the management agency for any single county district, but may contract with the transit authority as needed for operation of the system.

7) If the district is approved in a referendum and does not consists of all three counties in the Triangle or both Triad counties, it may be expanded to include an additional county or counties by joint action of the transit authority and the board of commissioners of the county or counties to be added, with a favorable referendum in the county or counties to be added.

8) Repeal of the tax requires the approval of the transit authority and the county boards of commissioners of the counties involved, and a referendum. A referendum on repeal can also be forced by a petition of 15% of the registered voters of the district.

Remaining 94 counties

House Bill 148 authorizes the remaining 94 counties to levy a sales tax of ¼% with a referendum called by the county board of commissioners, but only if the county or a municipality within that county operates or contracts for the operation of a public transportation system and only if the county has levied the ¼ cent county sales tax authorized under Article 46 of Chapter 105 of the General Statutes. Funds may be used only for public transportation and are allocated between the county and the city under the same formula as for the increased vehicle registration fee set out in Section 4 of the bill.

Part 3. Increase transit vehicle registration fee

Since 1991 Triangle Transit has been authorized to levy a five dollar vehicle registration fee, collected by DMV, an authorization later extended to the Triad. The three Triangle counties are currently at the maximum. In the Triad, only Randolph County is levying the tax. Since legislative authorization in 1991, inflation brings the value of that $5.00 to $7.85. HB 148 will authorize the fee to be increased to a maximum of $7.00, effective immediately and to $8.00, effective July 1, 2010. In the Triangle, a fee increase would need to be approved by the Triangle Transit Board, the boards of commissioners of all three counties, and by a special tax board consisting of two commissioners from each of the three counties, as provided by current law. In the Triad, the current fee authorization is on a county by county basis with the approval of the PART board and the board of commissioners of the county.

Part 4. Vehicle registration fee

The bill will allow all counties where there is a county or municipal transit system to levy a vehicle registration fee of up to seven dollars. The fee will be collected by DMV as is the current Triangle Transit registration fee. Within the levying county, the tax will be shared by the county and municipalities, with the county receiving funds based on the population in the unincorporated areas and the municipalities based on the population within the corporate limits. If the county does not operate a transit system it does not get a share of the funds, likewise any municipality not operating a transit system does not get a share of the funds. Those funds will be reallocated to those entities within the county that do operate a transit system. The county or city does not have to operate the system directly. It may contract for operation with another county or city, regional transit agency, or private entity. Funding allocation for human services transportation operating countywide can be determined by interlocal agreement.

Part 5. Vehicle registration tax conformed to new registration system deadlines

HB 148 will conform the deadlines for changes to the regional authority registration taxes with the Division of Motor Vehicles combined registration/inspection renewal system by increasing the amount of notice the DMV receives before a change would go into effect.

Part 6. Supplemental property tax

HB 148 will authorize a supplemental property tax in the Research Triangle Park special tax district. Under 1985 legislation, that district can levy a tax up to 10 cents on each $100 value of property for general municipal purposes. The bill authorizes an additional 10 cents on each $100 value of property for public transportation with the RTP or to provide for public transportation from RTP to other public transportation systems or to other places outside RTP such as RDU airport. This language has been agreed to by a special ballot of property owners in RTP over the last several weeks. Each one cent raises approximately $430,000 per year. The actual tax levy has to be agreed upon each year by the special tax district advisory board and the Wake and Durham County Boards of Commissioners.

EFFECTIVE DATE: The act would be effective when it becomes law.

Gerry Cohen, Director, Bill Drafting Division, substantially contributed to this summary.

H148-SMRB-49(e4) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 148 (Fourth Edition)

SHORT TITLE: Congestion Relief/Intermodal Transport Fund.

SPONSOR(S): Representatives Carney, Allen, Ross, and McGee

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:			SEE ASSUMPTIONS AND METHODOLOGY		
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC local governments; NC Department of Revenue

EFFECTIVE DATE: Effective when it becomes law, Section 3(d) is effective July 1, 2010.

BILL SUMMARY: House Bill 148 establishes a Congestion Relief and Intermodal Transportation 21st Century Fund to be used for:

- Local governments and transportation authorities for public transportation.
- Short line railroads for maintenance and expansion of freight service.
- Railroads for Intermodal and multimodal facilities and inland ports.
- State ports for terminal railroads and improved access to military facilities.
- Expansion of intercity passenger rail service.

The bill also extends the taxing authority of local governments to generate revenue for public transportation:

- It gives transportation authorities the power, with voter approval, to levy a 1/2% local sales tax to be used only for public transportation systems. (Applies to some counties in the Triangle Transit Authority and Piedmont Authority for Regional Transportation)
- It gives counties that operate a public transportation system the power, with voter approval, to adopt a ¼% local sales tax to be used only for public transportation systems.

- It authorizes regional transit authorities to increase the local vehicle registration tax from a maximum of $5.00 to a maximum of $7.00 to adjust for inflation. The authorization is increased to $8.00, effective July 1, 2010.
- It authorizes counties with a county or municipal transit system to levy a maximum local vehicle registration tax of $7.00 per year.
- It authorizes a county to levy an additional property tax within a research and production service district not in excess of ten cents on each $100 of value to be used only for public transportation. This property tax applies to the Research Triangle Park special tax district.
- It adds special districts that levy a local sales tax for public transportation purposes to the list of governmental entities allowed an annual sales tax refund.

ASSUMPTIONS AND METHODOLOGY: HB 148 bill creates a fund financed through an undesignated amount of General Fund appropriations and gives local jurisdictions the authority to levy additional sales and property taxes.

Section 1 of the bill establishes the Congestion Relief and Intermodal Transportation 21st Century Fund. Grants towards public transportation purposes would be made from the fund based on the criteria set forth in the bill. The amount of grant funding would depend on the appropriations authorized for the fund.

The sales tax option in Section 2 allows Wake, Orange, Durham, Guilford and Forsyth counties to levy a half-cent sales tax for public transportation. Other counties with public transit systems would be allowed the option of a quarter-cent sales tax (except for Mecklenburg, which already has a half-cent sales tax for public transportation).

Section 3 of the bill allows counties within the Triangle Transit Authority (TTA) and Piedmont Authority for Regional Transportation (PART) to by resolution increase the current motor vehicle registration fee by three dollars. The fee could be increased by two dollars in FY 09-10 and another dollar in FY 10-11. All counties with a public transit system would be allowed to levy an additional three dollars in vehicle registration taxes towards regional transit funding.

In addition to the regional transit vehicle registration fee increases, Section 4 of the bill allows all counties to enact Article 52, the County Vehicle Registration Fee. The county registration fee cannot exceed seven dollars per vehicle. Revenue from the county sales and vehicle registration taxes would be distributed between the county and municipalities based on population; however, no county or municipality would receive funding unless it operates a public transit system.

Tables 1 and 2 below provide data on the additional revenue that could be generated in the TTA and PART counties by the increases in the current vehicle registration tax, the county vehicle registration tax and the half-cent or quarter-cent sales tax. Because food is exempted from the Article 43 tax option, the sales tax estimates exclude food as a taxable item.

Table 1: Motor Vehicle Registration Fee and Sales and Use Tax Increases Triangle Transit Authority					
County	Regional Transit Registration Fee above $5*		County Vehicle Registration Fee	Total Vehicle Registration Increase ($10)	Collections from 1/2-cent Sales Tax
	$ 2 Increase	$ 1 Increase	$7 Increase		
TTA Counties					
Durham	377,644	188,822	1,321,754	1,888,220	16,168,302
Orange	195,852	97,926	685,482	979,260	4,844,717
Wake	1,460,366	730,168	5,111,176	7,301,680	51,703,119
Total	**$2,033,832**	**$ 1,016,916**	**$ 7,118,412**	**$10,169,160**	**$72,716,139**

*. Vehicle Registration figures represent full-year collection amounts. Actual collections will be less during the year of implementation; the legislation does not allow for an effective date for a new tax or an increase until six months after the adoption of a resolution.

Table 3.

Table 2: Motor Vehicle Registration Fee and Sales and Use Tax Increases PART Counties					
	Regional Transit Registration Fee above $5**		County Vehicle Registration Fee $7 Increase	Total Vehicle Registration Increase ($10)	Collections from 1/2-cent or ¼-cent sales tax
	$ 2 Increase	$ 1 Increase			
PART Counties					
Alamance	274,198	137,099	959,693	1,370,990	3,583,139
Davidson	343,618	171,809	1,202,663	1,718,090	2,290,047
Davie	92,276	46,138	322,966	461,380	569,423
Forsyth	584,158	292,079	2,044,553	2,920,790	19,826,046*
Guilford	786,566	393,283	2,752,981	3,932,830	26,750,519*
Randolph	297,290	148,645	1,040,515	1,486,450	2,013,763
Rockingham	190,492	95,246	666,722	952,460	1,420,909
Stokes	104,700	52,350	366,450	523,500	416,870
Surry	175,496	87,748	614,236	877,480	1,602,834
Yadkin	85,110	42,555	297,885	425,550	456,572
Total	**$2,933,904**	**$ 1,466,952**	**$ 10,268,664**	**$ 14,669,520**	**$58,930,125**

*Sales and use tax figures marked w/ an asterisk represent collections from a ½-cent sales and use tax levy.
**Vehicle Registration figures represent full-year collection amounts. Actual collections will be less during the year of implementation; the legislation does not allow for an effective date for a new tax or an increase until six months after the adoption of a resolution.

Property Tax
The bill also allows a ten-cent increase in the property tax rate for the Research Triangle Park Special Tax District. Currently, the property tax in the district generates $430,000 per penny. Therefore, a ten-cent increase would generate $4.3 million in additional revenue.

SOURCES OF DATA: NC Department of Revenue, NC Department of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:
Sandra Johnson, Fiscal Analyst
Economy and Taxation

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: August 3, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 148*

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

H148-ALB-141 [v.1]

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

Date _____ ,2009

Senator _____

moves to amend the bill on page 4, lines 25 by deleting
"and to increase stock of affordable housing"

and substituting
"and to create incentives for the purpose of increasing the stock of affordable housing"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATOR JOSH STEIN
NORTH CAROLINA SENATE
16TH DISTRICT

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NORTH CAROLINA 90!

House Bill 148/Senate Bill 151
The Congestion Relief and Intermodal Transportation 21st Century Fund

In Support

AARP of North Carolina
American Council of Engineering Companies of North Carolina
ARC of North Carolina
Cabarrus County Transportation System
Capital Area Friends of Transit
Carolina Asphalt Pavement Association
Carolinas Associated General Contractors
Carolinas Concrete Pipe and Products Association
Carolinas Ready Mixed Concrete Association
Cary Chamber of Commerce
Chapel Hill Transit
Chapel Hill-Carrboro Chamber of Commerce
Charlotte Area Transit System
Charlotte Chamber of Commerce
Conservation Council of North Carolina
Duplin County Public Transportation
Durham Chamber of Commerce
Greater Wilmington Chamber of Commerce
Greene County Transportation Department
Greensboro Partnership
McDowell Chamber of Commerce
Moore County Transportation Services
Morrisville Chamber of Commerce
NAACP of North Carolina
North Carolina ACORN
North Carolina Aggregates Association
North Carolina Alliance for Health
North Carolina Association of Community Development Corporations
North Carolina Association of County Commissioners
North Carolina Chamber
North Carolina Chapter of the American Planning Association
North Carolina Concrete Pavement Association
North Carolina Housing Coalition
North Carolina Justice Center
North Carolina League of Municipalities
North Carolina Metropolitan Mayors Coalition
North Carolina Public Transportation Association
North Carolina Rural Economic Development Center
North Carolina Sierra Club
North Carolina State Ports Authority
Piedmont Authority for Regional Transportation
Pitt Area Transit System (Pitt County)
Professional Engineers of North Carolina
Raleigh Chamber of Commerce
Regional Coordinated Area Transportation System (Randolph and Montgomery Counties)
Regional Transportation Alliance
Rutherford County Transit
Southern Environmental Law Center
Triangle Tomorrow
Triangle Transit
Unifour Rural Planning Organization
WakeUP Wake County
Winston-Salem Chamber
WTS NC Chapter

HOUSE BILL 1514
Committee Substitute Favorable 7/22/09
Third Edition Engrossed 7/23/09

Short Title: IDF Changes/Research & Prod. Serv. Districts. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND ECONOMICALLY DISTRESSED COUNTIES TO INCLUDE ALL TIER ONE AND TIER TWO COUNTIES, TO INCREASE THE MAXIMUM EXPENDITURE OF FUNDS FROM THE INDUSTRIAL DEVELOPMENT FUND, TO EXEMPT FROM RULE MAKING THE CUSTOMIZED TRAINING PROGRAM UNDER THE COMMUNITY COLLEGE SYSTEM, AND TO AMEND THE COUNTY SERVICE DISTRICT ACT OF 1973 TO ALLOW ADDITIONAL COUNTY RESEARCH AND PRODUCTION SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-437.01(a) reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating and retaining jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation or retention of new jobs. The funds shall

be expended at a maximum rate of ~~five thousand dollars ($5,000)~~ten thousand dollars ($10,000) per new job created or per job retained up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in a county that has one of the 25 highest rankings under G.S. 143B-437.08 or that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b)."

SECTION 1.(b) G.S. 143B-437.01(a1) reads as rewritten:

"(a1) Definitions. – The following definitions apply in this section:

(1) Air courier services. – Defined in G.S. 105-129.81.

(2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(2a) Company headquarters. – Defined in G.S. 105-129.81.

(3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(4) Economically distressed county. – A county that ~~has one of the 65 highest rankings~~is defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied.

(5) Eligible industry. – A company headquarters or a person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. – Defined in G.S. 105-129.81.

(7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. – Defined in G.S. 105-129.81.

(9) Reserved.

(10) Warehousing. – Defined in G.S. 105-129.81.

(11) Wholesale trade. – Defined in G.S. 105-129.81."

SECTION 1.(c) G.S. 143B-437.01(b1) reads as rewritten:

"(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of the counties that ~~have one of the 65 highest rankings~~are defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development

Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project."

SECTION 2.(a) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
(7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3A of Chapter 135 of the General Statutes.
(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.
(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.
(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.
(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).
(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.
(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.
(14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.
(15) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve.
(16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.

(17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.

(19) The Community Colleges System Office in developing criteria and guidelines administering the Customized Training Program under G.S. 115D-5.1."

SECTION 2.(b) G.S. 115D-5.1 reads as rewritten:

"**§ 115D-5.1. Workforce Development Programs.**

...

(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt ~~rules and~~ guidelines that allow the Customized Training Program and the Focused Industrial Training Program to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces.

...

(g) The State Board shall adopt ~~rules and policies~~guidelines to implement this section. At least 20 days before the effective date of any criteria or nontechnical amendments to guidelines, the State Board must publish the proposed guidelines on the Community Colleges System Office's web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the State Board has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

SECTION 3.(a) G.S. 153A-312 reads as rewritten:

"**§ 153A-312. Definition of research and production service district.**

(a) Standards. – The board of commissioners may by resolution establish a research and production service district for any area of the county that, at the time the resolution is adopted, meets the following standards:

(1) All (i) real property in the district is being used for or is subject to covenants that limit its use to research or scientifically-oriented production or for associated commercial or institutional ~~purposes.~~purposes or (ii) if all the real property in the district is part of a multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h), all such real property in the district is subject to covenants that limit its use to research or scientifically oriented production, associated commercial or institutional purposes, or other industrial and associated commercial and institutional uses.

(2) The district (i) contains at least 4,000 ~~acres.~~acres or (ii) satisfies the criteria of G.S. 143B-437.08(h).

(3) The district (i) includes research and production facilities that in combination employ at least 5,000 ~~persons.~~persons or (ii) satisfies the criteria of G.S. 143B-437.08(h).

(4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.

(5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.

(6) The district has no more than 25 permanent residents.

(7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of real property belong, which association can make the recommendations provided for in G.S. 153A-313. This subdivision shall not apply to a research and production service district that satisfies the criteria of G.S. 143B-437.08(h).

(8) There ~~exist~~ exists, or will exist when conveyed by the nonprofit corporation described in subdivision (4) of this subsection, deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the district other than property owned by the federal government.

(9) No part of the district lies within the boundaries of any incorporated city or town.

The Board of Commissioners may establish a research and production service district if, upon the information and evidence it receives, the Board finds that:

(1) The proposed district meets the standards set forth in this subsection; and

(2) It is impossible or impracticable to provide on a countywide basis the additional or higher levels of services, facilities, or functions proposed for the district; and

(3) It is economically feasible to provide the proposed services, facilities, or functions to the district without unreasonable or burdensome tax levies.

(b) Multi-County Districts. – If an area that meets the standards for creation of a research and production service district lies in more than one county, the boards of commissioners of those counties may adopt concurrent resolutions establishing a service district, even if that portion of the district lying in any one of the counties does not by itself meet the standards. Each of the county boards of commissioners shall follow the procedure set out in this section for creation of a service district.

If a multi-county service district is established, as provided in this subsection, the boards of commissioners of the counties involved shall jointly determine whether the same appraisal and assessment standards apply uniformly throughout the district. This determination shall be set out in concurrent resolutions of the boards. If the same appraisal and assessment standards apply uniformly throughout the district, the boards of commissioners of all the counties shall levy the same rate of tax for the district, so that a uniform rate of tax is levied for district purposes throughout the district. If the boards determine that the same standards do not apply uniformly throughout the district, the boards shall agree on the extent of divergence between the counties and on the resulting adjustments of tax rates that will be necessary in order that an effectively uniform rate of tax is levied for district purposes throughout the district.

The boards of commissioners of the counties establishing a multi-county service district pursuant to this subsection may, by concurrent resolution, provide for the administration of services within the district by one ~~county~~ or more counties on behalf of all the establishing counties.

(c) Report. – Before the public hearing required by subsection (d), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more services, facilities, or functions to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) Hearing and Notice. – The board of commissioners shall hold a public hearing before adopting any resolution defining a service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (c) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(e) Effective Date. – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners."

SECTION 3.(b) G.S. 153A-313 reads as rewritten:

"**§ 153A-313. Advisory committee.**

(a) The board or boards of commissioners, in the resolution establishing a research and production service district, shall also provide for an advisory committee for the district. Such a committee shall have at least 10 members, serving terms as set forth in the resolution; one member shall be the representative of the developer of the research and production park. The resolution shall provide for the appointment or designation of a chairman. The board of commissioners or, in the case of a multi-county service district, the boards of commissioners shall appoint the members of the advisory committee. If a multi-county service district is established, the concurrent resolutions establishing the district shall provide how many members of the advisory committee are to be appointed by each board of commissioners. Before making the appointments, the appropriate board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee; the association shall submit at least two names for each appointment to be made. Except as provided in the next two sentences, the board of commissioners shall make the appointments to the committee from the list of persons submitted. In addition, the developer of the research and production park shall appoint one person to the advisory committee as the developer's representative on the committee. In addition, in a single county service district, the board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate, and in a multi-county service district, each board of county commissioners may make one additional appointment of such other person as that board of commissioners deems appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment by a board of commissioners, the appropriate board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy; and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under the preceding sentence of this section, the board of commissioners making that appointment shall fill the vacancy with such person as that board of commissioners deems appropriate.

Each year, before adopting the budget for the service district and levying the tax for the district, the board or boards of commissioners shall request recommendations from the advisory

committee as to the level of services, facilities, or functions to be provided for the district for the ensuing year. The board or boards of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory board.

(b) In the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), the board of directors for the nonprofit corporation which owns the industrial park shall serve as the advisory committee described in subsection (a) of this section."

SECTION 3.(c) G.S. 153A-317 reads as rewritten:

"**§ 153A-317. Taxes authorized; rate limitation.**

A county may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to ~~taxation.~~taxation or, in the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), such additional property taxes may not be levied within said district in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) value of property subject to taxation."

SECTION 4. This act is effective when it becomes law. Subsections (b) and (c) of Section 1 of this act expire July 1, 2012.

HOUSE BILL 1514:
IDF Changes/Research & Prod. Serv. Districts

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 4, 2009
Introduced by:	Reps. Crawford, Dickson, Gibson	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1514 does the following:

- ***Makes changes to the Industrial Development Fund (IDF) as follows:***
  - ***Increases from $5,000 to $10,000 the maximum rate expended per job.***
  - ***Authorizes the use of funds for job retention (in addition to job creation, which is the current law).***
  - ***Expands the definition of "economically distressed county" to include all tier 1 and tier 2 counties.***
- ***Exempts from rulemaking the Customized Training Program within the Community College System.***
- ***Amends the County Service District Act to allow additional county research production service districts.***

CURRENT LAW: The IDF provides funds to assist local governments of the most economically distressed counties in the State in creating jobs in certain industries. Economically distressed county is defined as a county that has one of the 65 highest rankings under the development tier designation. An eligible industry is defined as a company or person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade. The IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. Other requirements include that the funds have to be used by the city and county governments for projects that directly result in the creation of new jobs and must be expended at a maximum rate of $5,000 per new job created up to a maximum of $500,000 per project.

Within the IDF there is a special account entitled the Utility Account that provides funds to assist the local government units of the counties that have one of the 65 highest rankings under the development tier designation. The funds in the Utility Account can only be used for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. There is no maximum funding amount per new job to be created or per project under the Utility Account.

Under the development tier designation, the 40 most distressed counties are designated as tier 1, the next 40 as tier 2 and the 20 least distressed as tier 3.

BILL ANALYSIS: House Bill 1514 makes the following changes related to the IDF:

- Increases the maximum rate by which funds in the IDF are to be expended for jobs from $5,000 to $10,000.
- Authorizes funds from the IDF to be spent for job retention as well as job creation, which is the current law.
- Expands the definition of "economically distressed county" as one that is a tier 1 or tier 2 county under the development tier designation. The current law defines the term as a county that has one of the 65 highest rankings.

- Provides funds from the Utility Account to tier 1 or tier 2 counties instead of just to counties with one of the 65 highest rankings under the development tier designation.

House Bill 1514 exempts from rulemaking the Community Colleges System Office in developing guidelines administering the Customized Training Program. The Program offers programs and training services to assist new and existing businesses to remain productive, profitable, and within the State. Although the Office is exempt from rulemaking, the bill provides that the State Board must publish the guidelines and any substantive change to the guidelines on its web site and it must accept comments on the proposals.

Lastly, House Bill 1514 authorizes additional county research and production service districts. Under current law, the board of commissioners may be resolution establish a research and production district for any area of the county if it meets the standards listed below. A county may levy property taxes within the district in addition to those levied throughout the county with a cap of 10¢ on each $100 value of property. House Bill 1514 modifies those standards to allow for the creation of such a district when all of the real property in the district is part of a multijurisdictional industrial park. The maximum property tax rate for a district meeting those criteria would be 15¢ on each $100 value of taxable property.

The current standards for a research and production service district are:

(1) All real property in the district is being used for or is subject to covenants that limit its use to research or scientifically-oriented production or for associated commercial or institutional purposes.
(2) The district contains at least 4,000 acres.
(3) The district includes research and production facilities that in combination employ at least 5,000 persons.
(4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.
(5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.
(6) The district has no more than 25 permanent residents.
(7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of real property belong, which association can make the recommendations provided for in G.S. 153A-313.
(8) There exist deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the district other than property owned by the federal government.
(9) No part of the district lies within the boundaries of any incorporated city or town.

EFFECTIVE DATE: The bill would become effective when it becomes law. The provisions that modify the qualification of counties for IDF benefits will expire in three years on July 1, 2012.

Drupti Chauhan, counsel to House Commerce, substantially contributed to this summary.

H1514-SMRB-50(e3) v1

HOUSE BILL 1514
Industrial Development Fund Modifications

North Carolina's Industrial Development Fund (IDF) provides funds to eligible counties and local governments to help pay for infrastructure improvements such as water, sewer, gas or rail lines in connection to new job creation in the state's most economically distressed counties.

House Bill 1514 PCS makes the following changes to the Industrial Development Fund – G. S. 143B-437.01:

Expands the number of counties to include all Tier 2 counties eligible for IDF assistance, to sunset in 3 years.

Presently, all Tier 1 counties are eligible and only 26 of the 40 Tier 2 counties are eligible. HB 1514 would make all Tier 2 counties eligible during this critical economic climate.

The lower-tiered counties tend to be more rural and thus have a harder time recruiting industry than the more economically prosperous Tier 3 areas. The ability to make infrastructure improvements can help these counties in their recruitment efforts.

Increases the amount available for IDF assistance from the current $5,000 per job created to $10,000 per job created, up to a maximum of $500,000 per project (maximum remains unchanged).

When the first IDF grant was awarded in 1987, $5,000 had greater buying power than it does today. The result is that each mile of sewer, water, electrical (etc.) line run today costs substantially more than it did 20 years ago.

- **Infrastructure cost:** With the rate of inflation today, it would take over $9,000 to purchase the same amount that $5,000 did in 1987, which was the amount when the General Assembly created this program. IDF grantees are local units of government seeking support so that they are able to create an infrastructure (water, sewer, etc.) capable of supporting jobs.

- **Most distressed counties are rural:** The distance from existing water/sewer systems in rural areas is a factor for construction cost.

Between 2005 and 2009: 27 rural counties leveraged $6.27 million in IDF grants, securing commitments for 2,111 jobs and more than $1 billion in investment.

NC Department of Commerce, July 2009
Rita Harris | (919) 715-2785

2009 Industrial Development Fund
County Rankings
G.S. 1436-437.08

Eligible Counties

ALEXANDER (2)
ALLEGHANY (1)
*ANSON (1)
ASHE (2)
AVERY (2)
*BEAUFORT (1)
*BERTIE (1)
*BLADEN (1)
*BURKE (1)
CALDWELL (1)
CAMDEN (1)
CASWELL (1)
CATAWBA (2)
CHEROKEE (2)
CHOWAN (1)
CLAY (1)
*CLEVELAND (1)
*COLUMBUS (1)
CUMBERLAND (1)
DAVIDSON (2)
DUPLIN (2)
*EDGECOMBE (1)
FRANKLIN (2)
GASTON (2)
GATES (1)
*GRAHAM (1)
GRANVILLE (2)
*GREENE (1)
*HALIFAX (1)
HARNETT (2)
*HERTFORD (1)
HOKE (2)
HYDE (1)
JONES (1)
LEE (2)
*LENOIR (1)
MADISON (2)
*MARTIN (1)
MCDOWELL (2)
*MITCHELL (1)
MONTGOMERY (1)
NASH (2)
*NORTHAMPTON (1)
ONSLOW (2)
PAMLICO (2)
PERSON (2)
PITT (2)
RANDOLPH (2)
*RICHMOND (1)
*ROBESON (1)
*ROCKINGHAM (1)
ROWAN (2)
*RUTHERFORD (1)
SAMPSON (2)
*SCOTLAND (1)
STANLY (2)
STOKES (2)
*SURRY (1)
SWAIN (2)
*TYRRELL (1)
*VANCE (1)
*WARREN (1)
*WASHINGTON (1)
WAYNE (1)
WILKES (1)
WILSON (1)
YADKIN (2)
YANCEY (2)

Tier 2 Non-Eligible Counties

PERQUIMANS (2)
PASQUOTANK (2)
ALAMANCE (2)
POLK (2)
DARE (2)
WATAUGA (2)
DAVIE (2)
JACKSON (2)
MACON (2)
PENDER (2)
TRANSLYVANIA (2)
CURRITUCK (2)

Tier 3 Non-Eligible Counties

Brunswick (3)
Buncombe (3)
Cabarrus (3)
Carteret (2)
Chatham (3)
Craven (3)
Durham (3)
Forsyth (3)
Guilford (3)
Haywood (3)
Henderson (3)
Iredell (3)
Lincoln (3)
Mecklenberg (3)
Moore (3)
New Hanover (3)
Orange (3)
Union (3)
Wake (3)

***NO LOCAL MATCH REQUIRED**

"Top 25 most distressed" is actually 27 most distressed counties due to the methodology of including additional counties that are below 50,000 population and greater than 19% poverty.

"Top 65 most distressed" is actually 68 most distressed counties due to a 4-way tie at the 65th ranking.
25% LOCAL MATCH IS REQUIRED.

NC Department of Commerce, July 2009
Rita Harris | (919) 715-2785

HOUSE BILL 1514
Industrial Development Fund Modifications

General Assembly established in 1987, is funded through annual appropriation (Balance as of 7/13/09 = $510,000)
Contingent upon job creation, recipients are local units of government for the purpose of infrastructural support
Tier 2 Counties are required to provide a 25% match

	DATE	GRANTEE	COUNTY	COMPANY	JOBS	GRANT	INVESTMENT
I-331	7/02/04	City of Sanford	Lee	Wyeth-Lederle (#2)	100	$500,00	$12,000,000
I-332	01/24/05	Harnett	Harnett	Carolina Precast Water	5	$25,000	
I-333	03/01/05	Duplin	Duplin	Case Farms Inc.	30	$150,000	$12,400,000
I-334	03/01/05	Richmond	Richmond	Project Impact	25	$125,000	$3,770,000
I-335	08/16/05	Kinston	Lenoir	Smithfield Packing	125	$300,000	$85,000,000
I-336	09/01/05	Elizabeth City	Pasquotank	Tamsco	100	$200,000	$10,000,000
CI-337	09/12/05	Columbus County	Columbus	Oak Bark dba Wright Corp	8	$500,000	
I-338	10/25/05	Town of Star	Montgomery	Tex Racing	11	$55,000	
I-340	02/23/06	Gaston	Gaston	Project CASO/National Gypsum	75	$375,000	$124,000,000
CI-342	02/27/06	Bessember City	Gaston	Dole/Bud Antle, Inc.	175	$500,000	$54,000,000
I-341	03/01/06	Alexander	Alexander	Paragon Films	25	$20,838	$10,000,000
I-344	06/23/06	Wilson	Wilson	Absolute Plastics	150	$500,000	$24,000,000
I-346	09/12/06	Town of Charleston	Bladen	Millworks Specialties	6	$27,000	$1,000,000
I-347	09/28/06	Newton	Catawba	Target Corporation	572	$400,000	$100,000,000
I-348	02/19/07	Vance	Vance	Profilform	10	$30,000	$1,000,000
I-349	03/23/07	Vance	Vance	Frazier Snack Foods (Carolina Country Mfg.)	8	$30,000	$750,000
I-350	04/02/07	Davidson	Davidson	RCR Enterprises, Inc.	7	$36,079	$9,000,000
I-352	07/27/07	City of Washington	Beaufort	Carver Machine Works	50	$250,000	$800,000
I-353	07/31/07	Tarboro	Edgecombe	Project Sigma (Spondex)	85	$500,000	$7,000,000
I-359	11/30/07	City of Raeford	Hoke	Burlington Raeford ED Project	19	$95,000	$6,900,000
I-367	03/04/08	Locust	Stanly	Chichago Tube & Iron	42	$210,000	$10,000,000
I-368	03/20/08	Chocowinity	Beaufort	Southtech Plastics	26	$130,000	$2,000,000
I-370	04/20/08	Cofield	Hertford	Perdue Agribusiness, LLC	20	$100,000	$1,500,000
I-371	04/20/08	Northampton	Northampton	Fineline Industries, Inc. (Emer. Assist)	50	$100,000	$1,500,000
I-375	08/29/08	Elizabeth City	Pasquotank	DRS Technical Services, Inc.	100	$500,000	
I-377	01/05/09	Halifax	Halifax	United Salvage & Auto, Inc.	19	$91,000	$6,500
I-378	01/05/09	China Grove	Rowan	Altec Industries	15	$75,000	$2,000,000
I-381	02/04/09	Kinston	Lenoir	Spirit Aerosystems	203	$271,646	$570,000,000
I	03/23/09	Cherokee	Cherokee	Snap-On V Project	50	$200,000	$8,00(
		TOTALS			**2111**	**$6,296,563**	**$1,0(,000**

NC Department of Commerce, July 2009
Rita Harris | (919) 715-2785

HOU___BILL 1514
Industrial Development Fund Modifications

IDF/Utility Account Grants (awarded FY '05-'09)
Account funded entirely through JDIG awards (no annual appropriation)
25% of award from Tier 3, 15% from Tier 2 awards fund grant activity

	DATE	GRANTEE	COUNTY	COMPANY	JOBS	GRANT	INVESTMENT
CU-339	11/30/05	Pasquotank County	Pasquotank	Gateway Bank/Commerce Park	36	$500,000	$1,500,000
U-343	05/24/06	Halifax	Halifax	Halifax Co. Industrial Park		$169,220	$5,200,000
U-345	06/28/06	Pasquotank	Pasquotank	Pasquotank Commerce Park		$377,625	
U-351	04/19/07	Caldwell	Caldwell	Transload Econ. Dev.		$100,000	$1,260,000
U-354	08/06/07	Ahoskie	Hertford	South Ahoskie Water Expansion		$500,000	
U-355	08/31/07	Wayne	Wayne	ParkEast Elevated Water Tank		$500,000	
U-356	08/31/07	Laurinburg	Scotland	LMA Industrial Park Water/Sewer		$105,300	
U-357	09/18/07	Kinston	Lenoir	Lenox		$400,000	
CU-360	11/30/07	City of Raeford	Hoke	Burlington Raeford Project	19	$226,000	$6,900,000
CU-361	12/14/07	Anson County	Anson	Hornwood Corporation	30	$250,000	$1,000,000
CU-362	01/10/08	Burke County	Burke	Burke Co. Industrial Park		$500,000	
U-363	01/11/08	Halifax	Halifax	Halifax-Northampton Regional Airport		$125,000	
U-364	02/07/08	Chocowinity	Beaufort	Chocowinity Industrial Park		$370,000	$2,000,000
U-365	02/20/08	Edgecombe County	Edgecombe	Fountain Industrial Park		$493,152	
U-366	02/27/08	Kenansville	Duplin	Hwy 11/Hwy 24 Bypass Sewer		$500,000	
CU-369	03/20/08	City of Rockingham	Richmond	vonDrehle Cordova, Inc.	27	$500,000	$25,000,000
U-372	07/08/08	Bethel	Pitt	Bethel Waterline Extension		$500,000	
U-373	08/04/08	Severn	Northampton	Resinall Corp. Rail Relocation		$275,000	$1,000,000
U-374	08/04/08	Cofield	Hertford	Perdue Agribusiness, Inc.		$142,000	$1,500,000
U-376	10/15/08	Wilson	Wilson	Becton Dickinson		$460,000	$108,000,000
U-379	01/06/09	Bladenboro	Bladen	Bladenboro Water System		$500,000	$3,000,000
U-380	02/09/09	Rutherford	Rutherford	Corporate 74 Secondary Access Rd.		$500,000	$200,000,000
TOTAL					112		$356,360,000

NC Department of Commerce, July 2009
Rita Harris | (919) 715-2785

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 20
PROPOSED COMMITTEE SUBSTITUTE S20-CSTDx-79 [v.1]

8/3/2009 6:48:39 PM

Short Title: Voter-Owned Election for Treasurer. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO ADD THE OFFICE OF STATE TREASURER TO THE COUNCIL OF STATE OFFICES SUBJECT TO THE VOTER-OWNED ELECTIONS ACT; TO MAKE TECHNICAL CHANGES TO THE ACT; AND TO PROVIDE FUNDING FOR THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, Treasurer, and Commissioner of Insurance in elections to be held in 2008 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under

G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of qualifying contributions required by G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of qualifying contributions required by G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Treasurer, Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying ~~period~~ period, except as provided in G.S. 163-278.98(b1), and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the 10th day after the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle and make recommendations about the feasibility of expanding its provisions to include other candidates for State office based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"**§ 163-278.97A. Limitation on use of the Fund.**

If the amount in the Fund is less than two million two hundred fifty thousand dollars ($2,250,000) on August 1 of the year before an election, then only certified candidates for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance shall be eligible for a distribution of funds in accordance with G.S. 163-278.99. Certified candidates for Treasurer shall be eligible for a distribution of funds if the amount in the Fund is at least four million five hundred thousand dollars ($4,500,000). Based upon documentation of the Fund's projected receipts and other factors, the Board may lower the dollar amounts in this section by a majority vote taken by September 1 of the year before an election.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred

thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this

subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising ~~activities~~ activities, except as provided in subsection (b1) of this section, and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of funds~~, rounded to the nearest one hundred dollars ($100.00),~~ to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). The distribution amount shall be reduced by an amount equal to the amount raised in qualifying contributions after the day of the primary. For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports of that election year.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.99A. Reporting requirements.**

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall ~~[be]~~ be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election,

special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"§ 163-278.99B. Matching funds.

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on

awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Certain Communications Involving All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"**§ 163-278.99C. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.99D. Enforcement by the Board; civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"**§ 163-278.99D.1. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies,

recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adapt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"**§ 163-278.99E. Voter education.**

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."
(7) Candidate ~~statement, limited to 150 words.~~ Statement. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory

language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 2.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 2E.

"Assessments.

"**§ 105-113.120. Surcharge imposed.**

A surcharge is imposed on a person who pays a regulatory charge listed under G.S. 105-113.121. The agency that collects a charge upon which the surcharge is due must collect the surcharge at the same time and remit the proceeds of the surcharge to the Department of Revenue on a monthly basis. The Department must credit the proceeds of the surcharge collected under this section to the Voter-Owned Election Fund created pursuant to G.S. 163-278.97.

"**§ 105-113.121. Charges subject to surcharge.**

The following surcharges are imposed by this Article:

(1) A one percent (1%) surcharge on the insurance regulatory charges provided in G.S. 58-6-25.

(2) A five dollar ($5.00) surcharge on the license fees as provided in G.S. 58-33-125(a).

"**§ 105-113.122. Assessments on payments from Treasurer.**

An assessment of up to four-fifths of one percent (0.8%) must be applied to payments made to entities the State Treasurer retains in accordance with the Treasurer's authority under Article 6 of Chapter 147 of the General Statutes. Assessments must be made in such a manner that they are broadly applied among various entities and the total amount assessed each fiscal year exceeds seven hundred fifty thousand dollars ($750,000) but is less than one million two hundred fifty thousand dollars ($1,250,000). The Treasurer must credit the assessments to the Department of Revenue on a monthly basis. The Department must promptly credit the assessments collected under this section to the Voter-Owned Election Fund created pursuant to G.S. 163-278.97."

SECTION 2.(b) This section is effective when it becomes law and applies to charges and fees that are due and contracts that are entered into or renewed on or after that date.

SECTION 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 4. Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE BILL 20:
Voter-Owned Election for Treasurer

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 4, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S20-CSTDx-79		Committee Counsel

SUMMARY: The proposed committee substitute to Senate Bill 20 expands the public campaign financing program to cover the office of the Treasurer, and make other changes to the details of the program.

CURRENT LAW: North Carolina has two public campaign financing programs that follow the "Clean Elections" model adopted in Maine, Arizona, and Connecticut. One program covers all elections for State Supreme Court and Court of Appeals, and is commonly referred to as the 'Public Campaign Financing Fund'. That was enacted in 2002 and has been used in the elections of 2004, 2006, and 2008. The second is a pilot program, commonly referred to as the 'Voter-Owned Elections Act,' that covers elections for 3 Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction. That was enacted in 2007 and was used in the 2008 election.

Although both programs cover statewide offices, the judicial program covers only nonpartisan elections, and the Council of State program covers only partisan elections.

In brief, both programs work as follows: Candidates qualify for the program by pledging to abide by contribution and spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants and the qualifying contributions. If participating candidates are faced with opponents or independent expenditures or electioneering communications targeted at them, in primary or general election, that go beyond what they can spend, the Fund provides "matching funds" with which those candidates can defend themselves.

The programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Guide contains information about the affected elections and space for candidates to present themselves without cost.

The judicial program has been financed mainly with taxpayer checkoffs on the NC Income Tax form and by a $50 surcharge on attorney membership fees. The Council of State program has been financed mainly with direct appropriations from the General Fund.

PCS ANALYSIS:

The proposed committee substitute for Senate Bill 20 expands 'Voter-Owned Elections Act' from the three currently covered offices to include the Treasurer. The PCS would also clarify which council of state offices would be eligible to participate if the Fund is not fully funded on August 1 of the year prior to an election.

The PCS also makes the following changes to the workings of the Council of State program:

1. **Write-ins.** The PCS clarifies that a write-in candidate is not eligible to participate.
2. **Qualifying Contributions.** The PCS makes several changes to the provisions on qualifying contributions, which must be raised from registered NC voters in amounts between $10 and $200:

- *Method of Payment*. Currently, qualifying contributions may be accepted only by check or money order.
    - The PCS allows acceptance by any non-cash method otherwise allowed for contributions, notable including credit cards and Pay Pal.
- *Minimums*. Currently, to qualify a candidate must raise qualifying contributions from at least 750 individuals, and those qualifying contributions must reach a dollar amount that is at least 25 times the filing fee for the office sought. For the Council of State offices covered in 2008, this amounted to about $30,000. At least one candidate who got qualifying contributions from plenty of voters nonetheless missed the dollar threshold.
    - The PCS would change that formula to require contributions from at least 900 voters and add 100 voters to that number for every $100,000 over $300,000 that the candidate would be entitled to receive in grants for the office. (See below for the different grant amounts, designed to recognize that some Council of State offices cost more to run for than others.)
    - The PCS changes the threshold dollar amount of qualifying contributions to equal $20 times the minimum number of voters from whom qualifying contributions must be raise. So, a candidate for an office in the lower grant range would have to raise $18,000 from at least 900 voters.
- *Maximums*. Currently, the maximum of qualifying contributions that may be raised is different for a candidate with no primary than for a candidate with a contested primary. For a candidate with no primary, the maximum qualifying contributions equals 100 times the filing fee for the office, and for a candidate with a contested primary it is 200 times the filing fee for the office.
    - The PCS eliminates the filing fee as a measure, as with the minimum. For a candidate with no primary, the maximum would be $100 times the minimum number of voters from whom qualifying contributions must received. If the candidate has a contested primary, the maximum would be $200 times the minimum number of voters from whom qualifying contributions must be received. A candidate for an office in the lower grant range with no primary could raise no more than $90,000 in qualifying contributions.
- *No Raffles*. Currently the law says that "no payment, gift, or anything of value shall be given in exchange for a qualifying contribution." An issue arose over whether a raffle ticket was something of value that could be given in exchange for a qualifying contribution. The State Board of Elections decided that raffle tickets might not be a thing of value, but that the prize would be, so the raffle idea was unworkable.
    - The PCS adds that "the opportunity to win anything of value" shall not be given in exchange for a qualifying contribution.
- *Multiple Contributions from Same Individual*. The PCS clarifies that multiple qualifying contributions from the same person can count as only one qualifying contribution, for purposes meeting the threshold. Also, the PCS provides that multiple contributions from the same non-family member may not exceed $200.
- *Family Contributions*. Currently, the candidates themselves and their family members (spouse, parent, child, brother, sister) may each contribute up to $1,000 to the campaign. The question arose whether such contributions may be used to meet the qualifying contribution threshold.

- The PCS states that up to $200 of a family member's contribution may be treated as a qualifying contribution.

3. **Grants from the Fund.** Currently, no basic grant money is distributed in a primary. In the general election, the basic grant is measured by the average amount of campaign-related expenditures by all candidates who won the immediately preceding 3 general elections for that office, but not less than $300,000.

   - The PCS provides that only expenditures made in the general elections will count toward that measurement. Expenditures are made in the general election if they must be reported in the 3rd or 4th quarterly reports. Also, the PCS says the result of the formula is rounded to the nearest $1,000.

4. **Matching Funds.** Currently, matching funds (once called "rescue funds") are available in a primary if a non-participating opponent outspends a participating candidate. This is the same as the judicial Fund -- no basic grant money for a primary, only matching funds. Matching funds are triggered in a primary by opposition spending that exceeds the maximum amount a participating candidate could raise in qualifying contributions. Matching funds are triggered in the general election by opposition spending that exceeds the participating candidate's basic grant entitlement from the Fund. The opposition spending is subject to special expedited reporting so the matching fund provision could be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

   The PCS makes two changes to the law on matching funds:

   1. *In the Primary.* The PCS provides that matching funds are available in a primary to a certified candidate with a primary opponent or to a certified candidate who has no primary opponent but who is clearly targeted by opposition spending.

   2. *No Matching Funds for All-Candidate Ads.* In 2008 in the judicial program an ad was run supporting both the candidates in one Court of Appeals race. The State Board of Elections felt compelled by the law to give both of them matching funds, which they both turned down. The PCS provides that there will be no matching funds for a communication that supports all the candidates in the race or opposes all the candidates in the race.

5. **Enforcement.** Currently, both the judicial program and the Council of State program are enforced by the State Board of Elections, which has civil penalties available as remedies. For the judicial program, a statute provides for the State Board to be advised in enforcement by an Advisory Council, provides for an appeal procedure, and provides for specific State Board authority to adopt procedures and issue opinions. The Council of State program does not have that same statute.

   The PCS imports that statute into the Council of State program, using the same Advisory Council for both programs.

6. **Voter Guide.** Currently, the Voter Guide is supposed to explain the functions of the offices affected by the programs, and give space to provide information about themselves only to candidates for those offices. Within each candidate's space the candidate is given 50 words to present endorsements and 150 words to make a statement.

   The PCS expands the Voter Guide's coverage to all 10 offices in the Council of State, including Governor and Lieutenant Governor, which are not affected by the programs. The PCS would replace the word limits of 50 for endorsements and 150 for statement with one word cap of 250

words for the candidate's entire entry. That would include biographical information. The PCS would replace permissive language for the State Board to publish the Judicial and Council of State guides together with a mandate to do so whenever possible.

7. **Assessments.** Creates a new Article 2E in Chapter 105 to provide assessments that will be credited to the Voter-Owned Election Fund. The assessments are as follows:
   - A 1% surcharge on the insurance regulatory charge paid by insurance companies on each company's premium tax liability.
   - A $5 surcharge on license fees charged by the Department of Insurance under G.S. 58-33-125.
   - An assessment of up to 0.08% on payments made to entities retained by the State Treasurer. The Treasurer must apply the assessments broadly among various entities and the total amount assessed must be at least $750,000 but less than $1,250,000.

EFFECTIVE DATE: When it becomes law. The first Treasurer race that would be covered would occur in 2012.

Bill Gilkeson and Erika Churchill substantially contributed to this summary.

S20-SMTD-140(CSTDx-79) v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: August 4, 2009

TO: Senator Berger

FROM: Claire Hester
Fiscal Research Division

RE: Proposed Committee Substitute for SB 20: Voter-Owned Election for Treasurer

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available (X)		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES:	-	-	-	-	-
EXPENDITURES:	**See Assumptions and Methodology**				
POSITIONS (cumulative):	**See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Elections

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

BILL SUMMARY:
The Proposed Committee Substitute (PCS) for Senate Bill 20 expands the Voter-Owned Elections Act from the three currently covered offices to include the Treasurer. The PCS also clarifies which Council of State offices would be eligible to participate if the Fund is not fully funded on August 1 of the year prior to an election.

The PCS also makes the following changes to the workings of the Council of State program:

1. **Write-ins.** The PCS clarifies that a write-in candidate is not eligible to participate.

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    - o The PCS allows acceptance by any non-cash method otherwise allowed for contributions, notable including credit cards and Pay Pal.
- *Minimums.* Currently, to qualify a candidate must raise qualifying contributions from at least 750 individuals, and those qualifying contributions must reach a dollar amount that is at least 25 times the filing fee for the office sought. For the Council of State offices covered in 2008, this amounted to about $30,000.
    - o The PCS would change the formula to require contributions from at least 900 voters and add 100 voters to that number for every $100,000 over $300,000 that the candidate would be entitled to receive in grants for the office. (See below for the different grant amounts, designed to recognize that some Council of State offices cost more to run for than others.)
    - o The PCS changes the threshold dollar amount of qualifying contributions to equal $20 times the minimum number of voters from whom qualifying contributions must be raise.

    A candidate for an office in the lower grant range would have to raise $18,000 from at least 900 voters.
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contribution, for purposes meeting the threshold. Also, the PCS provides that multiple contributions from the same nonfamily member may not exceed $200.

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4. **Matching Funds.** Currently, matching funds (formerly termed "rescue funds") are available in a primary if a non-participating opponent outspends a participating candidate. This is the same as the judicial Fund: no basic grant money for a primary, only matching funds. Matching funds are triggered in a primary by opposition spending that exceeds the maximum amount a participating candidate could raise in qualifying contributions. Matching funds are triggered in the general election by opposition spending that exceeds the participating candidate's basic grant entitlement from the Fund. The opposition spending is subject to special expedited reporting so the matching fund provision could be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

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- A 1% surcharge on the insurance regulatory charge paid by insurance companies on each company's premium tax liability.
- A $5 surcharge on license fees charged by the Department of Insurance under G.S. 58-33-125.
- An assessment of up to 0.08% on payments made to entities retained by the State Treasurer.
- The Treasurer must apply the assessments broadly among various entities and the total amount assessed must be at least $750,000 but less than $1,250,000.

Source: Heather Fennell, Senate Finance Committee Counsel, 8/4/09

EFFECTIVE DATE: This act is effective when it becomes law. The first Treasurer race that would be covered would occur in 2012.

ASSUMPTIONS AND METHODOLOGY:

According to the 2008-2009 Campaign Finance Manual issued by the Campaign Finance Office of the North Carolina State Board of Elections, there are five sources of revenue for the North Carolina Voter-Owned Elections Fund. In addition to distributions to qualified candidates, all expenses for implementation, including staff, administrative, and enforcement costs, are paid for by the North Carolina Voter-Owned Elections Fund. Revenue for the Fund is provided through the following means:

- The first source is from any voluntary donation made directly to the Voter-Owned Elections Fund. In the past, there have been few donations.
- The second source is from appropriations from the General Fund. The legislature appropriated $1,000,000 for the 2007-2008 fiscal year and $3,580,000 for the 2008-2009 fiscal year for the implementation of the Act. This source provides almost all the funding.
- The third source is from Fund revenues that were distributed to candidates, but were not spent or committed at the time a candidate is no longer considered a certified candidate for that election. This source produces little funding.
- The fourth source is any funds ordered to be returned to the Fund as a result of a violation by a participating or certified candidate in the Program. This source produces little funding.

- The fifth source is from money paid to the Fund as a result of a candidate forfeiting funds in excess of the $20,000 cap on contributions and expenditures between August 1st of the year before the election and the date of declaring a candidate's intent to participate in the Program. This source produces little funding.

The State Board of Elections is responsible for administering the Fund, including the development of procedures for the proper administration of the Program. The Board will make determinations regarding whether electioneering communications will trigger matching funds and will be responsible for making determinations of violations of Article 22J of Chapter 163 of the General Statutes, the provisions creating the Program.

The Board has delegated the daily administration of the Fund to the Campaign Finance Division of the State Board of Elections. Under the direction of the Board, the Campaign Finance Division will audit all reports of both non-participating and participating candidates to ensure compliance with the provisions of the Program. Certification requirements will be verified by Campaign Finance staff prior to the Board certifying a candidate.

G.S. 163-278.99 outlines the method employed by the State Board of Elections, in consultation with the State Treasurer and the State Controller, to determine how the Fund is distributed among certified candidates. In the chart below, the left column provides the name of the particular seat on the Council of State, the average over the last three elections regarding the particular seat as addressed in G.S. 163-278.99(b)(4), and the funding for the certified candidate as mentioned in the same statue under G.S. 163-278.99(c).

Council of State seat	Average over last three elections (rounded per statute)	Amount certified candidate would receive
Secretary of State	$198,000	$300,000
Attorney General	$1,759,000	$1,759,000
Treasurer	$1,064,000	$1,064,000
Commissioner of Agriculture	$365,000	$365,000
Commissioner of Labor	$150,000	$300,000
State Auditor	$135,000	$300,000
Commissioner of Insurance	$280,000	$300,000
Supt. Of Public Instruction	$161,000	$300,000

Due to a number of variables, the State Board of Elections is not able to determine the fiscal impact of Senate Bill 20. In any election, there are unknowns that affect the cost of the particular election. Typically, the work load for the State Board of Election is impacted by the number of candidates who file for a particular vacancy, as well as by the necessary review and auditing of candidates who submit information to qualify to receive distributions from the Voter-Owned Election Fund. Therefore, the Board does anticipate that the proposed legislation will increase their work load, and thus, could require more personnel. However, at this time, the Board is not able to estimate how many positions may be needed.

SOURCES OF DATA: North Carolina State Board of Elections

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE ~~July~~ Aug 3, 2009

S. B. No. 20 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Rand

1 moves to amend the bill on page 3, lines 29-37

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines.

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 565
Committee Substitute Favorable 5/6/09

Short Title: Union Fire Fees. (Local)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW UNION COUNTY TO ADJUST ITS FIRE PROTECTION FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-236(c), as it applies to Union County pursuant to Chapter 883 of the 1991 Session Laws, as amended by Chapter 61 of the 1995 Session Laws and S.L. 1999-39, reads as rewritten:

"(c) Fees. – The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection and on owners of all manufactured or mobile homes that benefit from the availability of fire protection; provided, however, that the fees shall not be imposed on the North Carolina Department of Transportation for real property owned by the Department and used solely for highway purposes. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical, rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall ~~not~~ not, except as otherwise provided in this section, exceed the following maximums:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year.

(2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The fee on this class of property may not exceed two cents (2¢) per acre per year. The county may establish a minimum fee for unimproved land of not more than five dollars ($5.00) per year.

(3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars ($10.00) per site per year.

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars ($100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

(5) A multiple-family dwelling. The fee on a duplex may not exceed fifty dollars ($50.00) per building per year. The fee on a triplex may not exceed seventy-five dollars ($75.00) per building per year. The fee on any other

multiple-family dwelling may not exceed one hundred dollars ($100.00) per building per year.

(6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars ($50.00) per year.

The board of commissioners may increase the fees authorized by this subsection by no more than twice the amount provided for each class of property by including the increase in the budget ordinance adopted under Article 3 of Chapter 159 of the General Statutes."

SECTION 2. G.S. 153A-236, as it applies to Union County pursuant to Chapter 883 of the 1991 Session Laws, as amended by S.L. 1995-61, S.L. 1999-39, and this act, expires July 1, 2010.

SECTION 3. This act applies to Union County only.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 565

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

H565-ATD-63 [v.1]

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

Date _____, 2009

Senator Goodall

moves to amend the bill on page 2, line 10 by deleting the phrase "July 1, 2010" and inserting the phrase "July 1, 2011".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 512*
Committee Substitute Favorable 6/25/09
Committee Substitute #2 Favorable 7/22/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H512-CSTD-78 [v.3]

8/3/2009 4:12:25 PM

Short Title: Incentives for Energy Conservation. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY TO GEOTHERMAL HEAT PUMPS AND EQUIPMENT, TO ALLOW THE CREDIT TO BE TAKEN AGAINST THE GROSS PREMIUMS TAX, AND TO EXTEND THE SUNSET FOR THE CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.15(7) reads as rewritten:

"**§ 105-129.15. Definitions.**

The following definitions apply in this Article:

...

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.

e. Geothermal heat pumps that use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

f. Geothermal equipment that uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating and cooling.

..."

SECTION 2. G.S. 105-129.16A reads as rewritten:

"**§ 105-129.16A. Credit for investing in renewable energy property.**

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. – A ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential.

(2) Residential Property. – The following ceilings apply to renewable energy property placed in service for residential purposes:

a. One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water heating, including pool heating.

b. Three thousand five hundred dollars ($3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.

d. Eight thousand four hundred dollars ($8,400) per installation for a geothermal heat pump or geothermal equipment.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, ~~2011.~~2016."

SECTION 3. G.S. 105-129.17(a) reads as rewritten:

"(a) Tax Election. – The credit allowed in G.S. 105-129.16A is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. ~~The~~ All other credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after January 1, 2009.

HOUSE BILL 512:
Incentives for Energy Conservation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 4, 2009
Introduced by:	Reps. Holliman, Harrison, Luebke	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Third Edition H512-CSTD-78		Committee Counsel

SUMMARY: ***The proposed committee substitute to House Bill 512 extends the sunset for the renewable energy property credit to 2016 and clarifies the definition of nonresidential property.***

[As introduced, this bill was identical to S305, as introduced by Sen. Clodfelter, which is currently in Senate Finance.]

CURRENT LAW:

Renewable Energy Property Credit. Under current law, the credit for investing in renewable energy property applies to any of the following machinery and equipment or real property:

- Biomass equipment.
- Hydroelectric generators
- Solar energy equipment
- Wind equipment

The amount of the credit for investing in renewable energy property is 35% of the cost of the property placed in service. In the case of renewable energy property that services a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The credit may not exceed the following amounts:

TYPE OF PROPERTY	MAXIMUM CREDIT
Non residential property	$2,500,000 per installation
Residential property – Solar energy equipment for domestic water heating.	$1,400 per dwelling unit
Residential property – Solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.	$3,500 per dwelling unit
Residential property – All other renewable energy property for residential purposes	$10,500 per installation

The renewable energy tax credit has the following limitations and conditions:

The renewable energy tax credit may not exceed 50% of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax. Any unused portion of the credit may be carried forward for the succeeding five years.

A taxpayer that claims any other credit allowed with respect to renewable energy property may not take the renewable energy tax credit with respect to the same property.

A taxpayer may not take the renewable energy tax credit if the taxpayer leases the property from another person, unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.

The Department of Revenue must report each year on the number of taxpayers claiming the credits, the cost of the property for which the credits were claimed, and the total cost to the General Fund of the credits claimed.

The credit will sunset on January 1, 2011.

BILL ANALYSIS: The proposed committee substitute to House Bill 512 makes the following changes to the renewable energy property tax credit:

Adds geothermal: Adds geothermal to the property eligible for the credit. Geothermal is defined as either geothermal heat pumps that use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, or as geothermal equipment that uses the internal heat of the earth as a substitute for traditional energy for heating water or active space heating or cooling. The credit is capped at $8,400 per installation for residential property.

Extends sunset: Extends the sunset of the credit to renewable energy property placed in service on or after January 1, 2016.

Gross premiums tax: Allows the credit to be taken against the gross premiums tax.

EFFECTIVE DATE: This act is effective for taxable years beginning on or after January 1, 2009.

H512-SMTD-138(CSTD-78) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: August 3, 2009

TO: Representatives Holliman, Harrison, and Luebke

FROM: Marjorie Rutherford
Fiscal Research Division

RE: PCS to House Bill 512 (Third Edition)

FISCAL IMPACT ($ Millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
General Fund	**($0.42)**	**($0.42)**	**($0.42)**	**($1.42)**	**($1.42)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: January 1, 2009

BILL SUMMARY:
Current tax law awards an income tax credit to any taxpayer who constructs, purchases, or leases renewable energy property and places this property in service inside the state. The credit equals 35% of the cost of the property (with ceilings for certain technologies). In the case of renewable energy property that serves a single-family dwelling, the credit must be taken in the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. House Bill 512 extends the sunset of the credit from January 1, 2011 to January

1, 2016 and clarifies the definition of nonresidential property. It also extends the credit to include geothermal heat pumps and creates a cap of $8,400 for geothermal heat pumps installed for residential use. Finally, it enables the credit to be taken against the gross premiums tax.

ASSUMPTIONS AND METHODOLOGY:
Extending the sunset of the credits will increase the length of time that the state awards the existing credits for new projects. The net impact of this will be a decrease in revenues starting in FY 2012-2013, the first year in which the credits would not have been completely active under existing legislation. According to the North Carolina Department of Revenue's Summaries of the Renewable Energy Credits for years 2003 through 2007, the amounts of the credits awarded for renewable energy property have been highly variable for the past five years but have not exceeded $1 million. This report does not have the detail to indicate how much of the credits reflect new activity in recent years versus installments for past projects. Due to this variability and lack of complete information, this report assumes $1 million as a rough estimate of the loss of revenues in FY 2012-13 and FY 2013-14 due to the extension of the sunset. The cost could exceed this amount if there is increased investment in renewable energy property.

According to estimates from the North Carolina Solar Center, 20-30 geothermal heat pumps are currently installed each year. With the addition of an income tax credit, assuming that the recession will not impact purchasing decisions too greatly, this number is estimated to increase to 50 a year. The new bill would award an income tax credit equal to 35% of the cost of the heat pump credit with a ceiling of $8400 of credit per installation. In North Carolina the cost of installation is estimated to range between $17,500 and $27,000. Assuming that the cost of installation is $27,000, the amount of each credit would be the $8400 ceiling. Multiplying the $8,400 credit by the estimated number of installations each year results in a $420,000 loss in revenues for FY 2009-10 due to the inclusion of geothermal heat pumps in the tax credit.

The PCS enables the renewable energy credit to be taken against the gross premiums tax. Unfortunately, there is insufficient data to estimate what the impact of this change will be.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1389
Committee Substitute Favorable 7/6/09
Committee Substitute #2 Favorable 7/14/09
Fourth Edition Engrossed 7/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1389-CSTD-75 [v.10]

8/3/2009 2:43:28 PM

Short Title: Revolving Loan Fund for Energy Improvements. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO ESTABLISH LOAN PROGRAMS TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY AFFIXED TO REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-459. 1. Revolving loan program for energy improvements.**

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. – A city may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, 'renewable energy source' has the same meaning as 'renewable energy resource' in G.S. 62-133.8"

SECTION 2. Chapter 153A of the General Statues is amended by adding a new Part 6 of Article 18 to read:

"**§ 153A-455. Revolving loan program for energy improvements.**

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the

State. In furtherance of this purpose, a county may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. – A county may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A county may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, 'renewable energy source' has the same meaning as 'renewable energy resource' in G.S. 62-133.8"

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

HOUSE BILL 1389:
Revolving Loan Fund for Energy Improvements

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 4, 2009
Introduced by:	Reps. Fisher, Harrison, Rapp	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Fourth Edition H1389-CSTD-75		Committee Counsel

SUMMARY: ***The proposed committee substitute to House Bill 1389 authorizes cities and counties to establish revolving loan programs to finance energy efficiency improvements and distributed generation renewable energy sources that are permanently affixed to real property.***

CURRENT LAW: North Carolina cities and counties are eligible to obtain federal grant funds under the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA), during the 2009-2011 biennium to finance certain energy-related programs. The Energy Efficiency Conservation Block Grants Program (EECBG) seeks to assist eligible entities to reduce fossil fuel emissions, to reduce total energy use, and to improve energy efficiency in transportation, and buildings.

BILL ANALYSIS: The proposed committee substitute to House Bill 1389 would authorize cities and counties to establish loan programs to finance energy efficiency improvements and the installation of distributed renewable energy sources that are permanently affixed to real property. Cities and counties may use EECBG funds and any other restricted funds the entity may have. The term of the loan may not be greater than 15 years, and the annual interest rate charged on the loans may not exceed 8%.

The term renewable energy source has the same meaning as renewable energy resource as defined in G.S. 62-133.8. That definition includes all of the following:

- Solar electric.
- Solar thermal.
- Wind.
- Hydropower.
- Geothermal.
- Ocean current or wave energy resource.
- Biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane.
- Waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility.
- Hydrogen derived from a renewable energy resource.

The term does not include peat, a fossil fuel, or nuclear energy resource.

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

SENATE BILL 829*
Commerce Committee Substitute Adopted 7/28/09

Short Title: Regulation of Appraisal Management Companies. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93E of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Real Estate Appraisal Management Companies.

"**§ 93E-2-1. Registration required of real estate appraisal management companies; exceptions.**

Beginning January 1, 2012, it shall be unlawful for any person, corporation, partnership, sole proprietorship, subsidiary, unit, or any other business entity in this State to do any of the following without first registering with the Board under the provisions of this Article:

(1) Directly or indirectly engage or attempt to engage in business as an appraisal management company.

(2) Advertise or make a representation that the person or entity is engaging in or conducting business as an appraisal management company.

(3) In any way act as or provide the services of an appraisal management company.

"**§ 93E-2-2. Definitions.**

(a) The following definitions apply in this Article:

(1) Appraisal management company. – A corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that (i) administers a network of independent contract appraisers; (ii) receives requests for appraisals from clients; (iii) receives a fee paid by the client for the appraisals; and (iv) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request.

An appraisal management company does not include any of the following:

a. Any agency of the federal government or any State or municipal government.

b. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that exclusively employs persons on an employer and employee basis for the performance of appraisals in the normal course of its business and the entity is responsible for ensuring that the appraisals are being performed in accordance with Article 1 of this Chapter and with the Uniform Standards of Professional Appraisal Practice.

c. Any bank, farm credit system, savings institution, or credit union.

d. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that has as its primary business the development of appraisals in North Carolina in accordance with Article 1 of this Chapter and with the Uniform Standards of Professional Appraisal Practice.

e. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that has as its primary business the development of appraisals in North Carolina, but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of appraisals that the contracting entity cannot complete either because of the location or type of property in question.

f. Any licensed real estate broker performing activities in accordance with Article 1 of this Chapter.

g. Any officer or employee of an exempt entity described in this subdivision when acting in the scope of employment for the exempt entity.

(2) Board. – The North Carolina Appraisal Board under Article 1 of this Chapter.

(3) Employee. – An individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

(4) Registrant. – A real estate appraisal management company registered pursuant to this Article.

(b) The definitions contained in G.S. 93E-1-4 also apply in this Article.

"**§ 93E-2-3. Rule-making authority.**

The Board shall have the authority to adopt rules not inconsistent with the provisions of this Article and the General Statutes of North Carolina that are reasonably necessary to implement, administer, and enforce the provisions of this Article, including the authority to:

(1) Prescribe forms and procedures for submitting information to the Board.

(2) Prescribe standards of practice for companies registered under this Article.

(3) Prescribe standards for the operation of real estate appraisal management companies.

"**§ 93E-2-4. Qualifications for registration; duties of registrants.**

(a) Any person or entity desiring to be registered as an appraisal management company in this State shall make written application to the Board on forms prescribed by the Board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee under G.S. 93E-2-6 and any other information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed application and fee and upon a determination by the Board that the applicant is of good moral character, the Board shall issue to the applicant a certificate of registration authorizing the applicant to act as a real estate appraisal management company in this State.

(b) The registration required by subsection (a) of this section shall include the following information:

(1) Name of the entity seeking registration.

(2) Business address of the entity seeking registration.

(3) Phone contact information of the entity seeking registration.

(4) If the entity is not a corporation that is domiciled in this State, the name and contact information for the company's agent for service of process in this State.

(5) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns ten percent (10%) or more of the appraisal management company.

(6) The name, address, and contact information for a controlling person.

(7) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this State pursuant to the North Carolina Appraisers Act if a license or certification is required to perform appraisals.

(8) A certification that the entity has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

(9) A certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the residential real estate appraisal services for the appraisal management company.

(10) An irrevocable Uniform Consent to Service of Process.

(11) Any other information required by the Board pursuant to G.S. 93E-2-3.

(c) Any registrant having a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in unethical conduct shall promptly file a complaint with the Board.

(d) Fees shall be paid to a real estate appraiser based on Federal Deposit Insurance Corporation (FDIC) appraisal management company protocol within 30 days of the date the appraisal is transmitted by the real estate appraiser to the registrant or the registrant's client. Fees shall be paid directly to the real estate appraiser from the lender and not from the registrant. The registrant shall charge a direct fee to the lender for services provided without any fee splits.

(e) To qualify to be registered as an appraisal management company, each individual who owns, directly or indirectly, more than ten percent (10%) of the appraisal management company shall be of good moral character, as determined by the Board, and shall submit all information the Board deems necessary pursuant to the rules adopted by the Board. Additionally, each owner shall certify that he or she has never had a license to act as an appraiser refused, denied, cancelled, or revoked by the State of North Carolina or any other state.

(f) An appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of residential real estate appraisal services unless the independent appraiser is licensed or certified in good standing pursuant to the North Carolina Appraisers Act.

"**§ 93E-2-5. Compliance manager.**

Each appraisal management company registered under this Article shall designate a compliance manager who is responsible for ensuring the company operates in compliance with this Article. The compliance manager shall be a certified general real estate appraiser certified under Article 1 of this Chapter or under the comparable laws of another state. The appraisal management company shall file a form with the Board indicating the appraisal management company's designation of compliance manager and the individual's acceptance of the responsibility. An appraisal management company shall notify the Board of any change in the appraisal management company's compliance manager. Any appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to G.S. 93E-2-8 until the appraisal management company

complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be considered the compliance manager for purposes of this Article.

"**§ 93E-2-6. Fees and renewals.**

(a) Each application for registration as an appraisal management company under this Article shall be accompanied by a fee of five thousand dollars ($5,000). Registration issued under this Article shall expire on June 30 of each year and shall become invalid after that date unless renewed before the expiration date by filing an application with and paying to the Board a fee of two thousand five hundred dollars ($2,500).

(b) All registrations reinstated after the expiration date are subject to a late filing fee of twenty dollars ($20.00) for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars ($120.00). The late filing fee shall be in addition to the required renewal fee. In the event a registrant fails to reinstate the registration within six months after the expiration date, the registration shall expire and the registrant shall be required to file a new application for registration. Reinstatement of a registration shall not be retroactive.

(c) The Board may issue a replacement registration to the registrant upon payment of fifty dollars ($50.00) to the Board. The Board may certify the registration history of an appraisal management company registered under this Article upon payment of a fee of one hundred dollars ($100.00) to the Board.

"**§ 93E-2-7. Prohibited acts.**

(a) No employee, director, officer, or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Withholding or threatening to withhold timely payment for a real estate appraisal report.

(2) Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser.

(4) Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser.

(5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report.

(6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions.

(7) Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or State licensing standards.

(9) Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.

(10) Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services.

(b) No employee, director, officer, or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent.

(2) Use an appraisal report submitted by an independent appraiser for any other transaction.

(3) Require an appraiser to sign any sort of indemnification agreement that would require the appraiser to defend and hold harmless the company, any software provider that the company requires an appraiser to use, or any other company that the company does business with from any liability, damage, losses, or claim.

(4) Require an appraiser to provide the company with the appraiser's digital signature or seal.

(c) Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

(1) Consider additional appropriate property information.

(2) Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion.

(3) Correct errors in the real estate appraisal report.

"**§ 93E-2-8. Disciplinary authority.**

(a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company under this Article or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the Board determines that an applicant, registrant, or any partner, member, manager, officer, director, compliance manager, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

(1) Filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

(2) Violated or failed to comply with any provision of this Article or any rules adopted by the Board.

(3) Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor involving mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

(4) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business.

(5) Been the subject of an order of the Board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser.

(6) Acted as an appraisal management company while not properly licensed by the Board.

(7) Failed to pay the proper filing or renewal fee under this Article.

(b) The Board may, by order, summarily postpone or suspend the registration of an appraisal management company pending final determination of any proceeding under this section. Upon entering the order, the Board shall promptly notify the registrant that the order has been entered and the reasons for the order. The Board shall calendar a hearing within 15 days after the Board receives a written request for a hearing. If a registrant does not request a hearing, the order shall remain in effect until the order is modified or vacated by the Board. If a hearing is requested, after notice of and opportunity for hearing, the Board may modify or vacate the order or extend the order until the Board makes its final determination.

(c) The Board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, compliance manager, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the Board's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the Board.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(f) When a registrant is accused of any act, omission, or misconduct that would subject the registrant to disciplinary action, the registrant, with the consent and approval of the Board, may surrender the registrant's registration and all the rights and privileges pertaining to the registrant for a minimum period of five years. A person who surrenders a registration shall not be eligible for or submit any application for registration during the period the registration is surrendered.

(g) If the Board has reasonable grounds to believe that an appraisal management company has violated the provisions of this Article or that facts exist that would be the basis for an order against an appraisal management company, the Board may at any time, either personally or by a person duly designated by the Board, investigate or examine the books, accounts, records, and files of any registrant or other person relating to the complaint or matter under investigation. The Board may require any registrant or other person to submit a criminal history record check and a set of that person's fingerprints in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of the investigation or examination shall be charged against the registrant.

(h) The Board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, inquiry, or other proceeding conducted by the Board. Upon the production of any papers, records, or documents, the Board shall have the power to authorize true copies of the papers, records, or documents to be substituted in the permanent record of the matter in which the books, records, or documents shall have been introduced in evidence.

(i) The Board may conduct routine examinations of the books and records of an appraisal management company registered with the Board in order to determine the appraisal management company's compliance with this Article and any rules adopted by the Board pursuant to the authority of G.S. 93E-2-3. An appraisal management company shall maintain in this State all books and records related to real estate appraisal management services. An appraisal management company shall pay any expenses incurred by the Board resulting from the Board's examination of the appraisal management company's books and records.

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

"**§ 93E-2-10. Penalty; injunctive relief.**

(a) Any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor.

(b) The Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Article or rules adopted by the Board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the Board under this Article.

"**§ 93E-2-11. Criminal history record checks of applicants or registrants for registration as appraisal management companies.**

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

(1) Applicant. – A person applying for registration as an appraisal management company pursuant to G.S. 93E-2-4.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article

20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may require that an applicant for registration as an appraisal management company or a registrant consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration to an applicant or registrant. The Board shall ensure that the State and national criminal history of an applicant or registrant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or registrant to be checked, a form signed by the applicant or registrant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant's or registrant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar registration. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's or registrant's criminal history disqualifies the applicant or registrant for registration, the Board may deny registration of the applicant or registrant. The Board may disclose to the applicant or registrant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or registrant. The applicant or registrant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying

registration to an applicant or registrant based on information provided in the applicant's or registrant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.26. Criminal history record checks of applicants or registrants for registration as real estate appraisal management companies.**

The Department of Justice may provide to the North Carolina Appraisal Board from the State and National Repositories of Criminal Histories the criminal history of any applicant or registrant for registration under Article 2 of Chapter 93E of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or registrant, a form signed by the applicant or registrant consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or registrant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Pursuant to G.S. 93E-2-2, as enacted in Section 1 of this act, a real estate appraisal management company established under federal law shall not be required to pay the initial registration fees required by G.S. 93E-2-6, enacted in Section 1 of this act. However, the real estate appraisal management company established under federal law shall be required to pay registration fees associated with subsequent registration renewal.

SECTION 4. This act becomes effective January 1, 2012.

2009-2010 General Assembly

SENATE BILL 829: Regulation of Appraisal Management Companies

Committee:	Senate Finance	**Date:**	August 4, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 829 amends the Real Estate Appraisers Act to regulate appraisal management companies.***

BILL ANALYSIS: Senate Bill 829 creates a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. Beginning January 1, 2012, a person or business entity that acts as an appraisal management company must register with the North Carolina Appraisal Board before it may conduct business as an appraisal management company. An appraisal management company is defined as any business entity that:

- Administers a network of independent contractor appraisers;
- Receives requests for appraisals from clients;
- Is paid a fee by the client for the appraisal; and
- Enters into an agreement with one or more appraisers in its network to perform the requested appraisal.

The definition does not include a government agency, a chartered financial institution, a real estate broker performing market analyses, or appraisal businesses that employ appraisers or that occasionally contract with independent appraisers because of the location or type of property.

The Appraisal Board is authorized to determine the qualifications of applicants for registration. The applicant must be of good moral character, submit an application and fee, and make a number of certifications about its operating procedure, including that it will only contract with North Carolina licensed appraisers in good standing.

Each appraisal management company must designate a compliance manager who must be a certified general real estate appraiser under the laws of North Carolina or the comparable laws of another state. Failure to comply with this provision results in registration suspension.

The Appraisal Board is authorized to charge the following fees:

- Application fee $5,000.
- Renewal fee $2,500.
- Late fee $20./month up to $120.
- Replacement fee $50.
- Registration history $100.

No officer, agent, or employee of an appraisal management company shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. The bill lists a number of specific prohibited acts. However, this section does not prohibit an appraisal management company from requesting the appraiser to consider additional information, provide further details, or correct errors.

The Board has authority to deny, suspend, revoke, or refuse to issue or renew a registration, or restrict or limit activities of a person who owns or participates in the business if it finds that the company or any of

its principals or employees has violated any of the provisions of the Act. The Board may also impose a civil penalty not to exceed $10,000 for any violation of the Act and to impose a penalty of up to $25,000 for failure to comply with an order to cease from a prohibited action.

Any person violating the act shall be guilty of a Class 1 misdemeanor. The Board may also seek injunctive relief.

The Board may require applicants or registrants to consent to a criminal history record check. Refusal to consent may be grounds for denial of the registration. If the record check reveals one or more convictions, the Board is not required to automatically bar registration, but may consider a number of factors to determine whether the criminal history disqualifies the applicant or registrant. The Board is granted immunity from civil liability for denying registration based on the criminal history record check, provided it acted in good faith.

Section 2 of the bill authorizes the Department of Justice to provide criminal histories to the Appraisal Board and allows the Department to charge a fee to offset the cost of conducting the record check.

Section 3 provides that a real estate appraisal management company established under federal law is not required to pay the initial fee required in this Act, but must pay subsequent registration renewal fees.

EFFECTIVE DATE: This act becomes effective January 1, 2012.

S829-SMRB-51(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: August 4, 2009

TO: Senator Jenkins

FROM: Marjorie Rutherford, Danielle Seale
Fiscal Research Division

RE: Senate Bill 829 (Second Edition)

FISCAL IMPACT ($)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
NC Appraisal Board	$150,000	$75,000	$75,000	$75,000	$75,000
Justice	$480	$0	$0	$0	$0
EXPENDITURES:					
Correction	No fiscal impact anticipated				
Judicial	Indeterminate fiscal impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Appraisal Board, NC Department of Justice, Judicial Branch

EFFECTIVE DATE: Effective when bill becomes law

BILL SUMMARY:

Senate Bill 829 creates a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. The bill requires that beginning January 1, 2010, any person or business entity that acts as an appraisal management company must register with the North Carolina Appraisal Board. An appraisal management company is defined as any business entity that:

- Administers a network of independent contractor appraisers;
- Receives requests for appraisals from clients;
- Is paid a fee by the client for the appraisal; and
- Enters into an agreement with one or more appraisers in its network to perform the requested appraisal.

The definition does not include any government agency, any chartered financial institution, a real estate broker performing market analyses, or appraisal businesses that employ appraisers or that occasionally contract with independent appraisers because of the location or type of property.

The Appraisal Board is authorized to determine the qualifications of applicants for registration. The applicant must be of good moral character, submit an application and fee, and make a number of certifications about its operating procedure, including that it will only contract with North Carolina licensed appraisers in good standing.

Each appraisal management company must designate a managing principal who must be a certified general real estate appraiser. Failure to comply with this provision results in registration suspension.

The Appraisal Board is authorized to charge the following fees:

- Application fee $5,000.
- Renewal fee $2,500.
- Late fee $20./month up to $120.
- Replacement fee $50.
- Registration history $100.

No officer, agent, or employee of an appraisal management company shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. The bill lists a number of specific prohibited acts. However, this section does not prohibit an appraisal management company from requesting the appraiser to consider additional information, provide further details, or correct errors.

The Board has authority to deny, suspend, revoke, or refuse to issue or renew a registration, or restrict or limit activities of a person who owns or participates in the business if it finds that the company or any of its principals or employees has violated any of the provisions of the Act. The Board may also impose a civil penalty not to exceed $10,000 for any violation of the Act and to impose a penalty of up to $25,000 for failure to comply with an order to cease from a prohibited action.

Any person violating the act shall be guilty of a Class 1 misdemeanor. The Board may also seek injunctive relief.

The Board may require applicants or registrants to consent to a criminal history record check. Refusal to consent may be grounds for denial of the registration. If the record check reveals one or more convictions, the Board is not required to automatically bar registration, but may consider a number of factors to determine whether the criminal history disqualifies the applicant or registrant. The Board is granted immunity from civil liability for denying registration based on the criminal history record check, provided it acted in good faith.

Section 2 of the bill authorizes the Department of Justice to provide criminal histories to the Appraisal Board and allows the Department to charge a fee to offset the cost of conducting the record check.

Section 3 provides that a real estate appraisal management company established under federal law is not required to pay the initial fee required in this Act, but must pay subsequent registration renewal fees.

Source: Adopted from the Bill Analysis done by the Committee Counsel to Senate Commerce on June 29, 2009

ASSUMPTIONS AND METHODOLOGY:

Senate Bill 829 requires that any person or business that acts as an appraisal management company must register with the North Carolina Appraisal Board by January 1, 2010. In addition, the bill authorizes the Board to levy various fees. Among these fees is a $5,000 new application fee. The NC Appraisal Board estimates that 30 business entities would be required to register as real estate appraisal management companies under the passage of this bill. The number of appraisal management companies is expected to remain constant in the next few years. Assuming that all of these businesses register by the January 1, 2010 deadline, this will cause a revenue increase equal to the 30 businesses multiplied by the $5,000 new application fee. This results in a $150,000 revenue increase in FY 2009-10.

Senate Bill 829 authorizes the NC Appraisal Board to levy a $2,500 application renewal fee. This fee will cause a revenue increase starting in FY 2010-11 equal to the renewal fee multiplied by the 30 businesses. This results in a $75,000 revenue increase starting in FY 2010-11.

Senate Bill 829 also authorizes the NC Appraisal Board to levy a late fee, license replacement fee, and registration history fee. The Board is not able to predict the behavior of its future members to the extent that they will incur these fees. Therefore, the impact of these fees on future revenues cannot be estimated.

Department of Justice

The Department of Justice (DOJ) charges a fee of $38 to perform each criminal background check. Of this fee, $22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of NC databases and $2 is used for the processing cost associated with the request. All individuals registering with the North Carolina Appraisal Board may be required to submit to this background

check. Assuming that the 30 business will each receive a background check by the January 1, 2010 registration deadline, the fiscal impact to DOJ will be the $16 retained multiplied by the 30 businesses. This results in a $480 increase in revenues in FY 2009-10.

Department of Correction – Division of Prisons

Because the proposed bill creates a new offense, there is no historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill. In FY 2007-08, 21% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 1 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of $18 per day. Because the average active sentences for Class 1 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

Judicial Branch

Because the proposed bill creates a new offense, there is no historical data from which to estimate the impact of this bill on the court system. It is not known how many offenders might be charged under the proposed bill. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: NC Appraisal Board, NC Department of Justice

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Wednesday, August 5, 2009 at 1:00 p.m.
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met on Wednesday, August 5, 2009 at 1:00 p.m. There were twenty-two committee members present. Senator David Hoyle presided. Walt Whitehead and Yates Parrish of Raleigh, Emily Costello of Greensboro, and Daniel Smith of Holly Springs served as pages.

H.B. 1570 – Amend Allocation of TVA Payment.

Representative Haire was recognized to explain the bill which amends the allocation among local governments of the Tennessee Valley Authority payment in lieu of taxes. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 1586 – Community Land Trust Property Taxation.

Representative Luebke was recognized to explain the bill which clarifies the valuation of community land trust property. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 1166 – Insurance Law Changes.

Representative Goforth was recognized to explain the bill. It makes various changes in the laws governing insurance producers and brokers, bail bondsmen, motor clubs, premium finance companies, and collection agencies, it requires an insurer to provide certain information regarding a deceased person's life insurance to a funeral director or establishment, and it deletes obsolete references to assignments of error. Rose Vaughan Williams, the Department of Insurance's legislative counsel, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1637 – Modernize Precious Metal Business Permitting.

Representative Samuelson was recognized to explain the bill. It modernizes the record keeping of precious metals purchases by dealers, subjects all dealers in precious metals to similar record-keeping requirements, increases precious metals permitting fees, requires that a criminal history record check be conducted on employees of precious metals dealers and make various other changes to the precious metals permitting statutes. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 752 – Annual Registration of Farm Vehicles.

Senator Brunstetter was recognized to explain the bill. Senator Weinstein moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS requires notice be given prior to assessing a late filing fee for lobbyists and lobbyist principals. Senator Goss moved for a favorable report and the motion carried. A copy of the PCS is attached.

H.B. 1151 – Res. Lead-Based Paint Hazards/Renovations.

Representative Farmer-Butterfield was recognized to explain the bill. The bill establishes requirements for certification of persons performing lead-based paint renovation work in certain residential housing and child-occupied facilities and requires accreditation of renovation trainers and renovation training courses. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 465 – Use of Funds Received from Parking Meters.

Senator Blue was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS allows the City of Raleigh to extend an economic development deadline for the construction of economic development projects. Senator Hunt moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 825 – "Support NC" Special License Plate.

Senator Jenkins was recognized the bill. Senator Albertson moved to adopt the PCS for discussion and the motion carried. The PCS modifies the requirements for a grant from the Job Maintenance and Capital Development Fund. Rita Harris, Department of Commerce's legislative liaison, was recognized to answer questions and said that the Department supported the bill. Senator Soles moved for a favorable report and the motion carried. A copy of the PCS is attached.

The meeting adjourned at 1:37 p.m.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, August 05, 2009

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

FAVORABLE

H.B.(CS #1) **1151** Res. Lead-Based Paint Hazards/Renovations.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #1) **1166** Insurance Law Changes.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1570** Amend Allocation of TVA Payment.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1586** Community Land Trust Property Taxation.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS #1) **1637** Modernize Precious Metal Business Permitting.
Sequential Referral: None
Recommended Referral: None

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

S.B. **825** "Support NC Education" Special Plate.
Draft Number: 35387
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **465** Use of Funds Received From Parking Meters.

Draft Number:	50791
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 7

Committee Clerk Comments:
H1151 – Sen. Purcell
H1166 – Sen. Vaughan
H1570 – Sen. Snow
H1586 – Sen. McKissick
H1637 – Sen. Rand

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, August 05, 2009

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

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

H.B. **752** Annual Registration of Farm Vehicles.

Draft Number:	70481
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
H782 – Sen. Brunstetter

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	August 5, 2009	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 465	Use of Funds Received From Parking Meters.	Representative Blue Representative Martin Representative Ross Representative Harrell
HB 752	Annual Registration of Farm Vehicles.	Representative Lewis Representative Braxton Representative Warren Representative Brisson
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Earle Representative England, M.D. Representative Farmer-Butterfield Representative Rapp
HB 1166	Insurance Law Changes.-AB	Representative Goforth Representative Wray
HB 1570	Amend Allocation of TVA Payment.	Representative Haire
HB 1586	Community Land Trust Property Taxation.	Representative Hall Representative Luebke
HB 1637	Modernize Precious Metal Business Permitting.	Representative Dickson Representative Samuelson

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S825 - "Support NC Education" Special Plate has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	August 5, 2009	1:00 PM	544 LOB

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HB 1166	Insurance Law Changes.-AB	Representative Goforth Representative Wray
HB 1570	Amend Allocation of TVA Payment.	Representative Haire
HB 1586	Community Land Trust Property Taxation.	Representative Hall Representative Luebke
HB 1637	Modernize Precious Metal Business Permitting.	Representative Dickson Representative Samuelson

SB 825 "Support NC Education" Special Plate. Senator Jenkins

Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, August 5, 2009, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 465	Use of Funds Received From Parking Meters.	Rep. Blue Rep. Martin Rep. Ross Rep. Harrell
HB 752	Annual Registration of Farm Vehicles.	Rep. Lewis Rep. Braxton Rep. Warren Rep. Brisson
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Rep. Earle Rep. England Rep. Farmer-Butterfield Rep. Rapp
HB 1166	Insurance Law Changes.-AB	Rep. Goforth Rep. Wray
HB 1570	Amend Allocation of TVA Payment.	Rep. Haire
HB 1586	Community Land Trust Property Taxation.	Rep. Hall Rep. Luebke
HB 1637	Modernize Precious Metal Business Permitting.	Rep. Dickson Rep. Samuelson
SB 825	"Support NC Education" Special Plate.	Sen. Jenkins

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — August 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Pfizer
Tracy Kimbrell	Parker Poe
[illegible]	NMRS
Chip Killian	Nelson Mullins
T. Damian Graham	TTA
Rebecca Shigley	NCDOT
Barbara Carsley	PSCOA
X	
John Bowdish	Astra Zeneca
Joni Allen	BEGINNINGS
Kevin Leonard	NCACC
Jim Blackburn	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

August 5, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Parker Poe
Steve Best	NC PBA
Holley Hayes	SOS
Jack Brown	SOS
Cam Cover	BPMHL
Jessica Parker	NC Housing Coalition
Selina Mack	Durham Community Land Trustees
Pam Stock	NCBA
Bill Scoggin	KLG
Chris Hollis	Kaufman Dolan
Jim McCormick	City of Raleigh

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

August 5, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Peter Harris	Commerce

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

August 5, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jeanne Suddath	PBV
Henry Hutchins	Coca Cola
Butch Gunnells	NC Bev A
Will Culpepper	MVL
Erin Schultz	UNC-GA
[illegible]	BSA
[illegible]	BCS
Amy Hobbs	MWC
[illegible]	NCPDA
[illegible]	NCPBA
[illegible]	NCPBA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

August 5, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	DPH
[illegible]	DPH
Don Chang	DPH
Chris Estes	NC Housing Coalition
SWilson	DHHS
[illegible]	NJCBH
Brittany Farrell	NCFPC
Marvin Waters	CCPS
Thomas Caves	CCPS
Danny Linebrad	DHHS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1570
Committee Substitute Favorable 7/20/09
Third Edition Engrossed 7/23/09

Short Title: Amend Allocation of TVA Payment. (Public)

Sponsors:

Referred to:

May 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ALLOCATION AMONG LOCAL GOVERNMENTS OF THE TENNESSEE VALLEY AUTHORITY PAYMENT IN LIEU OF TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-458 reads as rewritten:

"**§ 105-458. Apportionment of payments in lieu of taxes between local units.**

The payments received by the State and local governments from the Tennessee Valley Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended, shall be apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of ~~the percentage of loss of taxes to each,~~each local government's percentage of the total value of the Authority's property in the State, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two-year average on said property next prior to it being taken over by the Authority."

SECTION 2. G.S. 105-459 reads as rewritten:

"**§ 105-459.** ~~Determination of amount of taxes lost by virtue of T.V.A. operation of property; proration of~~ Proration of T.V.A. **funds.**

The Department of Revenue shall determine each year, on the basis of current tax laws, the ~~total taxes that would be due to both the State of North Carolina and the local governments~~allocation of the Authority's valuation among the local governments in the same manner as if the property owned ~~and/or~~or operated by the Authority were owned ~~and/or~~or operated by a privately owned public ~~utility: Provided, however, in making said calculations the Department of Revenue shall use the tax rate fixed by the local government unit and taxing district involved for the tax year next preceding such calculations.~~utility. The Department of Revenue and the Treasurer of the State of North Carolina shall then prorate the funds received from the Authority by the State and local governments between the local governments upon the basis of the foregoing calculations."

SECTION 3. G.S. 105-461 reads as rewritten:

"**§ 105-461. Duty of ~~county accountant,~~ finance officer, etc.**

The ~~county accountant~~ finance officer or other proper officer of each local government to which this Subchapter is applicable ~~shall:~~

~~(1) Certify to the Department of Revenue and the Treasurer of the State of North Carolina the tax rate fixed by the governing body of such local government immediately upon the fixing of the same;~~

~~(2)~~ ~~Certify~~ shall certify each month to the Treasurer of the State of North Carolina a statement of the amount received by the local government direct from the Authority.

No local government shall be entitled to receive its distributive share of said fund from the Treasurer of the State of North Carolina until the foregoing information has been properly furnished. If any such local government shall fail to furnish the information herein required within 10 days from and after receipt by it from the Department of Revenue of request for the same, forwarded by registered mail, then and in that event it shall be barred from participating in the benefits provided for the period for which the same is requested."

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

HOUSE BILL 1570:
Amend Allocation of TVA Payment

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Rep. Haire	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1570 would amend the allocation of payments made by the Tennessee Valley Authority to the State and local governments. The allocation would be made on the basis of each local government's percentage of the total value of the TVA property in the State (instead of on the basis of the percentage of loss of taxes to each local government.) In addition, when calculating the allocation of the TVA's valuation among the local governments, the Department of Revenue would no longer use the tax rate fixed by the local government.

CURRENT LAW: Pursuant to federal law, the Tennessee Valley Authority (TVA) makes annual payments to the State and local governments in lieu of property taxes. These payments are apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of the percentage of loss of taxes to each local government. The minimum annual payment to any local government cannot be less than the local government's annual actual tax loss based upon the two-year average on the property next prior to it being taken over by TVA.

Each year the Department of Revenue must determine the total taxes that would be due to both the State and the local governments in the same manner as if the property were owned and operated by a privately owned utility.[1] The amount is calculated based on the tax rate fixed by the local government.

BILL ANALYSIS: House Bill 1570 would apportion the payments made by TVA between the local governments on the basis of each local government's percentage of the total value of the TVA's property in the State. Each year the Department of Revenue would determine the allocation of the TVA's valuation among the local governments as if the property were owned or operated by a privately owned utility. The tax rate fixed by the local government would no longer be used in making this calculation. In the past, as local governments in the mountains dropped their tax rate as the value of property appreciated, the lower rate resulted in a lower payment from TVA. This was because the lower tax rate was applied to the book value of TVA property.

TVA property is located in the following North Carolina counties: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, and Watauga.[2] TVA property is also located in the towns of Murphy in Cherokee County and Bryson City in Swain County.

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

BACKGROUND: The Tennessee Valley Authority (TVA) was created by Congress in 1933. This federal corporation is the largest public power company in the U.S. and manages the nation's fifth

[1] DOR determines the true value of utilities using the following:
- The market value of the company's capital stock and debt.
- The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or state regulatory agency and what it would cost to replace or reproduce the system property, less a reasonable allowance for depreciation.
- Gross receipts and operation income of the company.
- Any other information that in the judgment of the Department has a bearing on the true value of the company's system property.

[2] The counties of Cherokee, Swain, and Graham have the most TVA property.

largest river. Beginning in July, 1940, federal law required the TVA to pay a percentage of their gross proceeds to State and local governments annually "in order to render financial assistance to those States and local governments in which the power operations of the Corporation [TVA] are carried on and in which the Corporation [TVA] has acquired properties previously subject to State and local taxation." Since 1948, payment has been 5% of the gross proceeds. These proceeds are derived from the sale of power by TVA for the preceding fiscal year. These payments are in lieu of taxation. The payments are apportioned among the States in the following manner:

One-half of the payment is apportioned by paying to each State the percentage thereof which the gross proceeds of the power sales by the TVA within the state during the preceding fiscal year bear to the total gross proceeds from all power sales by the TVA

The remaining one-half is apportioned by paying to each State the percentage thereof which the book value of the power property held by the TVA within the State at the end of the preceding fiscal year bears to the total book value of all the property held by the TVA.

Martha Walston, counsel to the House Finance Committee, substantially contributed to this summary.

H1570-SMRB-53(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1570 (Second Edition)

SHORT TITLE: Amend Allocation of TVA Payment.

SPONSOR(S): Representative Haire

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***Amends allocation to individual local governments, but no net impact. See assumptions and methodology.***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain and Watauga Counties; Towns of Murphy and Bryson City; NC Department of Revenue

EFFECTIVE DATE: October 1, 2009

BILL SUMMARY:

House Bill 1570 would amend the allocation of payments made by the Tennessee Valley Authority to the State and local governments. The allocation would be made on the basis of each local government's percentage of the total value of the TVA property in the State (instead of on the basis of the percentage of loss of taxes to each local government.) In addition, when calculating the allocation of the TVA's valuation among the local governments, the Department of Revenue would no longer use the tax rate fixed by the local government.

ASSUMPTIONS AND METHODOLOGY:

The Tennessee Valley Authority (TVA) annually makes payments to the State and local governments in lieu of taxes. These payments are apportioned between the local governments in which TVA property is owned or an operation is carried on, on the basis of the percentage of loss of property taxes to each local government. As a result, the allocation is impacted each time one of the affected counties or municipalities changes its property tax rate.

House Bill 1570 would apportion the payments made by TVA between the local governments on the basis of each local government's percentage of the total value of the TVA's property in the

State. Each year the Department of Revenue will determine the allocation of the TVA's valuation among the local governments as if the property were owned or operated by a privately owned utility. The tax rate fixed by the local government will no longer be used in making this calculation.

As a result, the share of TVA payments received by individual counties and municipalities will change, however the total amount of the payments will not be affected. The chart below is an estimate of local government payments under current law vs. HB1570.

Estimated TVA Payments under Current Law vs. HB 1570 (FY 09-10)

County/Town	Assessed Value of TVA Property	2008-09 Tax Rate	Percentage Of Total Computed Levy	TVA Payment Current Law	Percentage Of Total Property Value	Payment Based on H1570	Difference
Avery County	2,798,489	0.3900	1.6%	$43,065	1.8%	46,852	$3,787
Buncombe County	11,278	0.5250	0.0%	$234	0.0%	189	($45)
Cherokee County	56,151,021	0.3850	32.6%	$853,015	36.0%	940,072	$87,057
Town of Murphy	2,468,737	0.3300	1.2%	$32,146	1.6%	41,331	$9,185
Clay County	14,178,478	0.4300	9.2%	$240,567	9.1%	237,374	($3,193)
Graham County	37,173,067	0.6000	33.7%	$880,072	23.8%	622,346	($257,726)
Haywood County	41,092	0.4970	0.0%	$806	0.0%	688	($118)
Henderson County	2,399	0.4620	0.0%	$44	0.0%	40	($4)
Jackson County	54,466	0.2800	0.0%	$602	0.0%	912	$310
Macon County	50,900	0.2461	0.0%	$494	0.0%	852	$358
Madison County*	4,651	0.5100	0.0%	$94	0.0%	78	($16)
Mitchell County	12,788	0.5200	0.0%	$262	0.0%	214	($48)
Swain County	42,601,855	0.3300	21.2%	$554,729	27.3%	713,234	$158,505
Town of Bryson City	448,143	0.3300	0.2%	$5,835	0.3%	7,503	$1,667
Watauga County*	63,968	0.3130	0.0%	$790	0.0%	1,071	$281
TOTAL	156,061,332		100%	$2,612,755	100%	2,612,755	$0

SOURCES OF DATA: NC Department of Revenue; Tennessee Valley Authority

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 17, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1586
Committee Substitute Favorable 7/13/09

Short Title: Community Land Trust Property Taxation. (Public)

Sponsors:

Referred to:

May 6, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE VALUATION OF COMMUNITY LAND TRUST PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Subchapter II of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.17. Taxation of community land trust property.**

(a) Classification. – Community land trust property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

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

(1) Community land trust developer. – A nonprofit housing development entity that is an exempt organization under section 501(c)(3) of the Code and that transfers community land trust property to a qualifying owner.

(2) Community land trust property. – Improvements to real property that meet all of the following conditions:

a. A fee or leasehold interest in the improvements is transferred subject to resale restrictions contained in a long-term ground lease of not less than 99 years.

b. The community land trust developer retains an interest in the property pursuant to the deed of conveyance or the long-term ground lease.

(3) Ground lease. – A lease between the community land trust developer of a dwelling site, as landlord, and the owner or lessee of a permanent residence constructed on the dwelling site, as tenant. The leasehold interest of the tenant in the dwelling site includes an undivided interest and nonexclusive easement for ingress and egress to the dwelling site and for the use and enjoyment of the common areas and community facilities, if any.

(4) Income. – Defined in G.S. 105-277.1(b).

(5) Initial investment basis. – The most recent sales price, excluding any silent mortgage amount, of community land trust property.

(6) Qualifying owner. – A North Carolina resident who (i) occupies, as owner or lessee, community land trust property as a permanent residence and (ii) is part of a household, the annual income of which at the time of transfer and adjusted for family size is not more than one hundred percent (100%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.

(7) Resale restrictions. – Binding restrictions that affect the price at which a qualifying owner's interest in community land trust property can be transferred for value to a subsequent qualifying owner or the community land trust developer.

(8) Silent mortgage amount. – The amount of debt incurred by a qualifying owner that is represented by a deed of trust or leasehold deed of trust on community land trust property and that earns no interest and requires no repayment prior to satisfaction of any interest-earning mortgage or a subsequent transfer of the property, whichever occurs first.

(9) Transfer. – Any method of disposing of an interest in real property.

(c) Valuation. – The initial appraised value of community land trust property in the year the property first qualifies for classification under this section is the initial investment basis. In subsequent general reappraisals, the value of the community land trust property shall not exceed the sum of the restricted capital gain amount and the initial investment basis. The restricted capital gain amount is the market value of the community land trust property that would be established for the current general reappraisal if not for this classification (i) adjusted to the maximum sales price permitted pursuant to the resale restrictions effective for a hypothetical sale occurring on the date of reappraisal, if less, and (ii) subtracting the initial investment basis and any silent mortgage amount."

SECTION 2. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the ~~organization fails to construct~~property was not used for low- or moderate-income housing ~~on the site~~ within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 3. G.S. 105-282.1(a)(2)c. reads as rewritten:

"c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, ~~105-278, or 105-277.15.~~105-277.15, 105-277.17, or 105-278."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010.

HOUSE BILL 1586:
Community Land Trust Property Taxation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Reps. Luebke, Hall	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1586 would classify community land trust (CLT) property as a special class of property and require resale restrictions to be considered in determining the property tax value.

CURRENT LAW: Under G.S. 105-283, real property must be appraised at its true value, or the value a willing, able, and knowledgeable buyer would give to a willing, able, and knowledgeable seller for the property. In appraising true value, the assessor must "consider ... any ... factor that may affect its value." Community land trust property for low- and moderate-income families has restrictions on the sales price, and anecdotal evidence suggests inconsistent treatment of these resale restrictions as a "factor that may affect [a property's] value" for purposes of establishing a property tax value for this type of property.

Under G.S. 105-278.6(e), real property held by a nonprofit organization as a future site for housing for individuals or families with low or moderate incomes qualifies for a deferral of property taxes. Those taxes become due and payable if homes for low or moderate income families are not built on the land within five years.

BILL ANALYSIS: House Bill 1586 classifies community land trust property for special property tax valuation and establishes how resale restrictions should be used by an assessor in establishing property tax values for this type of property. Community land trust property is an improvement to real property that meets all of the following requirements:

- It is developed by a non-profit 501(c)(3) tax-exempt entity, which retains an interest in the property according to one of the following two models[1]:
    - The improvement is conveyed to the qualifying owner and the land on which the improvement is constructed is leased to the qualifying owner under a 99-year lease, renewable for an additional 99-year term.
    - The improvement and the land on which the improvement is constructed are leased to the qualifying owner under a 99-year lease, renewable for an additional 99-year term.
- An interest in the property is conveyed to a North Carolina resident who occupies the improvement, as owner or lessee, as a permanent residence and who is part of a household with an annual income, at the time of transfer and adjusted for family size, of not more than 100% of the local area median income.[2]
- Its resale value is governed by restrictions contained in the ground lease to ensure low-priced housing to subsequent qualifying owners.

[1] The first model is the model used by Durham County. The second model is the model used by Orange County. Wilmington, another community land trust being established, has not designated a model at this time.

[2] The local area median income for Durham and Orange Counties is equal to $49,938 for a family of one; $57,063 for a family of two; $64,188 for a family of three; $71,313 for a family of four; $77,000 for a family of five; $82,750 for a family of six; $88,750 for a family of seven; and $94,125 for a family of eight or more.

The tax value of community land trust property when the property first qualifies for this classification is equal to the actual sales price of the house to the qualifying owner, minus any silent mortgage amount.[3] In subsequent revaluations, the tax value of community land trust property is capped at the original sales price plus the amount of capital gain the qualifying owner could realize from the sale.

The bill also modifies G.S. 105-278.6(e) to provide that eligibility for the tax deferral program does not end in situations such as bankruptcy or foreclosure, where the qualifying owner's interest is re-acquired by the CLT and the CLT owns the property, *in toto*, during the listing period.

EFFECTIVE DATE: This act is effective for taxable years beginning on or after July 1, 2010.

BACKGROUND: S.L. 2008-146 classified certain low-income housing developments as a special class of property for which the value must be assessed by using the income approach to valuation. The tax assessor must take into account any applicable rent restrictions and may not include any federal tax credits for affordable housing in determining income. The property value determination is limited to actual rental income as opposed to the rental income similarly situated property not subject to rent restrictions would be able to generate as income.

This bill specifically applies to Community Land Trusts where the underlying land is owned by a nonprofit and the individual homes are owned by low-income individuals or families. These homes are subject to resale restrictions to ensure the homes are affordable for future families. These homes are currently appraised at market value for tax purposes although due to the restrictions, the homeowners could not sell the homes at market value.

Dan Ettefagh, counsel to House Finance, substantially contributed to this summary.

H1586-SMTD-143(e2) v2

[3] A silent mortgage is a mortgage that earns no interest and requires no repayment prior to the satisfaction of any interest-earning mortgage or the transfer of the property, whichever occurs first.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1586 (Second Edition)

SHORT TITLE: Community Land Trust Property Taxation.

SPONSOR(S): Representatives Luebke and Hall

FISCAL IMPACT ($)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES					
Durham County	**($6,885)**	**($6,885)**	**($6,885)**	**($6,885)**	**($6,885)**
City of Durham	**($5,250)**	**($5,250)**	**($5,250)**	**($5,250)**	**($5,250)**
Orange County	***Potential Negative Impact Depending on Board of Equalization Review***				
City of Carrboro					
City of Chapel Hill	***See Assumptions and Methodology***				
Carrboro-Chapel Hill School District					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Orange County, City of Chapel Hill, City of Carrboro, Carrboro-Chapel Hill School District, Durham County, City of Durham,

EFFECTIVE DATE: July 1, 2009

BILL SUMMARY:

H1586 classifies community land trust property for special property tax valuation and establishes how resale restrictions should be used by an assessor in establishing property tax values for this type of property. Community land trust property is an improvement to real property that meets all of the following requirements:

- It is developed by a non-profit 501(c)(3) tax-exempt entity, which retains an interest in the property according to one of the following two models[1]:
    - The improvement is conveyed to the qualifying owner and the land on which the improvement is constructed is leased to the qualifying owner under a 99-year lease, renewable for an additional 99-year term.

[1] The first model is the model used by Durham County. The second model is the model used by Orange County. Wilmington, another community land trust being established, has not designated a model at this time.

- The improvement and the land on which the improvement is constructed are leased to the qualifying owner under a 99-year lease, renewable for an additional 99-year term.

- An interest in the property is conveyed to a North Carolina resident who occupies the improvement, as owner or lessee, as a permanent residence and who is part of a household with an annual income, at the time of transfer and adjusted for family size, of not more than 100% of the local area median income.[2]
- Its resale value is governed by restrictions contained in the ground lease to ensure low-priced housing to subsequent qualifying owners.

The tax value of community land trust property when the property first qualifies for this classification is equal to the actual sales price of the house to the qualifying owner, minus any silent mortgage amount.[3] In subsequent revaluations, the tax value of community land trust property is capped at the original sales price plus the amount of capital gain the qualifying owner could realize from the sale.

The bill also modifies G.S. 105-278.6(e) to allow that tax benefit to apply to situations such as bankruptcy or foreclosure, where the qualifying owner's interest is re-acquired by the CLT and the CLT owns the property, *in toto*, during the listing period.

Source: Adopted from the bill analysis done by the Committee Counsel to House Finance July 9, 2009

ASSUMPTIONS AND METHODOLOGY:
House Bill 1586 identifies community land trust property as a special class of property and requires assessors to take the resale restrictions that apply to land trust property into consideration when valuing property for property tax purposes. The bill limits the assessed value of land trust property to what the property could be sold for on the day it is assessed. This will have the effect of lowering the value of land trust property for property tax purposes.

There are currently three qualifying community land trusts active in North Carolina: Durham Community Land Trust, Orange Community Housing and Land Trust, and the Cape Fear Housing Land Trust. The cities and counties in which these land trusts are located will potentially experience a negative fiscal impact.

The Orange Community Housing and Land Trust currently has 135 properties within its trust that are subject to property tax. Of these properties, 127 are located in Chapel Hill and 8 are located in Carrboro. The Orange Community Trust estimates that on average each of the Carrboro properties will drop by $36,449.3 in assessed value and that each of the Chapel Hill properties will drop by $9,970.13 in assessed value. The Orange Country Board of Equalization and Review is currently conducting a hearing regarding land trust property. If the Board rules in favor of the Trust, the ruling would require Orange County local taxing entities to include land trust selling restrictions

[2] The local area median income for Durham and Orange Counties is equal to $49,938 for a family of one; $57,063 for a family of two; $64,188 for a family of three; $71,313 for a family of four; $77,000 for a family of five; $82,750 for a family of six; $88,750 for a family of seven; and $94,125 for a family of eight or more.
[3] A silent mortgage is a mortgage that earns no interest and requires no repayment prior to the satisfaction of any interest- earning mortgage or the transfer of the property, whichever occurs first.

when assessing land trust property. If this scenario occurs, House Bill 1586 will have no fiscal impact. If the Board rules unfavorably to the land trust, House Bill 1586 will result in a revenue decrease for Orange County and its Municipalities. The revenue decrease will be equal to the local property tax rate applied to the average drop in assessed property values multiplied by the number of properties within the taxing jurisdiction. The chart below summarizes the potential fiscal impact to the local governments.

Potential Impact of HB 1586: Orange County

Local Taxing Entity	Tax Rate (per $100)	Total Drop in Value	Total Tax Loss
Orange County	0.998	$ (1,562,181.92)	$ (15,590.58)
City of Carrboro	0.686	$ (295,917.00)	$ (2,030.88)
City of Chapel Hill	0.581	$ (1,266,264.92)	$ (7,357.00)
Carrboro-Chapel Hill School District	0.230	$ (1,562,181.92)	$ (3,593.02)

The Durham Community Land Trust currently has 75 properties in its trust. The properties are located in the City of Durham. Of these, there are 20 properties whose property tax value will lower due to House Bill 1586. The Trust estimates that, on average, each house will decrease in value by $48,617. Multiplying the $48,617 decrease by the number of properties results in a $972,340 loss in taxable property value. Applying the $0.7081 Durham County property tax rate to this number results in the revenue loss to Durham County. This results in a $6,885.15 revenue loss in FY 2009-10. Applying the $0.5400 City of Durham property tax rate to the loss in taxable property value results in the revenue loss to the City of Durham. This results in a $5,250.64 revenue loss in FY 2009-10.

The Cape Fear Housing Land Trust is currently in the process of acquiring properties and does not anticipate any of their properties will be impacted by this legislation within the next ten years. Therefore, House Bill 1586 will have no fiscal impact on New Hanover County and its municipalities within the next five years.

SOURCES OF DATA: Orange Community Housing and Land Trust, Durham Community Land Trust, Cape Fear Housing Land Trust

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 14, 2009

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1166

Committee Substitute Favorable 6/1/09
Committee Substitute #2 Favorable 7/22/09
Fourth Edition Engrossed 7/23/09
Senate Commerce Committee Substitute Adopted 8/4/09

Short Title: Insurance Law Changes.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING INSURANCE PRODUCERS AND BROKERS, BAIL BONDSMEN, MOTOR CLUBS, PREMIUM FINANCE COMPANIES, AND COLLECTION AGENCIES, TO REQUIRE AN INSURER TO PROVIDE CERTAIN INFORMATION REGARDING A DECEASED PERSON'S LIFE INSURANCE TO A FUNERAL DIRECTOR OR ESTABLISHMENT, TO DELETE OBSOLETE REFERENCES TO ASSIGNMENTS OF ERROR, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-10 is amended by adding a new subdivision to read:

"(4a) "FINRA" means the Financial Industry Regulatory Authority or any successor entity."

SECTION 2. G.S. 58-33-26(e) reads as rewritten:

"(e) A variable life and variable annuity products license authorizes a resident agent to sell, solicit, or negotiate variable contracts if the agent satisfies the Commissioner that the agent has met the ~~National Association of Securities Dealers~~FINRA requirements of the Secretary of State of North Carolina."

SECTION 3. G.S. 58-33-26(p) reads as rewritten:

"(p) An individual shall not simultaneously hold ~~an agent's~~a property, casualty, or personal lines insurance license and an adjuster's license in this State. An individual who holds a ~~property and liability~~property, casualty, or personal lines insurance license may apply for an adjuster license without having to take the adjuster examination in G.S. 58-33-30(e) if the individual applies for the adjuster license within 60 days after surrendering the ~~property and liability~~property, casualty, or personal lines insurance license. An individual who holds an adjuster license may apply for a property and liability insurance license without having to take the property and liability insurance agent examination in G.S. 58-33-30(e) if the individual applies for the ~~property and liability~~property, casualty, or personal lines insurance license within 60 days after surrendering the adjuster license."

SECTION 4. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-33-48. Criminal history record checks.**

(a) An applicant for an insurance producer license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner. The applicant's fingerprints shall be certified by an authorized law enforcement

officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) This section does not apply to a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license."

SECTION 5. G.S. 58-33-32(k) reads as rewritten:

"(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. As used in this subsection, "administrative action" includes enforcement action taken against the producer by the ~~National Association of Securities Dealers.~~FINRA. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 6.(a) G.S. 58-33-35 is repealed.

SECTION 6.(b) G.S. 58-33-30(e)(1) reads as rewritten:

"(e) Examination.

(1) After completion and filing of the application with the Commissioner, ~~except as provided in G.S. 58-33-35,~~ the Commissioner shall require each applicant for license as an agent or an adjuster to take an examination as to the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner."

SECTION 7. G.S. 58-33-40(a) reads as rewritten:

"(a) ~~No~~ Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed."

SECTION 8. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. ~~Upon the appointment, the~~The individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited."

SECTION 9. G.S. 58-33-40(c) and (h) are repealed.

SECTION 10. G.S. 58-33-46(a)(2) and (a)(6) read as rewritten:

"**§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.**

(a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

...

(2) Violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the ~~National Association of Securities Dealers.~~FINRA.

...

(6) Having been convicted of a ~~felony;~~felony or a misdemeanor involving dishonesty, a breach of trust, or ~~a misdemeanor involving~~ moral turpitude."

SECTION 11. G.S. 58-21-65(f) reads as rewritten:

"(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter."

SECTION 12. G.S. 58-71-50(a) reads as rewritten:

"(a) An applicant for a license as a bail bondsman or runner shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant."

SECTION 13. G.S. 58-71-70 reads as rewritten:

"**§ 58-71-70. Examination; fees.**

Each applicant for a license as a professional bondsman, surety bondsman, or runner shall appear in person and take ~~a written~~an examination prepared by the Commissioner testing the applicant's ability and qualifications. Each applicant is eligible for examination 30 days after the date the application is received by the Commissioner. If an applicant is unable to complete the examination requirement within 30 days after notification from the Commissioner of the applicant's eligibility to take the examination, the applicant shall again be subject to the criminal history record check prescribed by G.S. 58-71-50(a) so that current information is available for review with the application. Each examination shall be held at a time and place as designated by the Commissioner. Each applicant shall be given notice of the designated time and place no sooner than 15 days before the examination. The Commissioner may contract with a person to process applications for the examination and administer and grade the examination in the same manner as for agent examinations under Article 33 of this Chapter.

The fee for each examination is twenty-five dollars ($25.00) plus an amount that offsets the cost of any contract for examination services. This examination fee is nonrefundable.

An applicant who fails an examination may take a subsequent examination, but at least one year must intervene between examinations."

SECTION 14. G.S. 58-71-45 reads as rewritten:

"**§ 58-71-45. Terms of licenses.**

A license issued to a bail bondsman or to a runner authorizes the licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal licenses. After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel ~~the runner's license and~~ the runner's authority to act for the professional bondsman."

SECTION 15. G.S. 58-71-120 reads as rewritten:

"**§ 58-71-120. Bail bondsman to give notice of discontinuance of business; cancellation of license.**

Any bail bondsman who discontinues writing bail bonds during the period for which ~~he~~ the bail bondsman is licensed shall ~~notify the clerks of the superior court with whom he is registered and~~ return ~~his~~ the license to the Commissioner for cancellation within 30 days after ~~such~~ the discontinuance."

SECTION 16. G.S. 58-70-40(b) reads as rewritten:

"(b) If an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere."

SECTION 17. G.S. 58-70-40 is amended by adding a new subsection to read:

"(e) A collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 18. Article 69 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-69-60. Notification of criminal or administrative actions.**

(a) If an individual proprietor, officer, or partner of a motor club has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the motor club shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) A motor club shall report to the Commissioner any administrative action taken against the motor club by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 19. Article 35 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-35-22. Notification of criminal or administrative actions.**

(a) If an individual proprietor, officer, or partner of an insurance premium finance company has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the premium finance company shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) An insurance premium finance company shall report to the Commissioner any administrative action taken against the premium finance company, including any branch office, by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 20. G.S. 58-2-69(b) reads as rewritten:

"(b) Every applicant for a license shall inform the Commissioner of the applicant's residential ~~address.~~address and provide the applicant's e-mail address to which the Commissioner can send electronic notifications and other messages. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new ~~residence.~~residence or obtains a different e-mail address. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee shall notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars ($50.00) to the Commissioner."

SECTION 21. G.S. 58-70-5 is amended by adding two new subsections to read:

"(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subsection (k) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subsection (k) of this section."

SECTION 22. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-70-6. Definitions.**

For purposes of G.S. 58-70-5 and this section, the following definitions apply:

(1) An "affiliate" of or a person "affiliated" with a specific person. – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.

(2) Control, including the terms "controlling," "controlled by," and "under common control with." – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.

(3) Holding company system. – An entity comprising two or more affiliated persons.

(4) Person. – An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

(5) Subsidiary of a specified person. – An affiliate controlled by that person indirectly through one or more intermediaries or directly.

(6) Voting security. – Includes any security convertible into or evidencing a right to acquire a voting security."

SECTION 23. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-58-97. Provision of life insurance information upon notification of insured's death.**

(a) Any person licensed to practice funeral directing or any employee of a funeral establishment licensed under the provisions of Article 13A of Chapter 90 of the General Statutes providing funeral service, as that term is defined in G.S. 90-210.20, for a deceased person insured or believed to be insured under a contract of life insurance may request information regarding the deceased person's life insurance contracts by providing an insurer with (i) a copy of a notification of death filed pursuant to G.S. 130A-112 and (ii) written authorization from the person or persons with legal authority to direct disposition of the deceased's body as prescribed under G.S. 90-210.124 or G.S. 130A-420. As soon as possible after receipt of the request, the life insurance company shall inform the person authorized by this section to make an inquiry of the following:

(1) The existence of any contract insuring the life of the deceased person.

(2) Any beneficiaries on record under any life insurance contract insuring the life of the deceased person.

(3) The amount of any liens or loans outstanding on the policy.

(4) The amount of benefits payable to the beneficiaries.

(5) Whether the policy has been reinstated within the last 24 months.

The insurer shall provide a claim form to any person or assignee making the request.

(b) If any person making a written request under subsection (a) of this section who has provided all the information required by subsection (a) of this section does not receive a timely response from the insurer, then the person may refer the request to the Consumer Services Division of the Department, which shall treat the referral as a consumer complaint. The referral shall include all the information provided to the insurer under subsection (a) of this section as well as copies of all communications and information received from the insurer regarding the request for information.

(c) If the beneficiary of record under the life insurance contract is not the estate of the deceased, then any person authorized to request information under subsection (a) of this section shall make reasonable efforts to locate the beneficiaries within 100 hours of receiving information from the insurance carrier regarding any life insurance contracts and shall provide to all beneficiaries all documents and information obtained from the insurance carrier. The person obtaining the information also shall inform all beneficiaries in writing in bold print that "THE BENEFICIARY OF A LIFE INSURANCE POLICY HAS NO LEGAL DUTY OR OBLIGATION TO SPEND ANY OF THAT MONEY ON THE FUNERAL, DEBTS, OR OBLIGATIONS OF THE DECEASED" and shall do so before discussing with the beneficiaries financial arrangements for burial of the deceased.

(d) Any licensee or employee of a funeral establishment licensed under Article 13A of Chapter 90 of the General Statutes who makes a false request for information under this section or fails to do that required by subsection (c) of this section shall be deemed guilty of fraud or misrepresentation in the practice of funeral service as defined in G.S. 90-210.25(e)(1)b. and unfit to practice funeral service."

SECTION 24. G.S. 58-39-75 is amended by adding a new subdivision to read:

"(4a) To a person making an inquiry under G.S. 58-58-97 when providing funeral service to a deceased insured; or".

SECTION 25. The Department shall report to the Chairs of the House Insurance Committee and the Senate Commerce Committee by March 1, 2011, the number of insurance policy beneficiary information inquiries referred to it under G.S. 58-58-97, as enacted by this act; the identity of the insurers whose refusal or delay resulted in the referrals; the reasons the

insurers were unable to respond to the inquiries; and any recommendations for administrative, legislative, or regulatory changes needed to enhance the ability of individuals arranging for funeral services to obtain timely access to information about life insurance policies held by a deceased person.

SECTION 26. G.S. 58-2-85 reads as rewritten:

"**§ 58-2-85. Procedure on appeal under § 58-2-80.**

Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to the following provisions:

(1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of appeal.~~appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commissioner.~~

(2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

~~(3) The Commissioner may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commissioner.~~

(4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(5), (6) Repealed by Session Laws 1975, c. 391, s. 11.

(7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.

(8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.

(9) In any appeal to the Court of Appeals, the complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.

(10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law."

SECTION 27. G.S. 58-2-90 reads as rewritten:

"**§ 58-2-90. Extent of review under § 58-2-80.**

(a) On appeal the court shall review the record ~~and the exceptions and assignments of error~~ in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any action of the Commissioner. The court may affirm or reverse the decision of the Commissioner, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commissioner's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional provisions, or
(2) In excess of statutory authority or jurisdiction of the Commissioner, or
(3) Made upon unlawful proceedings, or
(4) Affected by other errors of law, or
(5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
(6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. ~~The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commissioner.~~

(d) The court shall also compel action of the Commissioner unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commissioner under the provisions of Articles 1 through 64 of this Chapter shall be prima facie correct."

SECTION 28. If Senate Bill 660 becomes law, then Section 3 of that act reads as rewritten:

"**SECTION 3.** This act becomes effective ~~October 1, 2009,~~ January 1, 2010. and applies to motor vehicle liability insurance policies issued or renewed on or after that date."

SECTION 29. Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18, and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. Sections 26 and 27 of this act become effective October 1, 2009, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1166:
Insurance Law Changes.-AB

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Heather Fennell
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***House Bill 1166 is an agency bill that makes a number of changes to the laws related to licensing property, casualty or personal lines insurance agents, bail bondsmen, surplus lines carriers, collection agencies, insurance premium finance companies, and authorizes the release of life insurance coverage and benefits information to certain persons providing funeral services.***

BILL ANALYSIS:

Section 1 provides that the Financial Industry Regulatory Authority or any successor entity may be referred to as "FINRA" in Article 33 of Chapter 58

Sections 2, 5 and 10 substitute FINRA for the current term "National Association of Securities Dealers" in G.S. 58-33-26(e), G.S. 58-33-32(k), and G.S. 58-33-46(a) (2).

Section 3 clarifies existing law which provides that an individual may not simultaneously hold both a license as an adjuster and a license for property, casualty or personal lines insurance.

Section 4 requires individuals applying for a license as an agent, broker, limited representative, adjuster or motor vehicle damage appraiser to submit to a criminal background check as part of the licensure process. This requirement becomes effective October 1, 2010 and would apply to applications made on or after that date.

Section 6 repeals G.S. 58-33-35 which exempts certain applicants for an agent's license from taking an examination.

Sections 7 and 8 clarify the process by which an insurer may appoint an individual as an agent and requires the insurer to notify the Commissioner within 15 days of that appointment.

Section 9 repeals provisions that are made redundant because of the changes in Sections 7 and 8.

Section 10 allows the Commissioner to suspend, revoke, refuse to renew or put on probation an insurance license if the individual has been convicted a felony involving moral turpitude.

Section 11 requires that nonresident surplus lines licensees are to be licensed under the procedures applicable to agents, brokers, limited representatives, adjuster and motor vehicle damage appraisers.

Section 12 allows the Commissioner to specify the manner by which applicants for a bail bondsman or runner licenses must submit their fingerprints for a criminal background check.

Section 13 requires an applicant for a bail bondsman or runner license who is not able to complete the examination requirement within 30 days after notification of the commissioner to submit to another criminal background check.

Section 14 removes a provision that appears to allow a professional bondsman who ceases to employ a runner to cancel that runner's license.

Section 15 removes a provision that required a bail bondman who discontinues writing bail bonds to notify the clerk of court of that discontinuance

Sections 16, 17, 18 and 19 require owners of collection agencies, motor clubs and insurance premium finance companies to notify the Commission of any criminal conviction involving dishonesty or breach of trust and of any administrative action by another state or another governmental agency. These requirements become effective October 1, 2009.

Section 20 requires applicants for a license under Chapter 58 to provide the Commissioner with an e-mail address as well as a residential address, and to notify the Commissioner of any change in the e-mail address.

Section 21 adds two new subsections to G.S. 58-70-5 "Application to Commissioner for permit" - Subsection (r) allows applicants who are subsidiaries of a parent holding company, and who apply for a permit to "carry on the collection agency business..." to file the parent company's balance sheet accompanied by a guarantee by the parent company of the subsidiary's performance, instead of the current requirement that the subsidiary file its own balance sheet. Subsection (s) provides that the parent company remains responsible for the guarantee of performance provided under (r), unless a new parent company acquires the subsidiary and files a new guarantee of the subsidiary's performance, or the subsidiary files its own balance sheet as provided under current law.

Sections 22 sets forth a definition section for application in Article 70 "Collection Agencies".

Section 23 allows for persons licensed to practice funeral directing or employees of licensed funeral homes to request information from an insurer regarding coverage of a deceased person under a life insurance contract *(was "Any person providing funeral service...")*. Requires that requestor provide insurer with a copy of the notification of death and a written authorization from the deceased person's next of kin or person financially responsible for the services.

The new provision then directs the insurer to inform the requestor of:

- The existence of any contract insuring the life of the deceased.
- Beneficiaries on record.
- The amount of outstanding liens or loans on the policy.
- The amount of benefits payable to the beneficiaries.
- Whether the policy has been reinstated within the last 24 months. *(added in new PCS)*

The new provision allows persons not receiving timely responses from insurers to refer the requests, with accompanying information, to the Department for follow-up as a consumer complaint.

Subsection (c) to the proposed G.S. 58-58-97 directs persons who have received the information to 'make reasonable efforts' to locate the beneficiaries within 100 hours of receiving the information and to provide the beneficiaries with all documentation and information they received from the insurer, in those cases where the beneficiary of record is not the estate of the deceased. This new subsection also requires recipients of this information to inform all beneficiaries, in bold print, that they have no obligation to spend any of the life insurance money on the funeral or other debts or obligations of the deceased, before they may discuss with the beneficiaries financial arrangements for burial of the deceased.

The new subsection (d) deems anyone making a false request for information under the new section or failing to comply with the requirements of subsection (c) to be guilty of fraud or misrepresentation in the practice of funeral service and unfit to practice funeral service. Pursuant to G.S. 90-210.25(e), this would authorize the Board to suspend, revoke or refuse to renew a license, or to accept from the licensee payment of a penalty not to exceed $5,000.

Section 24 adds "...a person providing funeral service to a deceased insured making an inquiry under G.S. 58-58-97." to the list of persons currently authorized under G.S. 58-39-75 to be given personal or privileged information about an individual by an "...insurance institution, agent, or insurance-support organization...".

Section 25 directs the Department to report to the Chairs of the House Insurance and Senate Commerce committees by March 1, 2011 a range of information (including the number of insurance policy beneficiary information inquiries referred to it, the identities of insurers involved, reasons for delays, etc.) relating to requests of insurers referred to the Department for follow-up under the provisions of the new G.S. 58-58-97.

Sections 26 and 27 amend G.S. 58-2-85 and 58-2-90 respectively concerning appeals of the Commissioner's final decisions to the N.C. Court of Appeals. These sections delete language requiring exceptions to the final order to be set forth with the Commissioner and assignments of error for the Court's review. The North Carolina Court of Appeals no longer requires assignments of error.

Section 28 delays the effective date of the changes to the treatment of diminution in value in in autor insurance enacted in Senate Bill 660, which has been enacted by the General Assembly, but not yet signed by the Governor.

EFFECTIVE DATE: Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18 and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. The remainder of this act is effective when it becomes law

Tim Hovis, Kory Goldsmith, Ben Popkin, Staff Attorneys, substantially contributed to this summary.

H1166-SMTD-142(e5) v2

HOUSE BILL 1637

Committee Substitute Favorable 7/6/09
Committee Substitute #2 Favorable 7/20/09
Senate Commerce Committee Substitute Adopted 8/4/09

Short Title: Modernize Precious Metal Business Permitting. (Public)

Sponsors:

Referred to:

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE RECORD KEEPING OF PRECIOUS METALS PURCHASES BY DEALERS, TO SUBJECT ALL DEALERS IN PRECIOUS METALS TO SIMILAR RECORD-KEEPING REQUIREMENTS, TO INCREASE PRECIOUS METALS PERMITTING FEES, TO REQUIRE THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON EMPLOYEES OF PRECIOUS METALS DEALERS, AND TO MAKE VARIOUS OTHER CHANGES TO THE PRECIOUS METALS PERMITTING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-164 reads as rewritten:

"**§ 66-164. Definitions.**

~~Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:~~ The following definitions apply in this Article:

(1) ~~"Dealer" means a~~ Dealer. – A person who ~~engages in the business of purchasing~~ purchases precious metals from the ~~public~~ public, other than by an exempted transaction, in the form of jewelry, flatware, silver ~~services~~ services, or other forms and holds himself or herself out to the public by signs, ~~advertising~~ advertising, or other methods as engaging in such ~~purchases~~ purchases, including any independent contractor purchasing precious metals under any arrangement in any department ~~store;~~ store. ~~provided, however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiquities and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-166. Provided further that pawnbrokers as defined in G.S. 91A-3 shall be exempted insofar as they~~

~~accept~~ An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this Article and (ii) not subject to the requirements of this Article, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:

a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.

b. ~~pawns or pledges~~ Pawns, pledges, or purchases of items made of precious ~~metals under the provisions of Chapter 91A of the General Statutes.~~ metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of Chapter 91A of the General Statutes.

c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

(2) ~~"Local law enforcement agency" means:~~ Local law enforcement agency. – The term means the following, as applicable:

a. The county police ~~force; or~~ force, if the dealer's business is located within a county with a county police force and outside the corporate limits of a municipality.

b. ~~The county sheriff's office in a county with no county police force for any business located outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force. "Local law enforcement agency" means the municipal police for any business located within the corporate limits of a municipality having a police force.~~ The municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force.

c. The county sheriff's office of the county in which the dealer's business is located, if neither sub-subdivision a. nor b. of this subdivision applies.

(3) ~~"Precious metal" means gold,~~ Precious metal. – Gold, silver, ~~or platinum~~ platinum, or palladium, as defined below, but excluding coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.

a. ~~"Gold" is defined as any~~ Gold. – Any item or article containing ~~ten (10)~~ 10 ~~karat~~ karats of gold or more which may be in combination or alloy with any other metal.

b. ~~"Silver" is defined as any~~ Silver. – Any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal or which is marked 'sterling'.

c. ~~"Platinum" is defined as any~~ Platinum. – Any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any other metal.

d. Palladium. – Any item or article containing 950 parts per thousand or more of palladium which may be in combination or alloy with any other metal.

~~For purposes of this Article, "precious metal" does not include coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.~~"

SECTION 2. G.S. 66-165 reads as rewritten:

"**§ 66-165. ~~Permits required.~~Permits.**

(a) Dealer Permit. – Except as provided in subsection (c) of this section, it ~~shall be~~ is unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local ~~law enforcement~~ law enforcement agency. The ~~form of the permit and application therefor shall be as approved by the~~ Department of Crime Control and Public ~~Safety.~~ Safety shall approve the forms for both the application and the permit. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local ~~law enforcement~~ law enforcement agency which is used for ~~the conduction of~~ conducting a precious metals business, and each permit shall designate the location, place or premises to which it applies. ~~Such~~ No business shall ~~not~~ be conducted in ~~any other~~ a place other than that designated in the permit, ~~and no business shall be conducted~~ or in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist ~~home as defined in G.S. 105-61.~~home. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for ~~each dealer's permits~~ a permit within each jurisdiction ~~shall be ten dollars ($10.00)~~is one hundred eighty dollars ($180.00) to provide for the administrative costs of the local ~~law enforcement~~ law enforcement agency, including the purchase of required ~~forms.~~ forms and the cost of conducting the criminal history record check of the applicant. The fee ~~shall not be~~ is not refundable even if the permits are denied or later suspended or revoked. ~~Such permits shall be~~ A permit issued under this section is in addition to and not in lieu of other business licenses and ~~are~~ is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit shall furnish the local ~~law enforcement~~ law enforcement agency with the following information:

(1) ~~His~~ The applicant's full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five ~~years;~~years.
(2) Current address, and all addresses used by the applicant during the preceding five ~~years;~~years.
(3) Physical ~~description;~~description.
(4) ~~Age;~~Age.
(5) Driver's license number, if any, and state of ~~issuance;~~issuance.
(6) Recent ~~photograph;~~photograph.
(7) Record of felony ~~convictions;~~convictions.
(8) Record of other convictions during the preceding five ~~years; and~~years.
(9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with

the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant ~~who, within five years prior to the date of application,~~who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who ~~has, within five years prior to the date of application,~~has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Employee Requirements. – Every employee engaged in the precious ~~metal~~ metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local ~~law enforcement~~ law enforcement agency and have his or her photograph taken by the agency. The employee also shall consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to ~~him~~ the employee a certificate of compliance with this section upon the applicant's payment of the sum of ~~three dollars ($3.00)~~ten dollars ($10.00) to the agency. The ~~permit~~ certificate shall be renewed annually for a three-dollar ($3.00) fee and shall be posted in the work area of the ~~permit holder.~~registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under G.S. 66-169(a).

The Department of Justice may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the employee,

electronic database that prevents record deletion, tracks all modifications to records, and provides for electronic signatures.

(c) The ~~record book~~ records shall be open at all reasonable times to inspection on the premises by ~~law enforcement agencies~~ law enforcement agencies, and an individual record shall ~~not~~ be ~~destroyed~~ retained for at least two years after a transaction. If a dealer maintains a record book rather than an electronic database, the book shall be retained until at least two years following the last ~~transaction which the record book reflects.~~ recorded transaction.

(d) A copy of each consecutively numbered record ~~book~~ entry shall be filed within 48 hours of the transaction in the office of the local ~~law enforcement~~ law enforcement agency. ~~Mailing the required copy to the local law enforcement agency within 48 hours shall constitute compliance with this section.~~ Records shall be filed in the manner authorized by the local law enforcement agency, which may include reporting electronically by transmission over a computer network, by facsimile machine, or by hand delivering hard copies to the local law enforcement agency. In any case where a technological failure prevents a dealer from reporting electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of the record to the local law enforcement agency. Regardless of the manner in which the local law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon the request of a law enforcement agency.

(e) The files of local ~~law enforcement~~ law enforcement agencies ~~which contain such~~ that contain copies of ~~record book entries~~ records shall not be subject to inspection and examination as authorized by G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of such files, unless the person is one specifically authorized by the local ~~law enforcement~~ law enforcement agency to have access ~~thereto~~ for purposes of ~~law enforcement~~ law enforcement investigation or civil or criminal proceedings, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined up to five hundred dollars ($500.00) in the discretion of the court.~~court but not in excess of five hundred dollars ($500.00).~~

~~Every merchant to whom an exemption has been issued pursuant to G.S. 66-166 shall maintain a book in which shall be recorded, at the time of any purchase of precious metal, a description of the specific items purchased and the date of the transaction. This book shall be open at all reasonable times to inspection on the premises by law enforcement agencies and shall not be destroyed until two years following the last transaction which the record book reflects.~~"

SECTION 5. G.S. 66-170 reads as rewritten:

"**§ 66-170. Items not to be modified.**

No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any ~~such~~ item be removed from the licensed ~~premises~~ premises, or other location specified on the application for a special occasion permit, for a period of ~~five~~ seven days from the date the ~~purchase was made.~~ transaction was reported in accordance with G.S. 66-169."

SECTION 6. This act becomes effective October 1, 2009. No dealer who is required to be licensed under this act, but who was not required to be licensed prior to the effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing precious metals without a license during the period between October 1, 2009, and January 1, 2010.

HOUSE BILL 1637:
Modernize Precious Metal Business Permitting

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Reps. Samuelson, Dickson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***House Bill 1637 amends the provisions governing the regulation of persons engaged in the business of purchasing precious metals as follows:***

- ***Eliminates the 10% rule (exemption from licensing requirements for dealers whose second hand purchases of precious metals are less than 10% of their total purchases from the public).***
- ***Clarifies transactions that are exempt from regulation.***
- ***Exempts all pawnbroker transactions from regulation under the precious metals article.***
- ***Adds palladium as a regulated metal.***
- ***Increases the fee for a permit from $10 to $180 and increases the fee for registration of an employee from $3 to $10 with an annual renewal fee of $3.***
- ***Requires employees of dealers to consent to criminal history checks and provides that the person may not be employed by the dealer if the person refuses to consent or if the person has been convicted of a felony and has not had citizenship rights restored for at least 5 years.***
- ***Exempts employees from registration if they are only involved in precious metals purchases incidentally to other job responsibilities and the transactions are overseen by a registered employee or licensed dealer.***
- ***Requires a dealer who applies for a special occasion permit to provide a physical address where purchased items are to be kept for the required hold period.***
- ***Allows dealers to keep records electronically, but reporting would be in the manner authorized by the law enforcement agency.***
- ***Provides that purchased items may not be sold or disposed of for a period of 7 days after a transaction is reported.***

CURENT LAW: Article 25 of Chapter 66 of the General Statutes provides for the regulation of persons who engage in the business of purchasing precious metals (gold, silver, and platinum) from the public. "Precious metals" do not include coins, medals, tokens, or art ingots. A dealer must obtain a permit from the local law enforcement agency and is required to keep records of all transactions to be submitted to the law enforcement agency on an ongoing basis. Those requirements do not apply to a merchant whose purchases of precious metals from the public are 10% or less of the merchant's total purchases of secondhand items. Also exempt from regulation under this Article are purchases made directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories, and pawns or pledges of items made of precious metals made to pawnbrokers under Chapter 91A.

BILL ANALYSIS: House Bill 1637 would amend Article 25 of Chapter 66 of the General Statutes in the following ways:

Eliminate 10% rule. Under current law, a dealer may apply for an exemption from licensure requirements if the dealer's purchases of precious metals from the public are 10% or less of the dealer's total purchases of secondhand items. The dealer is required to apply for the exemption with the law enforcement agency each year. In any month that purchases exceed 10%, the dealer is required to file notice with the law enforcement agency. In practice, there seems to be confusion on the part of dealers and law enforcement about this exemption. The bill would eliminate the exemption, so that all dealers would be subject to licensing requirements.

Clarify exempt transactions. Under the current law, the following transactions are exempt from regulation:

- Purchases made by permanently located retail merchants directly from manufacturers or wholesalers of precious metals for their inventories.
- Pawns or pledges of items made of precious metals under the provisions of Chapter 91A (regulation of pawnbrokers). Purchases by pawnbrokers are not exempt, which causes overlap of the precious metal dealer and pawnbroker statutes, which include similar record keeping and hold provisions.

The bill would reorganize and clarify the statute and specifically list the following as "exempt transactions":

- Purchases made by permanently located retail merchants directly from manufacturers or wholesalers of precious metals for their inventories.
- Pawns, pledges, *and purchases* of items made of precious metals if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under Chapter 91A (this would eliminate the overlap for pawnbrokers and take them out of the precious metals article entirely).
- Trades of precious metals entered into by permanently located retail merchants where money is not paid for the item.

Palladium. Article 25 currently regulates purchases of gold, silver, and platinum. The bill would add palladium as a precious metal regulated under those provisions. Palladium would be defined as any item or article containing 950 parts per thousand or more of palladium which may be in combination with any other metal.

Fee increase. Under current law, the annual fee for a precious metals dealer permit is $10. The bill would increase the annual permit fee for dealers to $180 and provides that the fee includes the cost of the background check of the dealer and special occasion applicant. An employee of a dealer is required to register his or her name and address with the local law enforcement agency within 2 days of being employed and pay a fee of $3. The bill would increase the registration fee to $10 with an annual renewal fee of $3.

Physical address required for special occasion permit. Under current law, a dealer can apply for a special occasion permit, which allows the dealer to make purchases in various locations in the state that are not permanent. This makes it difficult or impossible for the dealer to comply with the required hold period. The bill would require an applicant for a special occasion permit to provide a physical address where the items are purchased for purposes of satisfying the required hold period. The address would have to be the location where the item was purchased or another address within the same law enforcement jurisdiction, if a separate location is approved by the agency issuing the permit. The dealer

would also be required to make the items available for inspection by law enforcement at all reasonable times.

Criminal history checks for employees. Under current law, an applicant for a dealer permit is required to undergo a criminal record check and may not be issued a permit if the applicant has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar charges within the previous 5 years. Employees of dealers are required to register with the local law enforcement agency but are not required to undergo criminal background checks. The bill would require employees to consent to criminal background checks. If the person refuses the check or has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar charges, and the person's citizenship rights have not been restored for at least 5 years prior to registering, then the person may not be employed by a licensed dealer. The bill would provide that an employee who is only engaged in precious metals purchasing incidentally to other job responsibilities would not be required to register and undergo a background check as long as any transaction the employee is involved with is overseen by a registered employee or licensed dealer. The bill also amends the requirements for licensees with regard to felony convictions, providing that they must also have had citizenship rights restored at least 5 years prior to application.

Records of transactions maintained electronically. Precious metal dealers are required to maintain records of all transactions, including the manufacturer's name, the model, model number, serial number, and engraved numbers or initials on the item; the date of the transaction; the name, sex, residence, phone number, and drivers license number of the seller; and the signatures of the dealer and seller. Under current law, a dealer's records of transactions must be maintained in record books, and a copy of each record book entry must be filed in the office of the local law enforcement agency within 48 hours of a transaction. The bill would allow the dealers to maintain records of transactions electronically in a database that prevents record deletion, tracks modifications, and allows for electronic signatures. It would also provide that the law enforcement agency may determine the manner of reporting required by the dealer (either electronic, by fax, or hand delivery), but the agency must allow the dealer to hand deliver a hard copy if a technological failure prevents reporting electronically or by fax. The dealer would also still be required to provide hard copies of records upon request of the agency.

Time restriction on selling or disposing of purchased items. When a dealer purchases an item, current law prohibits the dealer from selling or otherwise disposing of the item for a period of 5 days following the date of purchase. The bill would amend the law to prohibit the dealer from selling or otherwise disposing of the item for a period of 7 days after the record of the transaction is reported.

EFFECTIVE DATE: The bill would become effective October 1, 2009. However, a dealer that is required by the act to be licensed, and who is not required under the current law to be licensed, would not be guilty of engaging in the precious metals business without a license until January 1, 2010. This grace period is provided because there is a 30-day waiting period for issuance of a permit.

H1637-SMTD-141(e4) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1637 (Third Edition)

SHORT TITLE: Modernize Precious Metal Business Permitting.

SPONSOR(S): Representatives Dickson and Samuelson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES					
Local Law Enforcement	**$162,832+**	**$149,328+**	**$141,825+**	**$134,688+**	**$128,100+**
Justice	***At least $26,624 increase in revenues during FY 09-10. Potential increase in future fiscal years depending on the number of new hires and/or stores*. ***				
EXPENDITURES					
Local Law Enforcement	***At least $30,590 increase in expenditures during FY 09-10. Potential increase in future fiscal years depending on the number of new stores.***				
Correction	**Indeterminate fiscal impact**				
Probation	**Indeterminate fiscal impact**				
Judicial	**Indeterminate fiscal impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, Local Law Enforcement

EFFECTIVE DATE: Effective October 1, 2009. However, a dealer that is required by the act to be licensed, and who is not required under the current law to be licensed, would not be guilty of engaging in the precious metals business without a license until January 1, 2010. This grace period is provided because there is a 30-day waiting period for issuance of a permit.

BILL SUMMARY:

House Bill 1637 amends the provisions governing the regulation of persons engaged in the business of purchasing precious metals as follows:

- Eliminates the 10% rule (exemption from licensing requirements for dealers whose second hand purchases of precious metals are less than 10% of their total purchases from the public).
- Clarifies transactions that are exempt from regulation.
- Exempts all pawnbroker transactions from regulation under the precious metals article.
- Increases the fee for a permit from $10 to $180 and increases the fee for registration of an employee from $3 to $10 with an annual renewal fee of $3.
- Requires employees of dealers to consent to criminal history checks and provides that the person may not be employed by the dealer if the person refuses to consent or if the person has been convicted of a felony and has not had citizenship rights restored for at least 5 years.
- Exempts employees from registration if they are only involved in precious metals purchases incidentally to other job responsibilities and the transactions are overseen by a registered employee or licensed dealer.
- Requires a dealer who applies for a special occasion permit to provide a physical address in the State where purchased items are to be kept for the required hold period.
- Allows dealers to keep records electronically, but reporting would be in the manner authorized by the law enforcement agency. Provides that purchased items may not be sold or disposed of for a period of 7 days after a transaction is reported.

This differs from previous editions of the bill in that it reduces the permit fee from $250 to $180. It further provides that the permit fee includes the cost of the background check of the dealer. The bill requires a special occasion permittee to identify a physical address in this State where purchased items will be held for the required 7-day period. The bill would require that address to be located in the law enforcement jurisdiction in which the purchase is made. It also makes technical and stylistic changes.

Source: Adopted from the summary done by the committee counsel to House Finance on July 16, 2009

ASSUMPTIONS AND METHODOLOGY:

Under current law, persons engaging in the business of purchasing precious metals from the public must obtain a permit from local law enforcement agencies and keep records of all transactions to be submitted to the law enforcement agencies on an on-going basis. The requirements currently apply to merchants whose purchases of precious metals from the public are 10% or less of his or her total purchases of secondhand items. Pawnbrokers are exempt from these requirements. House Bill 1637 amends these laws by eliminating the 10% rule and increasing the fee for a permit from $10 to $180 and requires that part of this fee be used to pay for the background checks of store owners. It also increases the fee for registration of an employee from $3 to $10 with an annual renewal fee of $3.

According to the North Carolina Jewelers Association, there are around 859 jewelry retail outlets in the state. Each of these outlets engages, to some extent, in the buying precious metals from the public. Although current law requires most of these retail outlets to register with local law enforcement, in the past there has been the misconception in most counties that these outlets are exempt from permitting requirements. The only county that currently regulates jewelry retail outlets is Mecklenburg County. According to the Charlotte-Mecklenburg Police, there are around 54 of these outlets in Mecklenburg County. Therefore, with the exception of outlets in Mecklenburg County, the permit fee increase is the equivalent of a new fee. Due to current economic conditions, the Association expects the number of jewelry outlets to decline by 5% each year. Unfortunately, it cannot be predicted where this decrease will be

concentrated. This analysis assumes that none of the stores in Mecklenburg County will close. The revenue increase to local law enforcement will be equal to true fee increase multiplied by the number of stores paying the fee. This results in a $154,620 revenue increase for FY 2009-10. The chart below summarizes the fiscal impact of increasing the precious metal permitting fee.

HB 1637: Impact of Increasing the Permitting Fee

Fiscal Year	Number of Retail Outlets	Revenue Increase
FY 2009-10	859	$154,620
FY 2010-11	816	$146,880
FY 2011-12	775	$139,500
FY 2012-13	736	$132,480
FY 2013-14	700	$126,000

House Bill 1637 also increases the registration fee for an employee from $3 to $10 with an annual fee of $3. It is not known exactly how many employees work at the retail jewelry outlets. Assuming that there is at least one employee at these outlets excluding the permit holder, there will be at least 859 employees in FY 2009-10. Mecklenburg County is the only county that currently registers these employees and therefore, employees located in this county will be charged the $3 renewal fee in FY 2009-10. The remaining employees in the state will be charged the $10 fee in the first year. The revenue increase to local law enforcement will be equal to the number of employees in the state multiplied by the registration fee. This results in an $8,212 revenue increase for FY 2009-10. The chart below summarizes the fiscal impact of increasing the employee registration fee, assuming the same employees work at the outlets during the next five fiscal years.

HB 1637: Impact of Increasing Employee Registration Fee

Fiscal Year	Number of Employees	Revenue Increase
FY 2009-10	859	$ 8,212
FY 2010-11	816	$ 2,448
FY 2011-12	775	$ 2,325
FY 2012-13	736	$ 2,208
FY 2013-14	700	$ 2,100

Current Law requires the owner of a retail jewelry outlet to have their background checked as part of outlet permit application process. Because only Mecklenburg County has been enforcing this law, background checks will need to be performed for all existing stores outside of this county. House Bill 1637 stipulates that the cost of the background checks must come out of the $180 permit fee. This will manifest as an increase in expenditures for local law enforcement equal to the number of unlicensed stores multiplied by the $38 background check fee. This results in a $30,590 increase in expenditures in FY 2009-10. It is unknown how many new jewelry outlets will open in future years. This analysis assumes that the only stores that will remain open in FY 2010-14 will be existing establishments. Under this assumption, there will be no impact to local law enforcement during FY 2010-14. If new establishments are opened during this time period, there will be an increase in expenditures for local law enforcement.

Department of Justice

The Department of Justice (DOJ) charges a fee of $38 to perform each criminal background check. This bill calls for the background check fee for store owners to be included as part of the $180 permit fee and not as an additional, separate fee. Employees, however, will be required to furnish their own background check fee. Of the $38 fee, $22 is forwarded to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining $16 is retained by DOJ. Of this $16, $14 goes to a check of NC databases and $2 is used for the processing cost associated with the request.

Current Law requires the owner of a retail jewelry outlet to have their background checked as part of outlet permit application process. Because only Mecklenburg County has been enforcing this law, background checks will need to be performed for all existing stores outside of this county. This will cause an increase in revenues for DOJ equal to $16 multiplied by the number of stores currently without a permit. This results in a $12,880 increase in revenues in FY 2009-10. This analysis assumes that the only stores that will remain open in FY 2010-14 will be existing establishments. Under this assumption, there will be no impact to DOJ during FY 2010-14. If new establishments are opened during this time period, there will be an increase in revenues to DOJ during FY 2010-14.

The bill also requires all individuals employed by dealers of precious metals to consent to criminal history checks. The number of applicable employees is not known. Assuming there is at least one employee at each precious metal outlet remain, there will be at least 859 employees subject to criminal history checks under this bill. This number multiplied by the $16 retained by DOJ results in the revenue increase for FY 2009-10. This results in a $13,744 increase in revenues in FY 2009-10. The number of new employees in future fiscal years cannot be predicted. This analysis assumes that the same employees will be retained by retail outlets during the next five fiscal years. Under this assumption, there will be no impact to DOJ during FY 2010-14.. However, DOJ will experience a revenue increase during these years should these outlets choose to hire new employees in this time span.

Department of Correction – Division of Prisons

The North Carolina Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Three sections of the proposed bill contain criminal penalties; the Sentencing Commission's analysis of these sections is shown below.

Section 2: This section amends subsection (b) of G.S. 66-165, Permits required, to provide that the following two types of persons "shall not be employed by" a precious metals dealer required to obtain a permit under G.S. 66-165(a): (1) persons refusing to consent to a criminal history check, or (2) persons convicted within five years prior to the date of application of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar offenses. Under G.S. 66-172, Penalties, a dealer who violates any provision of Article 25 (Regulation of Precious Metal Businesses) is guilty of a Class 2 misdemeanor.[1] However, because the new language is directed at persons who "shall not be employed by a dealer[,]" rather than providing that a dealer "shall not employ" certain persons, it is unclear whether Section 2 creates a new offense for dealers under G.S. 66-172. This analysis assumes that Section 2 creates a new offense.

[1] The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 66-172. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently resulted in convictions.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentenced. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of $18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, the *State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

Section 3: This section expands the recordkeeping obligations of a merchant who purchases precious metals but is exempted from the permit requirement for a "dealer" under G.S. 66-166, Exemption from permits; record keeping under an exemption. Currently, exempted merchants are required to maintain a book with a description of each item of precious metal purchased and the date of transaction. (They must also preserve these records for a period of two years and must allow inspections by law enforcement at any time.) Section 3 would require exempted merchants to record a serially-numbered description of each transaction (in book or electronic form[2]) with the following information: the manufacturer's name; the model number, serial number, and any engraved number or initial found on the purchased item; the date of transaction; the name, sex, race, residence, telephone number and driver's license number of the seller; and the signature of the dealer/merchant and seller. If the seller lacks a valid, unexpired photographic identification card, the merchant would have to require two forms of positive identification to complete the transaction. Under G.S. 66-172, a dealer who violates any provision of Article 25 (Regulation of Precious Metal Businesses) is guilty of a Class 2 misdemeanor.[3] However, it is unclear whether a merchant granted an exemption under G.S. 66-166 is a "dealer" under subsection (1) of G.S. 66-164, Definition, for purposes of G.S. 66-172. To the extent that an exempted merchant is subject to criminal liability under G.S. 66-172 for violations of G.S. 66-166, Section 3 increases the potential for liability through more stringent recordkeeping requirements. This analysis assumes that Section 3 changes the existing offense in this manner.

AOC currently does not have a specific offense code for violations of G.S. 66-172. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of $18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, *the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

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[2] Section 4 amends G.S. 66-169, Records to be kept, to allow licensed precious metals dealers to maintain the required records of their precious metals transactions in either a paginated, bound book or in an electronic database that prevents deletions, tracks all modifications, and allows for electronic signatures. It further allows electronic filing of these records with the local law enforcement agency, as required by G.S. 66-169(d). Currently, the statute does not provide for electronic recordkeeping or filing.

[3] *See* Footnote 1.

Section 5: This section amends G.S. 66-170, Items not to be modified, to provide that an item of precious metal purchased by a licensed dealer may not be disposed of, changed in form, or removed from the licensed premises before the earlier of (1) seven days after the date that the record of the purchase is electronically reported to law enforcement under G.S. 66-169 or (2) 30 days after the transaction. Currently, the waiting period is five days from the purchase date. Section 5 thus increases the potential for violations of G.S. 66-170 by precious metals dealers by lengthening the waiting period before the dealer may engage in certain activities. A dealer who violates this provision is guilty of a Class 2 misdemeanor under G.S. 66-172.[4]

It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of $18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, *the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.[5]

General supervision of intermediate and community offenders by a probation officer costs DCC $2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from $8.43 to $16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is $16.71 for the initial six-month intensive duration, and $2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

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[4] *See* Footnote 1.

[5] DCC incurs costs of $0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

AOC staff reports that this proposed legislation creates a new offense and therefore they are *unable to predict the number of charges that may result from this bill.* This bill may create a new Class 2 misdemeanor offense due to changes in the language in Section 2 regarding employment by a dealer. This bill expands an existing Class 2 misdemeanor offense by expanding the recordkeeping obligations of a merchant who purchases precious metals but is exempt from the permit requirement for a dealer. It also extends the waiting period for disposing of or otherwise removing precious metal items from five to seven days, thus increasing the potential for violations. Violation of the waiting period is also a Class 2 misdemeanor.

For every new Class 2 misdemeanor charge, the cost to the court ranges from $83 to $161. Indigent defense costs for indigent misdemeanants average $225. In FY 2007-08, a typical misdemeanor case took 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources can be expected to further delay the disposition of cases.

SOURCES OF DATA: NC Jewelers Association, Charlotte-Mecklenburg Police, NC Sentencing and Policy Advisory Commission, Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

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APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 21, 2009

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 752*
PROPOSED SENATE COMMITTEE SUBSTITUTE H752-PCS70481-STf-77

Short Title: Lobbying Late Fees. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE NOTICE BE GIVEN PRIOR TO ASSESSING A LATE FILING FEE FOR LOBBYISTS AND LOBBYIST PRINCIPALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120C-401(e) reads as rewritten:

"(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified ~~or registered letter~~ letter, return receipt requested, advising the lobbyist, lobbyist principal, or other person required to report of the delinquency and the penalties provided by law. A late filing fee of fifty dollars ($50.00) per day, commencing on the tenth business day after the date the certified letter is received, applies to a report that is not timely filed. The cumulative late filing fee may not exceed five hundred dollars ($500.00). Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with ~~a~~ the late filing ~~fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).~~ fee. Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

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

HOUSE BILL 1151
Committee Substitute Favorable 7/15/09
Third Edition Engrossed 7/28/09

Short Title: Res. Lead-Based Paint Hazards/Renovations. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Certification and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities, if the person contracting for the renovation activity requests dust clearance sampling.

(2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation activities covered by this Article.

(3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department or the United States Environmental Protection Agency, and (iv) is certified with the Department to perform renovation activities.

(4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age 6.

(5) Renovation activities. – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling technician. Renovation activities include all activities included in the definition of the term 'renovation' in 40 C.F.R. § 745.83.

(6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling. For purposes of this Article, a zero-bedroom dwelling is any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(7) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work in target housing or child-occupied facilities from a certified renovator and (ii) is employed by a certified renovation firm.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of the Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovation firms are required to distribute EPA-approved pamphlets.

"**§ 130A-453.14. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(2) Perform as a trained renovation worker for compensation in target housing or child-occupied facilities unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.

(3) Conduct dust clearance sampling for compensation in target housing or child-occupied facilities unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector. For purposes of this Article, the terms 'risk assessor' and 'lead-based paint inspector' shall have the same meaning as provided in Article 19A of this Chapter.

(4) Conduct cleaning verification for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of fees pursuant to G.S. 130A-453.17.

"**§ 130A-453.15. Renewals of certification.**

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator shall renew his or her certification every five years by meeting the standards for renewal established by the Commission.

"**§ 130A-453.16. Accreditation of training courses and training providers.**

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

(d) Training providers and training courses accredited by the EPA are granted reciprocity, but providers and courses must be registered with the Department and comply with this Article.

"**§ 130A-453.17. Certification and accreditation fee schedule.**

(a) The Department shall collect annual accreditation and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00

(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling technician	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers.

"**§ 130A-453.18. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.**

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals.

"**§ 130A-453.19. Record retention, information distribution, and reporting requirements.**

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates ~~Article 19A~~ Article 19A or 19B of this Chapter or any rules adopted pursuant to ~~Article 19A~~ Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation ~~continues.~~ continues for Article 19A of this Chapter. The penalty shall not exceed seven hundred fifty dollars ($750.00) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under ~~this Article.~~ Article 19A or 19B."

SECTION 2. This act becomes effective January 1, 2010.

HOUSE BILL 1151:
Res. Lead-Based Paint Hazards/Renovations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Reps. Farmer-Butterfield, Earle, England, Rapp	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1151 establishes a program in the Department of Health and Human Services for the certification of persons and firms performing lead-based paint renovation work in certain residential housing and child-occupied facilities. The program is regulated by the Commission for Public Health. The bill also requires the accreditation of renovation trainers and training courses and establishes fees; authorizes reciprocity for training courses accredited by the EPA; and establishes the penalty for a violation of Article 19B at up to $750 per day.***

BILL ANALYSIS: House Bill 1151 authorizes the Commission for Public Health to establish a state program to regulate persons and firms that perform lead-based paint renovation work, in accordance with federal EPA requirements. Federal law requires that beginning April 2010, a contractor that renovates at least six square feet of interior painted surface or more than 20 square feet of exterior painted surface in certain housing and child care facilities must be certified and follow certain work practices to prevent lead contamination.

Section 1 creates a new Article 19B in the Public Health Law, entitled "'Certification and Accreditation of Lead-Based Paint Renovation Activities." The new Article requires that renovations performed for compensation in certain residential housing and in child-occupied facilities must be performed by certified renovators or certified renovation firms.

The bill prohibits non-certified renovators or firms from performing renovation activities, conducting dust clearing sampling, or conducting cleaning verification. The Commission is directed to adopt rules governing the qualifications, training, and experience required for certification. Certified renovators, firms, and dust sampling technicians must renew their certification annually.

Training providers and training courses must be accredited annually in accordance with rules adopted by the Commission.

The bill establishes maximum fees to be used for the administration of the Article as follows:

- $150.00 for accreditation or reaccreditation of a training provider.
- $2,000.00 for accreditation or reaccreditation of initial or refresher courses (per course per language).
- $300.00 for certification or recertification of a firm.
- $150.00 for certification or recertification of a dust sampling technician.

The fees do not revert to the General Fund at the end of the fiscal year. Accreditation fees do not apply to local or State governmental agency personnel, Indian tribes, or nonprofit training providers.

The Commission is directed to adopt rules to implement the provisions of the Article.

Section 2 amends the law governing penalties for violation of the Chapter. The amendment provides that an administrative penalty may be imposed for violation of the new Article or any rules adopted

pursuant to it. The penalty for violation of this Article shall not exceed $750 for each day the violation continues.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

Karen Cochrane-Brown, counsel to the Senate Commerce Committee, substantially contributed to this summary.

H1151-SMRB-54(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1151 (Second Edition)

SHORT TITLE: Res. Lead-Based Paint Hazards/Renovations.

SPONSOR(S): Representatives Earle, Farmer-Butterfield, England, and Rapp

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	$248,750	$549,200	$549,200	$549,200	$549,200
EXPENDITURES	$248,750	$549,200	$549,200	$549,200	$549,200
POSITIONS (cumulative):	6				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department Health & Human Services, Division of Public Health

EFFECTIVE DATE: January 1, 2010

BILL SUMMARY:

TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

As of July 15, 2009, the House committee substitute, now:

- Requires certification of individuals performing renovation activities for compensation throughout proposed Article 19B of GS Chapter 130A,
- Substitutes "Certification and Accreditation of Lead-Based Paint Renovation Activities" for "Registration, Certification, and Accreditation of Lead-Based Paint Renovation Activities").
- Makes other conforming changes where applicable, including to the title.
- Makes clarifying changes in proposed GS 130A-453.12 to the definitions of certified dust sampling technician and certified renovator.
- Specifies in the definition of trained renovation worker that the individual receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work

in target housing or child-occupied facilities from a certified renovator and is employed by a certified renovation firm.

- Adds definitions for target housing and renovation activities.
- Deletes definition of visual inspection for cleaning verification.
- Deletes in proposed GS 130A-453.13 that lead-based paint is presumed to be present in housing and child-occupied facilities covered by this Article. Makes organizational changes.
- Clarifies in proposed GS 130A-453.14 that the statute's provisions apply to renovation activities for compensation in targeted housing or child-occupied facilities.
- Provides that, for the purposes of this Article, risk assessor and lead-based paint inspector have the same meaning as provided in Article 19A of GS Chapter 130A.
- Specifies that rules adopted by the Commission for Public Health (Commission) are to include requirements for the payment of fees pursuant to GS 130A-453.17 (was, applicable fees).
- Requires in proposed GS 130A-453.15 that certification as a renovation firm and as a dust sampling technician must be renewed annually.
- Provides that a certified renovator must renew certification every five years by meeting the standards for renewal established by the Commission (was, a registered renovator may renew by taking refresher courses and meeting additional standards for renewal established by the Commission).
- Adds in proposed GS 130A-453.16 that training providers and training courses accredited by the US Environmental Protection Agency are granted reciprocity, but providers and courses must be registered with the Department of Health and Human Services (DHHS) and comply with this Article.
- Deletes in proposed GS 130A-453.17 that the certification fees imposed under the statute do not apply to local or state governmental regulatory agency personnel. Also deletes fee for registration or re-registration of a renovator.
- Amends GS 130A-22(b3) to provide that the Secretary of DHHS may impose an administrative penalty on a person who violates Article 19B of GS 130A or any rules adopted pursuant to Article 19B.
- Provides that each day of a continuing violation is a separate violation. Prohibits the penalty from exceeding $750 for each day the violation of Article 19B continues.

ASSUMPTIONS AND METHODOLOGY:

This proposed legislation is in response to regulations and proposed rules issued by the federal Environmental Protection Agency. Those federal rules established fees that will be charged to States without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals of firms engaged in lead-based paint activities under 40 CFR 745.226.

U.S. Environmental Protection Agency (EPA) began enforcing this lead-based paint regulation in states without authorized programs in April, 2009, with full implementation in April of 2010. If North Carolina does not have a program that can be authorized by EPA in place, then EPA will regulate in North Carolina. If EPA operates the program instead of North Carolina, EPA will

collect and use the fees and EPA will likely reduce funding for the existing lead-based paint abatement program.

HB 1151 seeks to establish such a program in compliance with EPA regulations. If HB 1151 is enacted, the program will establish requirements for training and certification of individuals and firms, work practices standards, educational information distribution, and recordkeeping requirements for renovation, repair and painting of pre-1978 housing and child-occupied facilities. Funding for the program will be completely fee-based.

The intent of the Federal regulation, and the subsequent state program, is to support the goal of eliminating childhood lead poisoning as a major public health concern. Childhood lead poisoning is a preventable disease. Paint that contains lead can pose a health threat through various routes of exposure. House dust is the most common pathway through which children are exposed to lead-based paint hazards. Lead exposure in young children is of concern because children absorb lead more readily than adults. Children's brains and nervous systems are more sensitive to the damaging effects of lead.

This legislation will allow the Division of Public Health, DHHS to:

- provide communication of the risks of lead poisoning
- provide exposure reduction or prevention for these risks through community outreach and
- contractor regulation.

The fees proposed in this legislation will fund a program that is designed to minimize the creation of lead-based paint hazards and to promote the effective clean-up of lead-based paint hazards created during renovation, remodeling, and painting activities.

The fees are to be used to initially establish three new positions in the Division of Public Health. The new staff is to

- offer consultation services to businesses regulated by the federal Toxic Substance Control Act,
- provide outreach and education,
- inspect projects,
- audit the required training courses and
- provide administrative support.

As the program matures its anticipated that up to three additional positions will be needed to maintain an effective program. Fees will also support program operational expenses. The fees proposed in the legislation are in line with the proposed fees that EPA references in the August 21, 2008 proposed rule.

The following are table projects the anticipated fee structure and revenue:

Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting
Projected Program Revenue

		SFY 09-10		SFY 10-11		SFY 11-12	
	Fee	Estimated # Collections	Revenue	Estimated # Collections	Revenue	Estimated # Collections	Revenue
Certification / Recertification Renovation Firm	$300	750	$225,000	1700	$510,000	1700	$510,000
Certification / Recertification Dust Sampling Technician	$150	20	$3,000	40	$6,000	40	$6,000
Accreditation / Reaccreditation of Training Provider	$150	5	$750	8	$1,200	8	$1,200
Accreditation / Reaccreditation of Initial Training Course	$2,000	5	$10,000	8	$16,000	8	$16,000
Accreditation / Reaccreditation of Refresher Training Course	$2,000	5	$10,000	8	$16,000	8	$16,000
Amount Collected			$248,750		$549,200		$549,200

Note: - Non-Profit Training providers do not pay fees and are not included in this table

The proposed budget for the program is as follows:

Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting Projected Program Budget

Account Title	Fiscal Year 09 – 10	Fiscal Year 10 – 11	Fiscal Year 11 – 12
Salaries Industrial Hygiene Consultant--Supervisor Industrial Hygiene Consultant Administrative Assistant 1	$167,190		
Industrial Hygiene Inspector (2) Asbestos Technical Trainer		$365,425	$365,425
Social Security	$12,790	$27,955	$27,955
Retirement	$14,462	$31,609	$31,609
Medical Insurance	$13,581	$27,162	$27,162
Employee Physicals	$1,000	$3,000	$3,000
Rent- office space	$10,000	$20,000	$20,000
Motor Fleet	$2,000	$7,500	$7,500
Transportation - in state	$500	$2,000	$2,000
Transportation - out of state	$500	$1,500	$1,500
Lodging - in state	$1,000	$3,000	$3,000
Lodging - out of state	$500	$1,500	$1,500
Meals - in state	$500	$1,500	$1,500
Meals – out of state	$500	$1,500	$1,500
Telephone service	$1,500	$4,000	$4,000
Postage and delivery	$5,000	$7,000	$7,000
Printing	$6,227	$12,049	$12,049
Training Course Registration	$1,500	$4,500	$4,500
Office Supplies	$1,500	$4,000	$4,000
Scientific Supplies	$1,000	$3,000	$3,000
Office Furniture	$4,000	$11,000	$11,000
Computers	$2,500	$6,000	$6,000
Computer Software	$1,000	$4,000	$4,000
Total	$248,750	$549,200	$549,200

SOURCES OF DATA:
Department of Health and Human Service, Division of Public Health

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lee Dixon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 22, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 465*
Committee Substitute Favorable 3/26/09
Committee Substitute #2 Favorable 4/8/09
Fourth Edition Engrossed 4/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H465-CSTD-66 [v.3]

8/5/2009 9:02:24 AM

Short Title: Extend Economic Development Deadline. (Local)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF RALEIGH TO EXTEND AN ECONOMIC DEVELOPMENT DEADLINE FOR THE CONSTRUCTION OF ECONOMIC DEVELOPMENT PROJECTS

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.1(d2) reads as rewritten:

"(d2) In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

(1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data is available.

(2) The governing board of the county or city shall contractually bind the purchaser of the property to construct, within a specified period of time not to exceed five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. A city may extend the five year period for up to an additional two years after holding a public hearing and finding extraordinary economic conditions prevented the completion of the project within the five year period. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city."

SECTION 2. This act applies to the City of Raleigh only.

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

HOUSE BILL 465:
Extend Economic Development Deadline.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 5, 2009
Introduced by:	Reps. Martin, Ross, Harrell, Blue	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fourth Edition H465-CSTD-66		

SUMMARY: ***The proposed committee substitute replaces the contents of the original bill[1]. This PCS would allow the City of Raleigh to delay certain development projects for 2 years, after holding a public hearing and determining that extraordinary economic conditions prevented the completion of the project in the original time period.***

CURRENT LAW: The Local Development Act of 1925 authorizes counties and cities to undertake specific economic development activities to be funded by the levy of property taxes and by the allocation of other revenues whose use is not otherwise restricted by law. Counties and cities may lease or sell interests in property. The sale or lease of property must be approved by the governing body of the county or city after a public hearing. In determining the amount of the consideration for the interest in the property, the county or city must consider the fair market value of the interest, any restrictions on the interest, and probably average hourly wage to be paid to workers by the business that will ultimately be located on the property. The county or city may also take in to account prospective tax revenues in determining the consideration for the property if the following two conditions are met:

1. The governing body has determined the conveyance of the interest will stimulate the local economy and result in the create of a substantial number of jobs at or above the median average for the county or city.
2. The purchaser agrees to develop the property within a time period, not to exceed 5 years, in a manner that will generate the anticipated tax revenue. If the improvements are not constructed within the time period, the purchaser must reconvey the property back to the county or city.

BILL ANALYSIS: The proposed committee substitute to House Bill 465 would extend the time period for development of a conveyed property for which property taxes were factored into the amount paid for the property, for an additional two years after holding a public hearing and finding extraordinary economic conditions prevented the completion of the project within the 5 year period. This would apply to the City of Raleigh only.

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

BACKGROUND: Part of the old convention center property in downtown Raleigh has been conveyed to develop a mixed-used site called "Site 1." Site 1 will consist of an underground parking deck and 2 high rise towers. Due to the economic uncertainly, and the reconveyance requirement in the statute, the project is having difficulty securing lending.

H465-SMTD-122(CSTD-66) v7

[1] The companion bill, SB 453 (Use of Funds Received from Parking Meters), has been enacted as S.L. 2009-164.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 825
PROPOSED COMMITTEE SUBSTITUTE S825-CSRB-66 [v.2]

8/5/2009 12:41:40 PM

Short Title: JMAC Modifications. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR A GRANT FROM THE JOB MAINTENANCE AND CAPITAL DEVELOPMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.012 reads as rewritten:

"**§ 143B-437.012. Job Maintenance and Capital Development Fund.**

...

(d) Eligibility. – A business ~~that satisfies all of the following conditions~~ is eligible for consideration for a grant under this ~~section:~~section if it satisfies the conditions of either subdivisions (1) or (2) of this subsection and satisfies the conditions of both subdivisions (3) and (4) of this subsection:

(1) The business is a major employer. A business is a major employer if the business meets the following requirements.

a. The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.

b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

(2) The business ~~employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.~~ is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:

a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures.

b. The Department certifies that the business has invested or intends to invest at least sixty-five million dollars ($65,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.

c. The business employs at least 300 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 300 full-time employees or equivalent full-time contract employees at the project for the full term of the grant.

(3) The project is located in a development tier one area at the time the business applies for a grant.

(4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

...

(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. ~~Each~~

Each grant agreement for a business that is a major employer under subdivision (d)(1) of this section shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. ~~A~~

Each grant agreement for a business that is a large manufacturing employer under subdivision (d)(2) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's

investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) or (d)(2) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

...

(n) Limitations. – The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed ~~sixty~~ seventy million dollars ~~($60,000,000).~~ ($70,000,000). The total annual cost of an agreement entered into under this section may not exceed ~~four~~ six million dollars ~~($4,000,000).~~($6,000,000)."

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

SENATE FINANCE COMMITTEE
Thursday, August 6, 2009
Senate Floor

MINUTES

The Senate Finance Committee met on August 6, 2009, on the Senate floor. Senator David Hoyle presided.

H.B. 713 – Expand Film Credit.

Senator Garrou was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. The proposed committee substitute provides for an alternative credit for qualifying expenses of a production company. Senator Soles moved for a favorable report and the motion carried. A copy of the proposed committee substitute and the summary is attached.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, August 06, 2009 .

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

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

H.B. **713** Env./Nat. Res. Reports Consolidation 2009.

Draft Number:	70483
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

floor mtg 8/6/09
Hoyle presided
Garrou moved to adopt PCS for disc
Garrou rec'd to explain
Soles moves

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 713*
PROPOSED SENATE COMMITTEE SUBSTITUTE H713-CSLB-81 [v.1]

8/6/2009 2:22:39 PM

Short Title: Expand Film Credit. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN ALTERNATIVE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.47 reads as rewritten:

§ 105-130.47. Credit for qualifying expenses of a production company.

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the~~ a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the~~ a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the~~ a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the~~ a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the~~ a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this

Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

..."

SECTION 2. G.S. 105-151.29 reads as rewritten:

§ 105-151.29. Credit for qualifying expenses of a production company.

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the~~ a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the~~ a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the~~ a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the~~ a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the~~ a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

..."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses occurring on or after that date.

HOUSE BILL 713:
Env./Nat. Res. Reports Consolidation 2009

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 6, 2009
Introduced by:	Reps. Allen, Gibson	**Prepared by:**	Dan Ettefagh and Martha Walston Committee Counsel
Analysis of:	PCS to 1st edition		

SUMMARY: ***The proposed committee substitute for House Bill 713 guts the bill and replaces it with language allowing a taxpayer that is a production company the following alternative credit for qualifying expenses:***

The alternative credit is equal to 25% of the production company's qualifying expenses less the difference between the amount of sales tax paid on purchases subject to the 1%/80% privilege tax and the amount of sales tax that would have been due if these purchases were subject to the combined general rate.

[This proposed committee substitute is identical to the proposed committee substitute for SB 943, which is currently in House Finance]

CURRENT LAW: North Carolina extends favorable tax treatment to a production company in two ways. First, a production company can claim a refundable income tax credit equal to 15% of the qualifying expenses spent in connection with a production. The amount of the credit with respect to a feature film production is capped at $7.5 million. In order to obtain the credit, the taxpayer's qualifying expenses must exceed $250,000. Qualifying expenses are the total amount spent in North Carolina for the following:

- Goods and services leased or purchased by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense.
- Cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

Second, in lieu of paying the combined general rate of sales tax on machinery parts and accessories, a production company pays a privilege tax of 1%, capped at $80 per item.

BILL ANALYSIS: The proposed committee substitute for House Bill 713 would create an alternative credit for production companies. Instead of the existing credit, a production company could elect to take as an income tax credit an amount equal to 25% of the company's qualifying expenses less the difference between the amount of privilege tax paid on purchases that are subject to the 1%/$80 privilege tax and

the amount of sales tax that would have been paid had the purchases been subject to the combined general sales tax rate. The election is binding.

The credit percentage has not changed since the General Assembly enacted the credit in 2005. The refundable tax credit replaced the film industry development grant program. The incentive is targeted at feature films, episodic television series, and commercial advertising.[1]

EFFECTIVE DATE: The bill would become effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses on or after that date.

BACKGROUND: The North Carolina Film Office commissioned two studies funded in partnership with EUE Screen Gems Studios, IATSE Local 491, Premiere Entertainment Services, Charlotte Regional Film Commission, Piedmont Triad Film Commission, Wilmington Regional Film Commission, Cinelease, and Illumination Dynamics:

- *"Economic and Fiscal Impacts of the North Carolina Film Credit Program"*, June 2009, prepared by Ernest & Young. This study presents estimates of the economic and tax impact of three components: film production activities; tourism related to NC films; and capital expenditures in NC film facilities.
- *"Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina"*, Summer 2009, prepared by Dr. William Hall of the Cameron School of Business at the University of North Carolina at Wilmington. This study is a case study that identifies the spending impacts of a film on Brunswick, New Hanover, and Pender Counties.

The studies are available upon request. Both studies recognize the number of jobs generated by film production in the State, the direct and indirect spending stimulus on the region's economy, the capital investments made by production companies, the resulting film generated tourism, and the contribution of these activities to the State and local government's tax collections.

The Ernest & Young study estimates the State's return on investment (ROI) from the refundable income tax credit. In forming the ROI estimate, the study analyzed the impact of the credit at the rate of 15% in 2007 and, using projections from the NC Film Office, estimates the impact of the credit at the rate of 25% for 2010 and 2011.

The study found that film productions qualifying for the credit in 2007 accrued an estimated net present value of $22 million of refundable tax credit cost to the State and $29 million of State and local tax revenue. In considering State tax ROI, the study estimated the State's ROI was $0.98 for each dollar of tax credit expenditure. This estimate assumes that the film productions qualifying for the credit would not have been produced in the State in absence of the credit.

The study estimates that the total State and local tax impacts from film productions, tourism, and capital expenditures related to film production would be $48 million in 2010 and $57 million in 2011 under a 25% tax credit. Under this scenario, the State tax ROI from each dollar of tax credit expenditure would be $0.69 in 2010 and $0.67 in 2011.

[1] The credit does not apply to the following: political advertising, television production of a news program or live sporting event, material that is obscene, as defined in G.S. 14-190.1, or a radio production.

Legislative Drafting Division *Marilyn Chism, Director* *(919) 733-4910*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 713*
PROPOSED SENATE COMMITTEE SUBSTITUTE H713-CSLB-81 [v.1]

8/6/2009 2:22:39 PM

Short Title: Expand Film Credit. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN ALTERNATIVE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.47 reads as rewritten:

§ 105-130.47. Credit for qualifying expenses of a production company.

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the~~ a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the~~ a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the~~ a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the~~ a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the~~ a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this

Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

..."

SECTION 2. G.S. 105-151.29 reads as rewritten:

§ 105-151.29. Credit for qualifying expenses of a production company.

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the~~ a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the~~ a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the~~ a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the~~ a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the~~ a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

..."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses occurring on or after that date.

HOUSE BILL 713:
Env./Nat. Res. Reports Consolidation 2009

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	August 6, 2009
Introduced by:	Reps. Allen, Gibson	**Prepared by:**	Dan Ettefagh and Martha Walston Committee Counsel
Analysis of:	PCS to 1st edition		

SUMMARY: ***The proposed committee substitute for House Bill 713 guts the bill and replaces it with language allowing a taxpayer that is a production company the following alternative credit for qualifying expenses:***

The alternative credit is equal to 25% of the production company's qualifying expenses less the difference between the amount of sales tax paid on purchases subject to the 1%/80% privilege tax and the amount of sales tax that would have been due if these purchases were subject to the combined general rate.

[This proposed committee substitute is identical to the proposed committee substitute for SB 943, which is currently in House Finance]

CURRENT LAW: North Carolina extends favorable tax treatment to a production company in two ways. First, a production company can claim a refundable income tax credit equal to 15% of the qualifying expenses spent in connection with a production. The amount of the credit with respect to a feature film production is capped at $7.5 million. In order to obtain the credit, the taxpayer's qualifying expenses must exceed $250,000. Qualifying expenses are the total amount spent in North Carolina for the following:

- Goods and services leased or purchased by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense.
- Cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

Second, in lieu of paying the combined general rate of sales tax on machinery parts and accessories, a production company pays a privilege tax of 1%, capped at $80 per item.

BILL ANALYSIS: The proposed committee substitute for House Bill 713 would create an alternative credit for production companies. Instead of the existing credit, a production company could elect to take as an income tax credit an amount equal to 25% of the company's qualifying expenses less the difference between the amount of privilege tax paid on purchases that are subject to the 1%/$80 privilege tax and

the amount of sales tax that would have been paid had the purchases been subject to the combined general sales tax rate. The election is binding.

The credit percentage has not changed since the General Assembly enacted the credit in 2005. The refundable tax credit replaced the film industry development grant program. The incentive is targeted at feature films, episodic television series, and commercial advertising.[1]

EFFECTIVE DATE: The bill would become effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses on or after that date.

BACKGROUND: The North Carolina Film Office commissioned two studies funded in partnership with EUE Screen Gems Studios, IATSE Local 491, Premiere Entertainment Services, Charlotte Regional Film Commission, Piedmont Triad Film Commission, Wilmington Regional Film Commission, Cinelease, and Illumination Dynamics:

- *"Economic and Fiscal Impacts of the North Carolina Film Credit Program"*, June 2009, prepared by Ernest & Young. This study presents estimates of the economic and tax impact of three components: film production activities; tourism related to NC films; and capital expenditures in NC film facilities.
- *"Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina"*, Summer 2009, prepared by Dr. William Hall of the Cameron School of Business at the University of North Carolina at Wilmington. This study is a case study that identifies the spending impacts of a film on Brunswick, New Hanover, and Pender Counties.

The studies are available upon request. Both studies recognize the number of jobs generated by film production in the State, the direct and indirect spending stimulus on the region's economy, the capital investments made by production companies, the resulting film generated tourism, and the contribution of these activities to the State and local government's tax collections.

The Ernest & Young study estimates the State's return on investment (ROI) from the refundable income tax credit. In forming the ROI estimate, the study analyzed the impact of the credit at the rate of 15% in 2007 and, using projections from the NC Film Office, estimates the impact of the credit at the rate of 25% for 2010 and 2011.

The study found that film productions qualifying for the credit in 2007 accrued an estimated net present value of $22 million of refundable tax credit cost to the State and $29 million of State and local tax revenue. In considering State tax ROI, the study estimated the State's ROI was $0.98 for each dollar of tax credit expenditure. This estimate assumes that the film productions qualifying for the credit would not have been produced in the State in absence of the credit.

The study estimates that the total State and local tax impacts from film productions, tourism, and capital expenditures related to film production would be $48 million in 2010 and $57 million in 2011 under a 25% tax credit. Under this scenario, the State tax ROI from each dollar of tax credit expenditure would be $0.69 in 2010 and $0.67 in 2011.

[1] The credit does not apply to the following: political advertising, television production of a news program or live sporting event, material that is obscene, as defined in G.S. 14-190.1, or a radio production.

SENATE FINANCE COMMITTEE
Friday, August 7, 2009
Senate Floor

MINUTES

The Senate Finance Committee met on August 7, 2009, on the Senate floor. Senator David Hoyle presided.

H.B. 1490 – Land Development Permit Changes.

Senator Goodall moved to adopt the proposed committee substitute for discussion and the motion carried. Sabra Faires, the Senate Tax Counsel, was recognized to explain the proposed committee substitute which extends certain permits and approvals affecting the physical development of real property located within the State of North Carolina, thereby superseding all statutory and regulatory requirements to the contrary. Senator Hoyle offered an amendment which amends the definition of the development approval to include a development agreement approved by a county and a development permit approved by a city. Senator Blue moved to adopt the amendment and the motion carried. Senator Blue moved to adopt the proposed committee substitute as amended and the motion carried. A copy of the proposed committee substitute and the amendment is attached.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1490*
Committee Substitute Favorable 5/6/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1490-CSRB-73 [v.1]

8/7/2009 1:17:01 PM

Short Title: Land Development Permit Changes. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT CONCERNING THE APPLICATION OF CERTAIN PERMIT EXTENSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Subparts l and m of subdivision (1) of Section 3 of S.L. 2009-406 read as rewritten:

"l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 18 of Chapter 153A of the General Statutes.

m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes."

SECTION 2. S.L. 2009-406 is amended by adding two new sections to read:

"**SECTION 5.1.(a)** This act does not revive a vested right to the water or sewer allocation associated with a development approval that expired between January 1, 2008, and August 5, 2009, and is revived by the operation of this act if both of the following conditions are met:

(1) The water or sewer capacity was reallocated to other development projects prior to August 5, 2009, based upon the expiration of the development approval.

(2) There is not sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval.

SECTION 5.1.(b) A person whose development approval is revived under this act but whose water or sewer allocation is not revived under this section must be given first priority if additional supply or treatment capacity becomes available.

SECTION 5.2.(a) This section applies only to Union County.

SECTION 5.2.(b) When a development approval that is contingent upon connection to a water supply system or a sanitary sewer system is suspended under Section 4 of this act and there is not sufficient supply or treatment capacity to accommodate requests for additional allocation, the local government that granted the allocation may reallocate reserved

capacity from projects whose approvals are suspended but are not ready to proceed if the local government meets all of the following requirements:

(1) Establishes an allocation plan for existing capacity that determines actual capacity and provides for a fair and equitable process to distribute the remaining capacity.

(2) Establishes a reallocation plan to meet requests for capacity above permitted capacity that is fair and equitable and requires the following:

a. That an applicant for a new or additional allocation demonstrate the ability to begin construction.

b. That the holder of a development permit suspended under Section 4 of this act demonstrate the ability or intent to begin construction in no less than 120 days in order to retain the reserved capacity.

(3) Does not reallocate capacity to exceed the amount of the reserved capacity.

SECTION 5.2.(c) This act does not reduce the original period of a development permit."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1490*

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

H1490-ARB-46 [v.1]

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

Date August 7 ,2009

~~Representative~~ Senator Hoyle

moves to amend the bill on page 2, line 16, by rewriting the line to read:

SECTION 3. If House Bill 274, 2009 Regular Session becomes law, Section 5.2 of House Bill 274, 2009 Regular Session is repealed.

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

SIGNED _____
~~Amendment Sponsor~~

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Friday, August 07, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1490** Extend Permits Regarding Land Development.

Draft Number:	80508
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE FINANCE COMMITTEE
Friday, August 7, 2009
Senate Floor

MINUTES

The Senate Finance Committee met on August 7, 2009, on the Senate floor. Senator David Hoyle presided.

H.B. 884 – JMAC Modifications.

Senator Garrou moved to adopt the proposed committee substitute for discussion and the motion carried. Senator Jenkins was recognized to explain the proposed committee substitute which modifies the requirements for a grant from the Job Maintenance and Capital Development Fund. Senator Jenkins moved for a favorable report and the motion carried. A copy of the proposed committee substitute is attached.

H.B. 530 – Life Sciences Development Act.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS for discussion. The PCS creates an incentive for investing in capital facilities in the life sciences in this State. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS is attached.

Senator David Hoyle, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Friday, August 07, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **530** Utilities/Carrier of Last Resort.

Draft Number:	80506
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **884** Clarify Inspection Station Responsibilities.

Draft Number:	50797
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:
H530 – Sen. Jenkins
H884 – Sen. Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 884*
Committee Substitute Favorable 5/11/09
Committee Substitute #2 Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H884-PCS50797-RB-72

Short Title: JMAC Modifications. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR A GRANT FROM THE JOB MAINTENANCE AND CAPITAL DEVELOPMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.012 reads as rewritten:

"**§ 143B-437.012. Job Maintenance and Capital Development Fund.**

...

(d) Eligibility. – A business ~~that satisfies all of the following conditions~~ is eligible for consideration for a grant under this ~~section:~~section if it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies the conditions of both subdivisions (3) and (4) of this subsection:

(1) The business is a major employer. A business is a major employer if the business meets the following requirements:

a. The Department certifies that the business has invested or intends to invest at least two hundred million dollars ($200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.

b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.

(2) The business ~~employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.~~ is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:

a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures.

b. The Department certifies that the business has invested or intends to invest at least sixty-five million dollars ($65,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.

c. The business employs at least 320 full-time employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 320 full-time employees at the project for the full term of the grant.

(3) The project is located in a development tier one area at the time the business applies for a grant.

(4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

...

(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. ~~Each~~

Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. ~~A~~

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) or (d)(2) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

...

(n) Limitations. – The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed ~~sixty~~ sixty-nine million dollars ~~($60,000,000).~~ ($69,000,000). The total annual cost of an agreement entered into under this section may not exceed ~~four~~ six million dollars ~~($4,000,000).~~($6,000,000)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 530
Committee Substitute Favorable 4/1/09
Committee Substitute #2 Favorable 4/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H530-PCS80506-SV-62

Short Title: Life Sciences Development Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE AN INCENTIVE FOR INVESTING IN CAPITAL FACILITIES IN THE LIFE SCIENCES IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 105 of the General Statutes is amended by adding a new Article to read:

"Article 3M.

"Life Sciences Investments.

"**§ 105-129.105. Findings and purpose.**

The General Assembly finds that life science companies generate employment opportunities for the State, expand local tax bases, and engage in the discovery, development, and commercialization of new pharmaceuticals, biologic products, medical devices, and diagnostic products. The General Assembly finds that there exists in the State a serious shortage of credit for life science companies to finance new and expanded facilities and acquire equipment for the production and delivery of life science products and services. The purpose of this Article is to create a mechanism for delivery of products and services in the life sciences that will build permanent production facilities in North Carolina.

"**§ 105-129.106. Definitions.**

The following definitions apply in this Article:

(1) Designated investor. – A person who purchases an equity interest in a qualified entity and who is issued an equity certificate.

(2) Economic interest. – Matters involving a business with which associated, as defined in G.S. 138A-3.

(3) Equity certificate. – A contract between a qualified entity and a designated investor setting forth the amount of investment, the return on the investment, and the repayment terms of the investment.

(4) Life science company. – A company engaged in any of the following:

a. Biotechnology, including agricultural and industrial uses.

b. Pharmaceuticals.

c. Biologic products.

d. Medical devices.

e. Diagnostic devices.

f. Service laboratories or facilities providing support services to the foregoing companies.

(5) Immediate family. – A parent, child, or sibling or the spouse of one of these relations.

(6) Qualified entity. – A business entity that satisfies all of the conditions of G.S. 105-129.107.

(7) Tax credit certificate. – A certificate issued by the Secretary to a designated investor under which a tax credit is issued to the designated investor.

"**§ 105-129.107. Qualified entities.**

(a) Requirements. – A qualified entity is a business entity that satisfies all of the following conditions:

(1) The entity is established as a for-profit limited liability company pursuant to Chapter 57C of the General Statutes whose sole purpose is to foster economic development in this State by making loans to life science companies to finance any of the following:

a. The acquisition or expansion of capital facilities in this State.

b. The acquisition of capital equipment to be located at facilities in this State.

c. Regulatory, documentation, and other costs required to make the facilities and equipment to be located in North Carolina operational.

(2) The entity does not make loans for any property located outside of this State.

(3) The entity has as its sole managing member a nonprofit 501(c)(3) corporation organized pursuant to Chapter 55A of the General Statutes that satisfies all of the following conditions:

a. The primary purpose of the corporation is to foster the development of the life science industry in this State.

b. The board of directors of the nonprofit corporation includes the Secretary of Commerce serving as vice-chair and the President of the North Carolina Biotechnology Center serving as chair.

c. The bylaws of the corporation provide that upon dissolution all assets of the corporation revert to the State.

(4) The entity raises funds for making loans to life science companies by issuing equity certificates for investments made by designated investors and by specifying a rate of return on those investments.

(5) Equity certificates issued by the entity reflect all of the following:

a. That the holder of the equity certificate is a nonmanaging member of the entity.

b. The amount of the investment.

c. The date and amount of each return on the investment.

d. The dates and amounts to redeem the equity certificate.

e. That the entity is not obligated to provide the return on investment nor the equity redemption except as funds are available as provided in G.S. 105-129.108.

f. That the holder of the equity certificate may be entitled to a tax credit as provided in this Article.

g. That the Secretary receives a copy of the equity certificate.

(6) The entity provides a copy of each equity certificate to the Secretary.

(7) The total amount payable under equity certificates, including tax certificates that have already been issued and for which the State has not been reimbursed by the entity, does not exceed one hundred million dollars ($100,000,000) at any time. To the extent to which the entity has reimbursed

the State for tax certificates that it has issued, the total amount due may be increased, but not to exceed one hundred million dollars ($100,000,000).

(8) The total amount of outstanding loans from the entity to any one life science company does not exceed thirty million dollars ($30,000,000) at any time.

(9) The entity has adopted conflict of interest policies that include a prohibition on an employee, officer, or director of the entity, or a member of the same household as or the immediate family of an employee, officer, or director of the entity, from having any economic interest in an investor in the entity or a company to which the entity makes loans.

(10) The bylaws of the entity require that upon dissolution all assets of the entity revert to the State.

(11) The bylaws of the entity require the entity to pay reasonable costs and expenses to the nonprofit corporation that serves as the managing member, but do not allow the managing member to receive any other compensation from the entity.

(12) The bylaws provide that other than payments to designated investors, all cash flow or profits of the entity must be used only for the purposes of this Article.

(13) The entity makes loans to life science companies for facilities or equipment to be located in this State based on an evaluation of the following factors:

a. The borrower's written business plan.

b. The borrower's written manufacturing or service plan.

c. The borrower's history of attracting operating capital from investors, grants, or other lenders.

d. The borrower's management team.

e. The borrower's demonstration of engaging in the life science industry in this State.

f. The borrower's job creation potential in this State.

g. The borrower's financial resources.

h. Any other factors deemed by the entity to be relevant to the likelihood of the success of the project and not inconsistent with this Article.

(14) On at least an annual basis, the entity contracts with an independent auditor to perform an audit of all activities of the entity to be completed within three months after the end of the entity's fiscal year and, except for the contract for auditing services, the independent auditor has no business, contractual, or other connection to the entity or its managing member.

(15) The bylaws of the entity require that the audit described under subdivision (14) of this subsection be submitted to the board of directors of the entity's managing member, the Governor, and the Joint Legislative Committee on Governmental Operations.

(16) On at least an annual basis, the entity publishes a report of the activities conducted by the entity that includes a review of the progress of the entity in implementing the purposes stated in G.S. 105-129.105 and the business plan of the entity and a description, including amounts, of the issuance of any tax credit certificates.

(17) The bylaws of the entity require the entity to comply with the requirements of Chapter 132 of the General Statutes and Article 33 of Chapter 143 of the General Statues as if the entity were a State agency.

(b) Certification Statement. – Upon written request from time to time by the entity accompanied by a certification under oath that each of the requirements of subsection (a) of this

section have been met, the Secretary must within 30 days issue a statement of qualification for the entity if the Secretary finds the certification to be satisfactory. The Secretary may obtain from the entity upon request any information as reasonable to determine whether the certification is accurate.

(c) No Pledge. – Neither a qualifying entity nor the corporation that is the sole managing member of a qualifying entity has any power to pledge the credit or taxing power of the State or any political subdivision of the State, or to make its debts payable out of any moneys or resources except those of the qualifying entity or the corporation. The obligations of the qualifying entity and the corporation are not obligations of the State or any political subdivision of the State but are obligations of the qualifying entity or corporation payable solely and only from the qualifying entity's or corporation's resources.

"**§ 105-129.108. Tax credit.**

(a) Notification from Qualifying Entity. – When a qualifying entity determines that it will be unable to make a payment required under an equity certificate, the entity must notify in writing both the designated investor and the Secretary of the entity's inability to make the payment. This notice must be made at least 30 days before the due date of the payment. The entity may consider its cash flow needs, including funding its continuing operations and obligations to other investors or its managing member, in making this determination. The notification to the Secretary required under this subsection must be made under oath and contain the following information:

(1) The amount of the initial equity investment.
(2) The rate of return on the invested capital.
(3) The calculation formula for determining the scheduled aggregate return on the initial equity investment.
(4) The due date of the payment.
(5) The amount of the tax credit that should be issued.
(6) The designated investor to whom the payment is due.

(b) Issuance of Tax Certificate. – Within 30 days after receiving a notification from a qualifying entity under subsection (a) of this section, the Secretary must deliver to the qualifying entity a tax credit certificate for each designated investor in the amount certified by the qualifying entity to be due. The tax credit certificate must be in an amount equal to the amount of the required payment that the qualifying entity certifies it is unable to make.

(c) Credit. – A taxpayer that presents a tax credit certificate is allowed a tax credit equal to one hundred percent (100%) of the amount specified in the certificate. The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter.

(d) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax liability against which it is imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(e) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the equity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

"**§ 105-129.109. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary. Each taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.110. Reports.**

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer, for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2010.

SENATE FINANCE COMMITTEE
Friday, August 7, 2009
Senate Floor

MINUTES

The Senate Finance Committee met on Thursday, July 30, 2009, on the Senate floor. Senator Clark Jenkins presided.

H.B. 921 – Washington Deannexation/Dare Trapping.

Senator Hoyle was recognized to explain the bill which amends the trapping laws in Dare County and to remove the Warren Field Airport from the corporate limits of the City of Washington. Senator Allran moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1500 – Development Tier Designation Exception.

Senator Hoyle was recognized to explain the bill which creates a new development tier designation exception for certain seafood industrial parks. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill is attached.

S.B. 535 – Archer Lodge Incorporated.

Senator Rouzer was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS incorporates the Town of Archer Lodge, subject to a referendum. Senator Allran moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

Senator Clark Jenkins, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, July 30, 2009

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

FAVORABLE

H.B.(SCS #1) **921** Washington Deannexation/Dare Trapping.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1500** Development Tier Designation Exception.
Sequential Referral: None
Recommended Referral: None

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

S.B. **535** Archer Lodge Incorporated.
Draft Number: 55501
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Monday, August 03, 2009

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

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

S.B. **898** Development Tier Exception Modification.

Draft Number:	55490
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

HOUSE BILL 921

Committee Substitute Favorable 5/11/09
Senate State and Local Government Committee Substitute Adopted 7/28/09

Short Title: Washington Deannexation/Dare Trapping. (Local)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRAPPING LAWS IN DARE COUNTY AND TO REMOVE THE WARREN FIELD AIRPORT FROM THE CORPORATE LIMITS OF THE CITY OF WASHINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1985-178 reads as rewritten:

"Section 1. It is unlawful to take by trapping any game or furbearing animal ~~between March 1 and either January 2 or the last day of deer hunting season, whichever is later.~~except as provided by the rules of the Wildlife Resources Commission. Notwithstanding the foregoing, it shall be unlawful to take by trapping any game or furbearing animal by the use of any trap that has a jaw spread that exceeds seven and one-half inches until after January 2 of each year or the last day of deer hunting season, whichever is later."

SECTION 2. The following area is removed from the corporate limits of the City of Washington:

Lying and being in the City of Washington, County of Beaufort, State of North Carolina and more particularly described as follows:

BEGINNING at NCGS-WASHPORT AZ MK NAD 83/86 State Plane Coordinates N-66678.6735 and E-2581094.0922, thence North 88° 27' 20" West 2,169.43 feet to a point, thence South 87° 47' 26" West 232.00 feet to a point, thence North 86° 45' 37" West 396.88 feet to a point, thence South 06° 25' 39" West 146.05 feet to a point, thence South 20° 38' 12" West 206.54 feet to a point, thence South 80° 34' 29" West 414.02 feet to a point, thence North 83° 01' 13" West 550.40 feet to a point, thence North 15° 09' 39" East 99.87 feet to a point, thence North 30° 09' 34" East 169.20 feet to a point, thence North 65° 06' 40" West 95.19 feet to a point, thence North 01° 18' 57" East 636.11 feet to a point, thence South 88° 47' 08" East 373.58 feet to a point, thence North 35° 56' 18" East 1,228.56 feet to a point, thence North 87° 42' 16" East 120.87 feet to a point, thence North 08° 54' 16" East 229.80 feet to a point, thence North 35° 56' 04" East 796.77 feet to a point, thence North 07° 11' 33" East 1,382.66 feet to a point, said point being indicated by N-670565.5558 and E-2579184.4733, thence North 26° 25' 38" West 695.17 feet to a point, thence North 63° 16' 57 East 371.37 feet to a point, thence South 81° 05' 02" East 387.89 feet to a point, thence South 87° 45' 37" East 1,114.31 feet to a point, thence North 04° 03' 51" East 34.86 feet to a point, thence South 82° 03' 22" East 64.20 feet to a point, thence South 77° 19' 54" East 49.81 feet to a point, thence South 73° 50' 35" East 126.92 feet to a point, thence South 67° 15' 29" East 110.35 feet to a point, thence South 57° 05' 04" East 163.06 feet to a point, thence South 48° 01' 54" East 131.17 feet to a point, thence South 33° 48' 37" West 197.95 feet to a point, thence South 03° 39' 47" West 344.73 feet to a point, thence South 35° 37' 45" West 809.28 feet to a point, thence South 33° 46' 12" East

95.41 feet to a point, thence South 05° 03' 42" East 76.93 feet to a point, thence South 27° 25' 05" East 101.72 feet to a point, thence South 85° 04' 40" East 115.15 feet to a point, thence South 29° 08' 49" East 213.80 feet to a point, thence South 66° 30' 50" East 54.72 feet to a point, thence South 29° 03' 37" East 215.06 feet to a point, thence South 49° 45' 04" East 163.01 feet to a point, thence South 41° 57' 43" East 226.76 feet to a point, thence South 35° 37' 48" East 109.45 feet to a point, thence South 14° 32' 12" East 116.32 feet to a point, said point being indicated by N-668717.6694 and E-2581521.7757, thence South 53° 13' 30" West 64.94 feet to a point, thence North 85° 32' 49" West 24.03 feet to a point, thence South 48° 12' 55" West 163.24 feet to a point, thence South 27° 55' 18" East 131.07 feet to a point, thence South 26° 35' 04" East 220.74 feet to a point, thence North 63° 37' 38" East 116.64 feet to a point, thence South 47° 57' 16" East 295.08 feet to a point, thence South 49° 51' 07" West 2.25 feet to a point, thence North 35° 17' 53" West 3.86 feet to a point, thence South 67° 05' 44" West 131.14 feet to a point, thence South 27° 03' 31" East 1,036.94 feet to a point, thence South 87° 30' 41" East 288.92 feet to a point, thence South 55° 10' 39" East 44.75 feet to a point, thence South 19° 42' 31" East 48.15 feet to a point, thence South 00° 55' 13" West 414.62 feet to a point, thence South 19° 21' 41" West 223.92 feet to a point, thence North 63° 47' 08" West 56.33 feet to a point, thence South 84° 10' 28" West 59.63 feet to a point, thence South 35° 46' 30" West 128.65 feet to a point, thence South 66° 12' 53" West 943.32 feet to a point, thence North 20° 56' 38" West 764.33 feet to a point, said point indicated by N-666678.6735 and E-2581094.0922, the point and place of beginning and being the same property shown on that certain survey by Burgess Land Surveying, P.A., dated July 22, 2009. Reference is herein made to said survey, and the same is incorporated for a more complete and adequate description.

SECTION 3. Section 2 of this act becomes effective January 1, 2010, but shall not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for prior years. The remainder of this act becomes effective October 1, 2009.

HOUSE BILL 921:
Washington Deannexation/Dare Trapping

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 29, 2009
Introduced by:	Rep. Braxton	**Prepared by:**	Judy Collier
Analysis of:	Third Edition		Research Assistant

SUMMARY:

House Bill 921 amends S.L. 1985-178, Section 1, concerning trapping in Dare County as follows:

- ***Prohibits the trapping of any game or furbearing animal except as provided by Wildlife Resources Commission rules.***
- ***Makes it illegal to take by trapping any game or furbearing animal having a jaw spread that exceeds seven and one-half inches until after January 2 of each year or the last day of deer hunting season, whichever is later.***

House Bill 291 also removes Warren Field Airport from the corporate limits of the City of Washington, situated in Beaufort County.

CURRENT LAW:

- S.L. 1985 178 currently regulates the trapping of game or furbearing animals in Dare. County.
- While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. De-annexation requires an act of the General Assembly.

BILL ANALYSIS:

- House Bill 921 amends Section 1 of S.L. 1985-178 concerning trapping in Dare County, to conform to Wildlife Resources Commission rules.
- House Bill 921 also removes Warren Field Airport from the corporate limits of the City of Washington.

EFFECTIVE DATE: House Bill 921 has the following effective dates:

- The section of the bill amending S.L. 1985-178 concerning trappings in Dare County becomes effective October 1, 2009.
- The section of the bill de-annexing Warren Field Airport from the corporate limits of the City of Washington becomes effective January 1, 2010, but does not affect the duty to pay taxes for any prior year or eliminate any tax liens for prior years.

BACKGROUND: On July 8, 2009, the Washington City Council unanimously approved a resolution requesting the introduction of legislation that will allow the city to remove Warren Field Airport from the city limits. The proposed legislation would facilitate the offering of tax-based incentives for airplane owners to base their aircraft at the city-owned airport.

Currently, aircraft based at the airport are subject to personal property taxes levied by the city and county. With an eye toward economic development, City and Beaufort County officials have discussed

the potential of a tax-advantage incentive program for aircraft owners to base their planes at Warren Field Airport.

The City of Washington wants to de-annex Warren Field Airport in an effort to reduce taxes aircraft owners pay for basing their aircraft at the airport. City officials believe the reduced taxes will attract more aircraft to the airport, thereby increasing revenues from fuel sales and hangar rentals. Beaufort County has agreed to share tax revenues with the City of Washington if the City de-annexes Warren Field Airport. The city and county anticipate negotiating an agreement on revenue allocation.

H921-SMRE-65(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1500*
Committee Substitute Favorable 5/6/09
Committee Substitute #2 Favorable 7/23/09

Short Title: Development Tier Designation Exception. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A NEW DEVELOPMENT TIER DESIGNATION EXCEPTION FOR CERTAIN SEAFOOD INDUSTRIAL PARKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.08 is amended by adding a new subsection to read:

"**§ 143B-437.08. Development tier designation.**

...

(i) Exception for Seafood Industrial Parks. – A seafood industrial park created under Article 23C of Chapter 113 of the General Statutes has a development tier one designation."

SECTION 2. This act is effective when it becomes law and expires July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 535*
PROPOSED COMMITTEE SUBSTITUTE S535-PCS55501-LB-76

Short Title: Archer Lodge Incorporated. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF ARCHER LODGE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Archer Lodge is enacted to read:

"CHARTER OF THE TOWN OF ARCHER LODGE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Archer Lodge are a body corporate and politic under the name 'Town of Archer Lodge.' The Town of Archer Lodge has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Archer Lodge are as follows:

Beginning at a point on the centerline of Covered Bridge Road with an intersection of Millstone Manor S/D (PB 31/377). Thence in a southwesterly direction along the centerline of Covered Bridge Road approximately 570 feet to a corner with lot #5 of Millstone Manor S/D (PB 31/377), thence in a northwesterly direction along lot #5 following an unnamed branch (PB 31-377) following the same unnamed branch to a corner with lot 19 (PB 35/77), thence southeasterly along Millstone Manor S/D to a point (PB 69/90), thence northwesterly along Millstone Manor S/D lot numbers 55 and 56 and along a drainage easement (PB 69/90) to an unnamed branch to a corner with lot 20 where the unnamed branch intersects with Big Arm Branch (PB 70/236), thence along Big Arm Branch to its intersection with "Ben's Prong," thence along "Ben's Prong" to Lot 15, Millstone Manor S/D (PB 70/236), thence along Ben's Prong Branch (DB 3636/97), (Parcel #16J03034A) to its intersection with (Parcel #16J03033F), thence following this line in a northerly direction to its intersection with (Parcel #16J02024B), thence in a southwesterly direction, thence northwesterly, thence northeasterly (PB 28/217) to an intersection with (Parcel #16J03021), thence following this parcel line in a northeasterly direction to its intersection with (Parcel #16I02017A), thence southeasterly along this line to its intersection with (Parcel #16J03024B), thence in a northeasterly direction along this line to its intersection with (Parcel #16J03033D), thence in a southeasterly direction along this line to its intersection with (Parcel #16J03033F), thence in a northeasterly direction along this line (Parcel #16J03033D) to its intersection with (Parcel #16I02024), thence in a northwesterly direction along this line to its intersection with (Parcel #16J03024C), thence

along this line in a northwesterly direction to its intersection with (Parcel #16I02017A). thence continuing northwesterly along (Parcel #16I02024) to its intersection with Big Arm Branch. thence northeasterly along Big Arm Branch to an intersection with (Parcel #16J02037), thence in an easterly direction to a point on the centerline of Buffalo Road (SR 1003), thence following the centerline of Buffalo Road to its intersection with (Parcel #16J02038T), thence following the perimeter of this parcel (16J02038T) to an intersection with the centerline of Buffalo Road, thence in a northerly direction along the centerline of Buffalo Road to an intersection with (Parcel #16J02038B), thence in a westerly direction following this property line to its most northwesterly point with (Parcel #16J02038C), thence in an easterly direction to a corner with (Parcel #16J02038J), thence following the most easterly perimeter of this parcel to an intersection with the centerline of Buffalo Rd., thence along this centerline in a northerly direction to an intersection with (Parcel #16J02038J), thence in a northwesterly direction following the perimeter of (Parcel #16J02038 J) to its intersection with (Parcel #16J02038D). thence following this parcel line in an easterly direction to its intersection with the centerline of Buffalo Road, thence southerly along the centerline of Buffalo Road to its intersection with (Parcel #16J02026), thence following the perimeter of this line to its intersection with Fletcher Road (SR 1770), thence easterly along the centerline of Fletcher Road to its intersection with (Parcel #16J02026), thence in a northeasterly direction following the perimeter of (Parcel #16J02026) to its intersection with (Parcel #16J02011A), thence southerly along this property line to its intersection with (Parcel #16J02027A), thence southerly along this property line to its intersection with (Parcel #16K01025M), thence following this line to its intersection with (Parcel #16J02009), thence in an southerly direction following the perimeter of this line to its intersection with (Parcel #1601025A), thence with this line to its intersection with (Parcel #16J02007A), thence in a southeasterly direction following this property line along its perimeter to its intersection with (Parcel #16J02005E), thence following the run of an unnamed branch (PB 27/435) to its intersection with the centerline of Wall Road (SR 1747). Thence from the preceding point continuing southeasterly and subsequently northeasterly along Archer's Glen S/D (PB 36/29), thence northwesterly along Jimmie Barne's (Parcel #16K03026A) to a corner with Phyllis Edwards (DR 1938/207), thence southeasterly along her line to its intersection with Donald Driver's line (DR 680/382), thence northeasterly along Driver's line, thence southeasterly to an intersection with Paul Tippett's line, thence northeasterly along this line (DB 958/348), thence northeasterly along Charles Tippett's line, (DB 2645/444) to a point in the centerline of Wendell Road (SR 1701), thence in a northeasterly direction along the centerline of Wendell Road (SR 1701) to a point in the centerline of Wendell Road and Buffalo Creek (PB 64/181), thence southeasterly along Phyllis Edwards' line (PB 64/181), thence southeasterly along Barnes View S/D (PB 64/101), thence northeasterly following "Old Buffalo Creek," a parcel owned by Creekside Land Development Corporation (DR 2691/428), to where it runs into Buffalo Creek, thence in a southeasterly direction following Buffalo Creek to its intersection with (Parcel #16K03031), thence southerly along this line to its intersection with Creekside S/D (Section 9B), from this point continuing in a northeasterly direction along the property line of (Parcel #16K03031) to its intersection with Buffalo Creek, thence southerly along Buffalo Creek to its intersection with Creekside S/D, Section 6 (PB 54/201) and (Parcel #16K04022A), thence following the Creekside S/D Boundary line to a point at its intersection with (Parcel #16K04022), thence in an easterly direction following the perimeter of this parcel to its intersection with the centerline of Covered Bridge Road (SR 1700), thence in an easterly direction along the centerline of Covered Bridge Road to its intersection with (Parcel #16K04021A), thence southeasterly along this property line to its intersection with Tafton S/D Phase 2 (PB 59/495), thence in an easterly direction along this line to its intersection with Buffalo Creek, thence in a southeasterly direction along Buffalo Creek to its intersection with Wyndfall S/D Section 5 (PB 64/273), (Parcel #16J04047O), thence in a southwesterly direction following this property line to a point on the centerline of Carrie Drive, thence southeast along

this centerline and continuing to follow (Parcel #16J04047O) to its intersection with Buffalo Creek, thence following Buffalo Creek in a southwesterly direction to its intersection with Hog Pen Branch, thence northwesterly following Hog Pen Branch (Edenton S/D, PB 73/54), (PB 55/270), (PB 58/127) to a point on the centerline of Buffalo Road (SR 1003), thence southeasterly along Buffalo Road (SR 1003), thence southwesterly and following Horseman's Run S/D (PB 44/237) and (PB 41/383), thence southwesterly along Jerry Pace's line (DB 883/277) to a point on Tim's Creek (PB 25/221), thence in a northeasterly direction along Tim's Creek to its intersection with (Parcel #16J03049), thence in a westerly direction along this property line to a point at the intersection of Mineral Springs Branch (PB 25/221) and (Parcel #16J03050B), thence in a southerly direction following this line to a point where it intersects with (Parcel #16J03053B), thence in a westerly direction to its intersection with (Parcel #16J04011A), thence in a southerly direction to its intersection with (Parcel #16J04011P), thence continuing in a southerly direction and around (Parcel #16J04011P) to its intersection with Sandy Creek Drive, thence in a westerly direction, including all of Sandy Creek Drive, to the centerline of South Murphrey Road (SR 1703), thence northeasterly along the centerline to an intersection with (Parcel #16J04010), thence westerly to an intersection with (Parcel #16P99041I), thence continuing westerly to an intersection with (Parcel #16J03059), thence southerly to the intersecton of (Parcel #16J04009) and (Parcel #16J04007), thence in a westerly direction along Phillip Barnes' property (Parcel #16J04009) to its intersection with (Parcel #16J04009A), thence in a southerly direction to a point on (PN #16J04008) and including all of (PN #16J04009A and 16J04008), from the corner of (PN #16J04008) to its intersection with the centerline of Castleberry Road (SR 1705), thence in a southwesterly direction along this centerline to an intersection with Plantation Point Phase 5 (DB 1878/444), thence southeasterly along this line to a point centerline in a southwesterly direction to its intersection with Lot #230 (PN #16J04007F) of Plantation Point S/D Section 5, thence in a southwesterly direction to an intersection with (PN #16J04005), thence following this property line in a southeasterly direction to its intersection with Watson's Mill S/D (PB 73/349), (PB 63/241) to a point at River Bend S/D (PB 31/143), thence in a southeasterly direction following the River Bend S/D line, thence following River Bend S/D to a point, thence northwesterly along River Bend S/D to a point on the centerline of Castleberry Road (SR 1705), thence following the centerline of Castleberry Road (SR 1705) in a northeasterly direction at a point in the centerline, thence in a northwesterly direction along William Holloway's line (DB 3167/343) to a point on a creek adjoining Riverwood S/D (PB 47/167), thence along this line (Perry Creek) in a northeasterly direction and continuing along Perry Creek (PB 57/436), thence northeasterly along Perry Creek James Allen's line (DB 595/217) to a point at the intersection of Phillip Barnes' line (PR 16J03060), thence southeasterly following his property line to a point at the centerline of Castleberry Road (SR 1705), thence northeasterly along Castleberry Road to a point with the intersection of J.T. Smith's line (PN # 16J03057), (DB 1448/893), thence northwesterly along Smith's line to its intersection with Charles Johnson's line (PR 16J03056), (DB 978/679), thence with Johnson's line in a northwesterly direction to its intersection with Phillip H. Barnes' property (PR 16J03063), (DB 3304/201), thence westerly and southwesterly along Phillip H. Barnes' property (PN # 16J03062), (DB 3304/201) to a point on James Allen's line (DB 595/217), thence westerly along James Allen's line where it intersects with Perry Creek, thence in a southwesterly direction along Perry Creek to an intersection with Elizabeth Badgett's line (PB 57/436), thence northwesterly along Badgett's line to a point on the centerline of Loop Road (SR 1706), thence in a northeasterly direction along the centerline of Loop Road (SR 1706) to a point where lot #1 of Mooneyham Estates (PB 33/231) intersects with Loop Road, thence in a northwesterly direction along lot #1 of Mooneyham Estates, thence in a northeasterly direction along lot #1 (PB 33/321) to a point in the eastern right-of-way of an existing 50' access easement, thence northeasterly along this easement to an intersection in the line of Cooper Farms S/D (PB 54/267), (PB 45/141), thence following Cooper Farms S/D to its

intersection with Saddlebrook S/D (PB 23/127), thence northeasterly along the Saddlebrook S/D line to its intersection with Millstone Manor S/D (PB 35/77), thence following this line southwesterly thence northeasterly to its intersection with the centerline of Covered Bridge Road (SR 1700) at its Point of Beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body, Number of Members.** The governing body of the Town of Archer Lodge is the Town Council and the Mayor. The Council has five members.

"Section 3.2. **Manner of Electing Council, Term of Office.** The qualified voters of the entire Town shall elect the members of the Council. Except as provided in this section, they shall serve four-year terms. In 2011, five members of the Council shall be elected. The three persons receiving the highest numbers of votes shall be elected to four-year terms, and the two persons receiving the next highest numbers of votes shall be elected to two-year terms. In 2013 and quadrennially thereafter, two members shall be elected to four-year terms. In 2015 and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.3. **Manner of Electing Mayor, Term of Office, Duties.** The qualified voters of the entire town shall elect the Mayor. In 2011 and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Town Council and shall advise the Town Council from time to time as to matters involving the Town of Archer Lodge. The Mayor may vote only on matters before the Council in order to break a tie.

"Section 3.4. **Manner of Electing Mayor Pro Tempore, Term of Office, Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chairman to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"Section 3.5. **Compensation of Mayor and Town Council.** The Mayor and members of the Town Council may be reimbursed for ordinary and necessary expenses.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, except that the first election shall be held on November 8, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. FORM OF GOVERNMENT.

"Section 5.1. **Form of Government.** The Town of Archer Lodge operates under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"ARTICLE VI. TAXES AND BUDGET.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Present Use Value.** If an area described in this Ordinance includes agricultural land, horticultural land, or forestland that on the effective date of incorporation is land that is being taxed at present-use value, the land shall continue to be valued for tax purposes at present-use value as long as the land so qualifies.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Archer Lodge is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person, or member of the person's immediate family, who is employed by or is an official, appointed or elected, of the Town of Archer Lodge, shall do business with the Town unless such activity is approved by the Town Council. All officials of the Town shall inform the Town Council of any conflicts of interest, and the failure to so inform shall constitute grounds for immediate dismissal or removal for cause. No official of the Town may accept any gratuity from any businessperson or other official if the gratuity is related to that official's official duties.

"Section 8.2. **Enlargement of Town Council.** The qualified voters of the Town of Archer Lodge may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.3. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner."

SECTION 2. From and after January 1, 2009, the citizens and property in the Town of Archer Lodge shall be subject to municipal taxes levied for the year beginning January 1, 2009, and for that purpose the Town shall obtain from Johnston County a record of property in the area herein incorporated that was listed for taxes as of January 1, 2009, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license ordinance. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009. The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act.

SECTION 3. The Johnston County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Archer Lodge the question of whether or not the area shall be incorporated as the Town of Archer Lodge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 4. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Archer Lodge."

SECTION 5. In the election, if a majority of the votes are cast "FOR the Incorporation of the Town of Archer Lodge," Sections 1 and 2 of this act shall become effective on the date that the Johnston County Board of Elections certifies the results of the election. Otherwise, Sections 1 and 2 of this act shall have no force and effect.

SECTION 6. Until members of the Council are elected in 2011 in accordance with Section 4.1 of the Town Charter and the laws of North Carolina, Jeff Barnes, Clyde Castleberry, Matt Mulhollem, John Perry, and Anne Taylor are appointed to serve as the interim Council, and Mike Gordon is appointed the interim Mayor. They shall possess and

exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to Articles III and IV of this Charter. If any person named in this Charter is unable to serve, the remaining interim Council members shall, by a majority vote, appoint a person to serve until the initial municipal election is held in 2011.

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 535*

Short Title:	Archer Lodge Incorporated.	(Local)
Sponsors:	Senator Rouzer.	
Referred to:	Finance.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF ARCHER LODGE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Archer Lodge is enacted to read:

"CHARTER OF THE TOWN OF ARCHER LODGE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Archer Lodge are a body corporate and politic under the name 'Town of Archer Lodge.' The Town of Archer Lodge has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Town of Archer Lodge are as follows:

BEGINNING at a point in the center line of Buffalo Road, being a common corner with the northwest corner of Edenton subdivision; thence easterly along the northern line of Edenton subdivision (not encompassing said subdivision) to a point in the line of Tax Parcel 16J04047P; thence southward along the line of said parcel to a point in the run of Buffalo Creek; thence meandering northward along the run of Buffalo Creek to the point at which Buffalo Creek intersects with Lake Wendell Road; thence westward along the centerline of Lake Wendell Road to its intersection with Buffalo Road; thence northward along the centerline of Buffalo Road to a new intersection with Lake Wendell Road; thence westward along the centerline of Lake Wendell Road to its intersection with Medlin Road; thence along the centerline of Medlin Road southwestward to the point at which Medlin Road intersects with the western property line of Tax Parcel 16J02039C; thence following the western property line of said parcel to the northwestern corner of Tax Parcel 16I01016; and southward along said property line to the northeastern corner of Tax Parcel 16I01011A; thence along the northern boundary of said property and continuing along the northern boundary of Tax Parcels 16I01011B, 16I01012, and 16I01013G to the southwestern corner of Tax Parcel 16I01013G and the northwestern corner of Tax Parcel 16I01013K; thence along the western line of Tax Parcel 16I01013K to the northeastern corner of Tax Parcel 16I02003Q; thence along the northern boundary of Tax Parcels 16I02003Q, 16I02003G, and 16I02003; thence southward along the western line of Tax Parcel 16I02003 to a point in the centerline of Medlin Road; thence southward along the centerline of Medlin Road along the northwestern property lines of Tax Parcels 16I02003E and 16I02003O to the northwestern corner of Tax Parcel 16I02003N; thence southeasterly along the line of Tax Parcel 16I02003O to a point in the line of Tax Parcel 16I02022T; thence along the line of said parcel in a counterclockwise direction to the northwestern corner of Tax Parcel

16I02012; thence southward along the western line of said parcel and continuing along the western lines of Tax Parcels 16I02011H, 16I02011I, and 16I02010F to a point in the centerline of Covered Bridge Road; thence eastward along the centerline of Covered Bridge Road to the northwestern corner of Tax Parcel 16I02010J; thence southward along the western boundaries of Millstone Manor and Saddle Brook subdivisions (encompassing said subdivisions); thence continuing along the western and southern boundary of Cooper Farms subdivision to a common corner, being the southwestern corner of Tax Parcel 16J03075T and the northwestern corner of Tax Parcel 16J03073F; thence continuing in a southerly direction along the western lines of Tax Parcels 16J03073F, 16J03073D, 16J03073G, and 16J03073B to the point where said line meets the northeastern corner of Tax Parcel 16J03073E; thence across a 50' right of way and southwesterly along the northern line of Tax Parcels 16J03073E and 16J03078A; thence southward along the western line of Tax Parcel 16J03078A to a point in the centerline of Loop Road; thence northeasterly along the centerline of Loop Road to the northwest corner of Tax Parcel 16J03077B; thence southward along the western lines of Tax Parcels 16J03077B, 16J03061, 16J04003G, 16J04003, 16J04003F, and 16J04003E to a point in the line of Tax Parcel 16J04002F; thence continuing counterclockwise along the western line of Tax Parcel 16J04002F to the northwestern corner of Tax Parcel 16J04199C; thence along the western lines of Tax Parcels 16J04199C and 16J04002A to a point in the centerline of Castleberry Road; thence along the centerline of Castleberry Road in a southerly direction to a point, being the southwestern corner of Tax Parcel 16K05012D; thence along the southern and eastern lines of said parcel to the southeastern corner of Tax Parcel 16K05012S; thence along the southeastern lines of Tax Parcels 16K05012S, 16K05012W, 16J04018A, 16J04031A, and 16J04026G to the northeastern corner of Tax Parcel 16J04026G, in the eastern line of River Hills subdivision; thence along the eastern boundary of River Hills subdivision and continuing along the eastern line of River Bend subdivision (encompassing said subdivisions) to the southeastern corner of Tax Parcel 16J04001S, being a common corner with parcels 16J04001T and 16J04001A and also being the northwestern corner of Watson's Mill subdivision; thence along the northern boundary of Watson's Mill subdivision (not encompassing said subdivision) to the southeastern corner of Tax Parcel 16J04005; thence northward along the eastern line of Tax Parcel 16J04005 to the southwestern corner of Tax Parcel 16J04014E; thence along the southern line of said parcel to a point in the line of Tax Parcel 16J04006A; thence counterclockwise along the line of said parcel to a point in the line of Tax Parcel 16J04007; thence easterly along the southern line of said parcel to its southeastern corner; thence northward along the lines of parcels 16J04007, 16J04009, and 16J03059 to the southwestern corner of Tax Parcel 16P99014I; thence along the southern line of said parcel and continuing along the southern line of Tax Parcel 16J04011Q to a point in the centerline of South Murphrey Road; thence continuing across South Murphrey Road and along the southern line of Tax Parcel 16J04011 to a point in the line of Tax Parcel 16J04011P; thence counterclockwise around the perimeter of Tax Parcel 16J04011P to a point in the line of Tax Parcel 16J03053B; thence southeasterly along the line of Tax Parcel 16J03053B and along the southern line of Tax Parcel 16J04013C to the northwestern corner of Horseman's Run subdivision; thence in a counterclockwise direction around the perimeter of Horseman's Run subdivision (encompassing said subdivision) to a point in the centerline of Buffalo Road; thence northward along the centerline of Buffalo Road to the point and place of BEGINNING.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Archer Lodge is the Town Council and the Mayor. The Council has five members.

"Section 3.2. **Manner of Electing Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Council. Except as provided in this section, they shall serve four-year terms. In 2009, five members of the Council shall be elected. The three

persons receiving the highest numbers of votes shall be elected to four-year terms, and the two persons receiving the next highest numbers of votes shall be elected to two-year terms. In 2011, and quadrennially thereafter, two members shall be elected to four-year terms. In 2013, and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire town shall elect the Mayor. In 2009, and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Archer Lodge. The Mayor may only vote on matters before the Council in order to break a tie.

"Section 3.4. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2009 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chairman to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"Section 3.5. **Compensation of Mayor and Town Council.** The Mayor and members of the Town Council may be reimbursed for ordinary and necessary expenses.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, except that the first election shall be held on November 3, 2009.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. FORM OF GOVERNMENT.

"Section 5.1. **Form of Government.** The Town of Archer Lodge operates under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"ARTICLE VI. TAXES AND BUDGET.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Special Provision.** The Town Council may adopt an ordinance allowing any taxpayer within the Town of Archer Lodge an ad valorem tax credit for any amount donated by that taxpayer to the Archer Lodge Municipal Exploratory Committee for use in the effort to incorporate the Town of Archer Lodge. This credit shall not be construed as a violation of G.S. 105-380.

"Section 6.3 **Present Use Value.** If an area described in this Ordinance includes agricultural land, horticultural land, or forestland that on the effective date of incorporation is land that is being taxed at present-use value, the land shall continue to be valued for tax purposes at present-use value as long as the land so qualifies.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Archer Lodge is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person, or member of the person's immediate family, who is employed by or is an official, appointed or elected, of the Town of Archer

Lodge, shall do business with the Town unless such activity is approved by the Town Council. All officials of the Town shall inform the Town Council of any conflicts of interest, and the failure to so inform shall constitute grounds for immediate dismissal or removal for cause. No official of the Town may accept any gratuity from any business person or other official if the gratuity is related to that official's official duties.

"Section 8.2. **Enlargement of Town Council.** The qualified voters of the Town of Archer Lodge may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.3. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner."

SECTION 2. From and after January 1, 2009, the citizens and property in the Town of Archer Lodge shall be subject to municipal taxes levied for the year beginning January 1, 2009, and for that purpose the Town shall obtain from Johnston County a record of property in the area herein incorporated which was listed for taxes as of January 1, 2009, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license ordinance. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009. The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act.

SECTION 3. The Johnston County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Archer Lodge the question of whether or not the area shall be incorporated as the Town of Archer Lodge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 4. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Archer Lodge."

SECTION 5. In the election, if a majority of the votes are cast "FOR the Incorporation of the Town of Archer Lodge," Sections 1 and 2 of this act shall become effective on the date that the Johnston County Board of Elections certifies the results of the election. Otherwise, Sections 1 and 2 of this act shall have no force and effect.

SECTION 6. At the same time as the election held under Section 3 of this act, the Johnston County Board of Elections shall hold an election for the initial Mayor and Town Council as provided in Articles III and IV of the proposed Charter. If the majority of votes is not cast "FOR Incorporation of the Town of Archer Lodge," the election of officers is null and void. The filing period for candidacies is the same as provided by G.S. 163-294.2.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 535:
Archer Lodge Incorporated

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 30, 2009
Introduced by:	Sen. Rouzer	**Prepared by:**	Judy Collier
Analysis of:	PCS to First Edition S535-CSLB-76		Research Assistant

SUMMARY: ***Senate Bill 535[1] incorporates the Town of Archer Lodge in Johnston County, subject to a referendum. The Joint Legislative Commission on Municipal Incorporation approved Senate Bill 535 at a meeting on July 29, 2009. The official Municipal Report is forthcoming.***

The Proposed Committee Substitute (PCS) makes the following changes to the first edition:

- ***Amends the metes and bounds description setting out the boundaries of the area to be incorporated as the Town of Archer Lodge.***
- ***Changes the date of the initial election of members of the governing body of the Town from 2011 to 2009.***
- ***Changes the date of the first municipal election from November 3, 2009 to November 8, 2011.***
- ***Makes conforming changes.***
- ***Adds provisions for an interim town council and interim mayor and designates specific individuals to hold those positions until the 2011 municipal elections for mayor and town council.***
- ***Allows the interim town council to fill any vacancies in the governing body that may occur until the initial municipal election is held in 2011.***

CURRENT LAW: Municipalities may be created by the General Assembly, with powers and duties it deems advisable. Rule 35.1(b) of the House Rules (see text below) requires that a legislative proposal proposing incorporation of a municipality must have attached to its bill jacket a report of the Joint Legislative Commission on Municipal Incorporations prior to a favorable report by a committee of the House. Article 20 of Chapter 120 creates the Joint Legislative Commission on Municipal Incorporation and sets forth the constitutional and statutory criteria for review of a proposed incorporation.

BILL ANALYSIS: Senate Bill 535 would incorporate the Town of Archer Lodge in Johnston County, with the following provisions:

- Incorporation is subject to a referendum on the proposed incorporation.
- The town is to be governed by a five-member town council and a mayor.
- Provides for municipal taxes, the privilege license tax, and ad valorem taxes.

EFFECTIVE DATE: This act would become effective when it becomes law.

S535-SMRE-66(CSLB-76) v1

[1] Companion Bill, House Bill 641 (1st Ed PCS), received a favorable report from House Local Government I Committee on April 23, 2009 and the 2nd Edition is currently in House Finance.

2010

SENATE
FINANCE

MINUTES

SENATE FINANCE COMMITTEE
Tuesday, May 18, 2010 at 4:40 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 4:40 PM on May 18, 20, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator Clodfelter presided.

Appropriations Act of 2009

Fees

Kristen Walker, a fiscal analyst with the Fiscal Research Division, was recognized to explain and answer questions regarding the Natural and Environmental Resources section of the bill. The section authorizes $1.8 million in fees. New fees include the dam safety fee and the fee to advertise in State welcome centers. Increased fees include exam and certification fees for pesticide dealers, applicators, consultants, and structured pest control; registration and annual fees for the Department of Labor Apprenticeship program; and hazardous waste fees. There is no change in the Utilities Commission's regulatory fee.

Kristen Leggett, a fiscal analyst with the Fiscal Research Division, was recognized to explain and answer questions regarding the Justice and Public Safety section of the bill. The bill authorizes $22.4 million in fees. New fees include a fee for filing a motion for summary judgment; for assigned title in; for filing a counterclaim in domestic violence actions; and for resuming a former or maiden name. Increased fees include civil and criminal actions in District Court; civil actions in Superior Court; failure to comply in criminal actions; summary ejectment proceedings before a magistrate; for defendants appointed counsel in criminal cases; for probations, parole;, and post-release supervision; and for community service programs.

The General Government section authorizes $130,000 in increased fees for filing a contested case at the Office of Administrative Hearings and for candidates filing for office. No explanation was requested.

Melanie Bush, a fiscal analyst with the Fiscal Research Division, was recognized to explain and answer questions regarding the Health and Human Services section of the bill. The bill authorizes $145,000 in fees. New fees cover the Adult Home Care Medication Aide Exam and Adult Home Care exam and renewals.

A copy of the fee provisions summary is attached.

IRC Update

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the recommendation of the Revenue Laws Study Committee. This section updates the reference to the Internal Revenue Code to conform to the changes made by federal acts. However, the bill does not conform to the five year carryback of net operating losses incurred by large businesses.

Cap Tax Rate on Income from Family-Owned and Other Small Business

Cindy Avrette explained that this section would limit the tax rate that applies to income received by a taxpayer from a small business to the same rate that the State imposes on corporate income. The corporate income tax rate is 6.9%.

Lower Sales Tax Compliance Burden on Small Retailers

Cindy Avrette stated that this section would decrease the number of retailers required to submit a pre-payment of 65% of the amount of sales tax revenue to be remitted for the following month by changing the threshold for this payment schedule from $10,000 to $15,000 effective October 1, 2020, and from $15,000 to $20,000, effective July 1, 2011.

Relieve Annual Report Compliance Burden on Small Business

Ms. Avrette explained that this section stipulates that the first annual report of a LLC is due April 15 following its year of organization.

Modernize Sales Tax on Accommodations

Ms. Avrette explained that this section would establish new sales and use tax reporting and remittance obligations on a person who enters into a contract with a provider of transient accommodations to facilitate the rental of an accommodation. A "facilitator," which would include an online travel company, would be required to report to the provider the final sales price charged to a customer for the rental of an accommodation and to send the provider the tax due on the sales price. A facilitator who fails to send the provider the amount due would become liable for the tax. A provider who receives tax payments from a facilitator would be required to remit the payments to the Department of Revenue. A provider would not become liable for payments due but not received from a facilitator. Likewise, a facilitator would not be liable for payments sent to a provider but not remitted to the Department. The section also clarifies that the rental of a transient accommodation, whether through the provider or a facilitator, is sourced to the location of the accommodation.

Modernize Admissions Tax and Restore Amenities Exclusion

Ms. Avrette stated that this section does three things. First, it extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling. The tax would apply to the difference between the face value of the ticket and the price for which the reseller sells the ticket. Second, it restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. Thirdly, it requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due.

Improve Tax and Debt Collection Process

Ms. Avrette explained that this section would improve the tax and debt collection process of the Department of Revenue by 1) expanding the use of the Setoff Debt Collection Act as follows: allow debts owed by a business to be set off against a tax refund due the business, allow a setoff against any type of tax refund, and allow a community college to submit for setoff debts owed the college; 2) authorizing the use of electronic process for sending notice of garnishment; 3) providing for a data match between the Department of Revenue

and financial institutions hold accounts of delinquent taxpayers; and 4) expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses (accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts).

Extend Sunset on Expiring Tax Incentive Income Tax credits and Sales Tax Refunds One Year

Ms. Avrette explained that this section extends the sunset on four incentive provisions from January 1, 2011, to January 1, 2012. The four provisions are 1) the tax credit for mill rehabilitation; 2) the tax credit for qualified business ventures; 3) the sales tax refund for passenger air carriers; and 4) the sales tax refund for motorsports aviation fuel.

Reduce Franchise Tax Burden on Construction Companies

Ms. Avrette said that this section applies the provision enacted last session that excludes from a corporation's franchise tax base all billings in excess of costs retroactively to taxable years beginning on or after January 1, 2007.

Fair Tax Penalties

Ms. Avrette explained that this section provides that a taxpayer may not be assessed a penalty for failure to pay tax when due if the taxpayer pays the tax due within the stated period of time.

Credit for Constructing a Renewable Energy Property Facility

Ms. Avrette explained that this section creates a new tax credit for construction of a facility in North Carolina for the manufacture of renewable energy property. The credit is equal to 25% of the installation and equipment costs of construction paid during the taxable year.

A copy of the Appropriations Act fee provisions summary is attached.

Senator Jenkins moved to adopt the bill as amended in Senate Appropriations and that the Committee give it a favorable report. The motion carried.

The meeting adjourned at 5:32 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, May 18, 2010

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **897** Appropriations Act of 2010.

Draft Number:	35430
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Clodfelter chaired

Convened 4:40pm
adjourned 5:32pm

Sim Jenkins bill as amended be P p be given a favorable report

Chairs' Agenda

Senate Finance Agenda
Tuesday, May 18, 2010

	SB 897, 2nd Edition Appropriations Act of 2009	Staff available for questions
(2)	IRC Update	(5) Cindy Avrette, Research – explained & answered ?'s Jonathan Tart, Fiscal Research
(3)	Cap Tax Rate on Income from Family-Owned and Other Small Business	Cindy Avrette, Research – answered ?'s Barry Boardman, Fiscal Research Jonathan Tart, Fiscal Research
(4)	Lower Sales Tax Compliance Burden on Small Retailers	Cindy Avrette, Research Sandra Johnson, Fiscal Research
(5)	Relieve Annual Report Compliance Burden on Small Business	Cindy Avrette, Research Rodney Bizzell, Fiscal Research
(9)	Extend Sunset on Expiring Tax Incentive Income Tax Credits and Sales Tax Refunds One Year read summary for minutes	Cindy Avrette, Research Rodney Bizzell, Fiscal Research
(6)	Modernize Sales Tax on Accommodations Cindy Avrette explained	Trina Griffin, Research Sandra Johnson, Fiscal Research
(7)	Modernize Admissions Tax and Restore Amenities Exclusion	Trina Griffin, Research Rodney Bizzell, Fiscal Research
(8)	Improve Tax and Debt Collection Process	Martha Walston, Fiscal Research
(10)	Reduce Franchise Tax Burden on Construction Companies	Cindy Avrette, Research Barry Boardman, Fiscal Research
(11)	Fair Tax Penalties	Cindy Avrette
(1)	Fees	(1) Kristin Walker, NER answer ?'s (2) Kristine Leggett, JPS (3) ~~Claire Hester~~, Gen Gov no ?'s (4) ~~Melanie Bush~~, HHS no ?'s

(12) Approp amendment renewable energy tax credit (check summary)

Senate Finance Committee
Tuesday, May 18, 2010
544 LOB

AGENDA

Welcome and Opening Remarks

Bills

SB 897 Appropriations Act of 2009.

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 18, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	KCG
Kay Emanuel	Legislative Research
Joy Hicks	NCDA&CS

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 18, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joel Maynard	ARM & Hasm
Bill Maynard	ARM & Moore
Michael A Simpson	Dominion
Andy Ellen	NCRMA
Linda Davis	NC AE
Mary Foreman	NCAE
Donald Boring	Office of the Governor
	MUC

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 18, 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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BJ Miller	Moses Cone
Amy Whited	NC Med Society
W. Gardner Colton	Personal Interest
Henry Jones	Attorney - Raleigh
Tibby Rodman	NCRMA
John Mraz	TPG
David Rice	Manning Fulton
John W Smith	AOC
Mildred Spearman	NCAOC
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Senate Finance Committee — **Name of Committee**

May 18, 2010 — **Date**

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Joey Stansbury	" " "
Chuck Hawkins	NCCAT
Rebecca Trask	NCACC
Jessi Hayes	NC HBA
Cathy Thomas	NCAR
Joe Lanier	Nelson Mullins
Brian Dempsey	MWC
Amy Hobbs	MUC
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VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 18, 2010
Date

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Kathy Harkins	Progress Energy
Janie Hauser	DENR
Elizabeth Biser	DENR
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Harrison Gilbert	Governor's Office
Will Culpepper	MVA

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Senate Finance Committee
Name of Committee

May 18, 2010
Date

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	Bone & Asso.
	NCAEC
	DLC and Assoc.
	Manning

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Senate Finance Committee
Name of Committee

May 18, 2010
Date

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NAME	FIRM OR AGENCY AND ADDRESS
	TCANC - Tim Agnew
	RLA

SENATE BILL 897:
Appropriations Act of 2010

2009-2010 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	May 17, 2010
Introduced by:	Sen. Dannelly	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Second Edition, as amended		

SUMMARY: ***Senate Bill 897[1], as amended in the Appropriations Committee, provides tax and administrative relief to small businesses, extends various economic development incentives, incorporates four proposals recommended by the Revenue Laws Study Committee, and clarifies the application of penalties in cases of forced consolidation.***

The bill provides the following tax relief to small businesses:

- ***It extends the 5-year carryback for net operating losses sustained in 2009. (Section 31.1, page 156)***
- ***It caps the individual income tax rate on the net business income received by a taxpayer from a small business at 6.9%, the same tax rate imposed on corporations. (Section 31.2, page 156)***
- ***It reduces the sales tax threshold that determines when a retailer must prepay a portion of the next month's anticipated sales tax collections from $20,000 to $15,000 effective October 1, 2009, and to $10,000 effective July 1, 2011. (Section 31.3, page 157)***

The bill provides administrative relief to small businesses by stipulating that the first annual report of a LLC is due April 15 following its year of organization. (Section 31.4, page 158)

It contains the following provisions to encourage economic development:

- ***It reserves $10,000,000 for commerce business recruitment initiatives. (Page 4, line 39)***
- ***It extends the sunset on the following expiring tax credits and refunds for one year:***
  - ***The tax credit for mill rehabilitation. (Section 31.5(a), page 160)***
  - ***The tax credit for qualified business investments. (Section 31.5(b), page 160)***
  - ***The sales tax refund for air passenger carriers. (Section 31.5(c), page 160)***
  - ***The sales tax refund for motorsports aviation fuel. (Section 31.5(d), page 160)***
- ***It offers a 25% tax credit for the construction of a renewable energy property facility. (Section 31.11, added by amendment in Appropriations on May 18, 2010)***

It contains the following tax proposals recommended by the Revenue Laws Study Commission:

- ***It updates the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. By doing so, North Carolina conforms to the changes made by five federal acts. The bill does not conform to***

[1] The Appropriations Committee gave S897-CSLExf-47, as amended, a favorable report on May 18, 2010..

the 5-year carryback for net operating losses (NOL) available to large businesses. (Section 31.1, page 156)

- ***It establishes new sales and use tax reporting and remittance obligations on a person who enters into a contract with a provider of transient accommodations to facilitate the rental of an accommodation. (Section 31. 6, page 160)***
- ***It extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling and restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. It also requires the Department to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. (Section 31.7, page 163)***
- ***It improve the tax and debt collection process of the Department of Revenue by expanding the use of the Setoff Debt Collection Act, authorizing the use of electronic process for sending notice of garnishment, providing for a data match between the Department and financial institutions holding accounts of delinquent taxpayers, and expanding the Statewide Accounts Receivable Program. (Section 31.8, page 164)***

It applies retroactively a tax law change enacted last session. S.L. 2009-422 excluded from a corporation's franchise tax base all billings in excess of costs, effective for taxable years beginning on or after January 1, 2010. This provision would apply the change retroactively to 2007. (Section 31.9, page 169)

Lastly, it provides that a taxpayer may not be assessed a penalty for failure to pay tax when due if the taxpayer pays the tax due within the stated period of time. (Section 31.10, page 169)

IRC UPDATE (Section 31.1, page 156; Senate Bill 1183)

Section 31.1 would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009 to May 1, 2010. By doing so, North Carolina would conform to the changes made by five federal acts. However, the bill does not conform to the 5 year carryback of net operating losses incurred by large businesses. This section of the bill would become effective when it became law. The Revenue Laws Study Committee recommended this legislation.

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[2] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[3] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal

[2] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[3] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

changes are made. By change the reference date to May 1, 2010, the bill incorporates changes made in the following federal acts:

- Worker, Homeownership, and Business Assistance (WHBA) Act. *(P.L. 111-92)*
- Acceleration of Income Tax Benefits for Haiti Relief. *(P. L. 111-126)*
- The Patient Protection and Affordable Care Act. *(P.L. 111-148)*
- The Health Care and Education Reconciliation Act.[4] *(P.L. 111-152)*
- The Hiring Incentives to Restore Employment (HIRE) Act. *(P.L. 111-147)*

The WHBA made the following tax law changes:

- *Five-year carryback of NOL for small business.* – It extended the five-year carryback of net operating loss (NOL) for small business enacted under the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) for one more year. Taxpayers that sustain a NOL for a tax year generally can take an NOL deduction to reduce income in another tax year. Under ARRTA, taxpayers could elect to carry back 2008 NOLs for three, four or five years, instead of the normal two years. The WHBA provides the same eligible businesses may elect to carry back 2009 NOLs for three, four, or five years. An eligible business is defined as a corporation, partnership or sole proprietorship that had average annual gross receipts of no more than $15 million for the tax year of the NOL and the two immediately preceding tax years. The bill conforms to this provision. Since North Carolina does not allow NOL for corporate taxpayers, conformity to this provision only applies to individual filers.

- *Five-year carryback of NOL for other business.* – It provided a similar election 5-year carryback of NOL for all businesses of any size, with the following limitations:
    - Limits the amount of a NOL carried back to the fifth taxable year to 50% of taxable income.
    - Limits the election to NOLs incurred in either 2008 or 2009, but not both.

  The bill decouples from this provision in a manner similar to what it has done in the past when it has decoupled from the federal accelerated depreciation provisions. A taxpayer will be required to add back the NOL deduction taken under WHBA in the year that it is claimed for federal purposes. Then, for taxable years 2011 through 2013, the taxpayer may deduct from federal taxable income one-third of the NOL absorbed on the taxpayer's 2003, 2004, 2005, and 2006 federal returns.

- *DOD Homeowner's Program.* – Provides that payments made under the Department of Defense Homeowners Assistance Program to certain military and civilian employees in connection with base closures are excluded from taxable income.

P.L. 111-126 provided that an individual who made a monetary donation to a qualified charitable organization for Haiti relief after January 11, 2010, and before March 1, 2010, could claim the contribution as a charitable deduction on the person's tax return for either 2009 or 2010. This bill conforms to this provision.

The Patient Protection and Affordable Care Act, as amended by the Reconciliation Act, made the following changes to the tax law. This bill conforms to these changes:

- *Medical expense deduction.* -- Effective January 1, 2013, the threshold for unreimbursed medical expenses will increase from 7.5% to 10% of adjusted gross income. Individuals age 65 and older are temporarily exempt from the increase; it would apply to seniors effective

[4] This Act served as a 'sidecar' bill that allowed amendments to the Patient Protection Act to be passed by the Senate with only 51 votes using the budget reconciliation rules.

January 1, 2017. Approximately 6% to 8% of North Carolina taxpayers claim the medical expense deduction on their income tax return.

- *Flexible spending account limits.* -- Effective January 1, 2011, the definition of 'qualified medical expenses' for purposes of Flexible Spending Accounts, Heath Spending Accounts, and Health Reimbursement Accounts will be modified to conform to the definition of that term for purposes of the medical expense itemized deduction. This modification means that over-the-counter medicines will not be covered unless they are prescribed by a health care professional. Effective January 1, 2013, the amount a person may contribute to a Flexible Spending Account plan will be limited to $2,500, indexed annually after that year. There is no limit under current law, although some employers may limit the amount that may be set aside.
- *Executive compensation.* -- Effective January 1, 2011, a health insurer provider may not deduct the amount paid to an employee to the extent the remuneration exceeds $500,000 unless the premium income paid to the insurer meets minimum essential coverage requirements.

The HIRE Act extended through 2010 the increased section 179 expensing levels[5] authorized under the Emergency Economic Stabilization Act (ESSA) of 2008 and extended through 2009 by ARRTA. In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Code. To be eligible, the property must be tangible personal property that is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take the expensing deduction first and claim section 168(k) depreciation on any remaining basis. Prior to the EESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. The new law temporarily doubles the limitation to $250,000[6] and increases the phase-out to $800,000.

CUT TAX RATE ON INCOME FROM FAMILY-OWNED AND OTHER SMALL BUSINESS (Section 31.2, page 156)

Section 31.2 would limit the tax rate that applies to income received by a taxpayer from a small business to the same rate the State imposes on corporate income. The corporate income tax rate is 6.9%. This section would become effective for taxable years beginning on or after January 1, 2010.

A business may be organized as a corporation, as a sole proprietorship, or as a pass-through entity such as a partnership or LLC. Business income derived from a corporate entity is taxed under the corporate income tax. In North Carolina, the corporate income tax rate is 6.9%. Business income derived from a sole proprietorship or a pass-through entity is taxed under the individual income tax. North Carolina has a graduated income tax rate structure of 6%, 7%, and 7.75%.

Section 31.2 would provide that the individual income tax rates applicable to income derived from a small business could not exceed the tax rate imposed on a corporation. That would effectively tax business income at the rates of 6% and 6.9%. The bill defines a small business as a business whose cumulative gross receipts from all business activity in a taxable year does not exceed $850,000.

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[5] The Governor's budget included this tax item.

[6] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

The term 'business income' would not include income that is considered passive income under the Code. Section 469 of the Code, as well as various IRC tax regulations, define passive income. Form 1040, Schedule E, requires reporting of passive and non-passive income. Form 1040, Schedule C, requires the reporting of profit and loss from sole proprietorships. Form 1040, Schedule 4, requires the reporting of farm income and loss.

Although the bill does not change the individual income tax surtax enacted last session, it would reduce the amount of tax to which the surtax applies. The surtax is equal to a percentage of the tax payable by the taxpayer.[7] The percentage amount varies depending upon the taxpayer's North Carolina taxable income[8] and the taxpayer's filing status. For married filing jointly, the surtax percentage is zero for taxable incomes up to $100,000; it is 2% for taxable incomes[9] over $100,000 and up to $250,000; and it is 3% for taxable incomes[10] over $250,000.

LOWER SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS (Section 31.3, page 157)

Section 31.3 would decrease the number of retailers required to submit a pre-payment of 65% of the amount of sales tax revenue to be remitted for the following month by changing the threshold for this payment schedule from $10,000 to $15,000, effective October 1, 2010, and from $15,000 to $20,000, effective July 1, 2011. This change in the law does not change the amount of sales tax revenue submitted to the State, but it does change by one month the timing of the payment for the year of the transition to the lower threshold.

Retailers must remit sales tax payments to the State on one of three filing schedules:

- A retailer who is consistently liable for less than $100 a month in sales and use taxes must file a return and pay the taxes due on a quarterly basis.
- A retailer who is consistently liable for at least $100 but less than $10,000 a month must file a return and pay the taxes due on a monthly basis.
- A retailer who is consistently liable for at least $10,000 a month must make a monthly prepayment of the next month's tax liability. Prior to 2006, retailers in this category had to pay tax twice a month. At the request of several large retailers in the Streamlined Sales Tax Project, North Carolina adopted the once a month payment schedule.

The threshold limit of $10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02.[11] Prior to this change, the threshold amount for making bimonthly payments was $20,000. Since 2001, the State and local tax rate has increased from 6.5% to 7.75%.[12] The lowering of the threshold amount as well as the increase in the tax rate has subjected more retailers to the most extensive sales tax remittance requirements. Some of the

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[7] North Carolina income tax is the amount recorded on line 14 of NC D-400 tax form.
[8] North Carolina taxable income is the amount recorded on line 13 of the NC D-400 tax form.
[9] The graduated NC income tax rates are 6%, 7%, and 7.75%. The effective tax rates in the respective tax brackets for taxpayers subject to the 2% surtax are 6.12%, 7.14%, and 7.91% respectively.
[10] The effective graduated tax rates for taxpayers subject to the 3% surtax are 6.18%, 7.21%, and 7.98%. Only nine states have a higher individual income tax rate than 7.98%: Hawaii, Oregon, California, New Jersey, Vermont, Rhode Island, Iowa, New York, and Maine.
[11] The acceleration of sales tax payments in 2001 created a nonrecurring revenue gain of more than $40 million in FY01-02.
[12] In some counties, the combined State and local sales tax rate is 8%.

small retailers in this category, especially those whose sales are not consistent from month to month, have expressed a cash flow hardship with the pre-payment requirement.

This provision would restore the sales tax filing thresholds to their pre-2001 level of $10,000 over a two-year period. By reducing the threshold from $20,000 to $15,000, the bill relieves 2,133 retailers from the pre-payment requirement. These retailers would continue to file a monthly return and pay the sales tax due on a monthly basis. The reduction of the threshold from $15,000 to $10,000 would relieve an additional 1000 plus retailers from the pre-payment requirement.

RELIEVE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS (Section 31.4, page 158; Part of Senate Bill 1177)

Section 31.4 stipulates that the first annual report of a LLC is due April 15 following its year of organization. The Revenue Laws Study Committee recommended this provision as part of its Revenue Laws Technical, Clarifying, and Administrative Changes proposal.

In March 2009, the Secretary of State's Office mailed 270,000 notices to businesses stating they were late in filing their annual reports. Failure to file an annual report is grounds for administrative dissolution for both business corporations and LLCs. The Secretary of State found that many businesses thought their first annual reports were due the year after their formation.[13] The Secretary of State informed the businesses that the first annual report is due on April 15th, regardless of when the business is formed. Under this interpretation, a LLC that filed its articles of organization on April 10th and paid the $125 filing fee would also have to file an annual report 5 days later along with a $200 annual report filing fee. The Revenue Laws Study Committee considered the issue at the request of many CPAs.

This section does three things to address the areas of concern:

- It conforms the due date for filing annual reports to the due date for filing corporate income tax returns. In 1997, at the recommendation of the General Statutes Commission, the General Assembly set the due date for corporate annual reports at the due date for filing tax returns.[14] The change was designed to make the filing of annual reports easier: the report could be made to one agency, the Department of Revenue, at a more familiar deadline date with the corporation's tax return. In 2007, the General Assembly changed the date a corporate tax return is due to be filed from the 15th day of the third month following the close of the corporation's fiscal year to the 15th day of the fourth month.[15] However, a conforming change was not made to the annual report filing statute. The lack of uniformity has caused confusion. This subsection makes the necessary conforming change.
- It provides that the first annual report required to be filed by a LLC is due by April 15th of the year *following* the calendar year in which the company files its articles of organization.
- It provides that the annual report must specify the year to which the report applies. The practice of the Secretary of State's Office is to credit an annual report that it receives to the oldest year in which an annual report is due and owing.

[13] Prior to the enactment of S.L. 2007-475, annual reports were filed on the anniversary of the business' incorporation. In an attempt to make the filing of the report easier, S.L. 2007-475 provided that a business would file its report with its income tax return to the Department of Revenue.
[14] S.L. 1997-475, section 6.1.
[15] S.L. 2007-491, section 14.

- It stipulates in the effective date section that the first annual report of a LLC is due April 15 following its year of organization. It provides that a LLC whose articles of organization were filed on or after January 1, 2010, but before April 15, 2010, is not required to file an annual report until April 15, 2011. It also provides that a LLC that was formed before January 1, 2009, and has filed an annual report in each year after the calendar year in which its articles of organization were filed is considered to have met its annual report filing requirements.

EXTEND SUNSET ON EXPIRING TAX INCENTIVE INCOME TAX CREDITS AND SALES TAX REFUNDS ONE YEAR (Section 31.5, page 160)

Section 31.5 extends the sunset on four incentive provisions from January 1, 2011, to January 1, 2012.

This section extends the sunset on the following four incentive provisions:

- *The tax credit for mill rehabilitation.* The credit for rehabilitating vacant historic manufacturing sites was established in 2006. The credit was last extended in 2008, and the sunset was amended to allow the credit where an application for an eligibility certification is submitted on or after the sunset date. The prior sunset did not allow the credit for expenses occurring on or after the sunset date. To be eligible for the credit, a taxpayer must spend at least $3 million to rehabilitate a historic, vacant, former manufacturing facility. The amount of the credit depends upon the development tier in which the site is located and the eligibility of the site for a federal credit

- *The tax credit for qualified business ventures.* The provision does not increase the cap, as recommended in the Governor's budget. The cap remains at $7.5 million a year. This credit was last extended in 2007. The purpose of the credit is to stimulate early stage investments that help move new technologies from universities and other research laboratories to commercialization. The qualified business investment tax credit is allowed for an individual taxpayer who invests in a qualifying small business. Qualifying small businesses include a business that engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, a business that has received within the preceding three years funding from a federal agency under the Small Business Innovation Research Programs, a business that has been certified by a research university as currently performing under a licensing agreement with the institution for commercializing technology developed at the institution. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year

- *The sales tax refund for passenger air carriers.* This credit was last extended in 2008. In 2005, the General Assembly allowed a sales and use tax refund to an interstate passenger air carrier for the net amount of sales and use tax paid by it on fuel during a calendar year in excess of $2,500,000. The 'net amount of sales and use taxes paid' is the amount of sales tax paid by the interstate passenger air carrier less the refund of that tax allowed to all interstate carriers under subsection (a) of G.S. 105-164.14. The refund for which the sunset provision is being extended is in addition to the refund allowed under G.S. 105-164.14(a).

- *The sales tax refund for motorsports aviation fuel.* This credit was last extended in 2008. In 2005, the General Assembly enacted a refund of sales and use taxes paid on aviation fuel by a motorsports racing team or motorsports sanctioning body. In order to qualify for the

refund, the fuel must have been used to travel to or from a motorsports event in this State, from this State to a motorsports event in another State, or to this State from a motorsports event in another State. For the purposes of the refund, a 'motorsports event' includes a motorsports race, a motorsports sponsor event, and motorsports testing.

MODERNIZE SALES TAX ON ACCOMMODATIONS (Section 31.6, page 160; Senate Bill 1185)

Section 31.6 would establish new sales and use tax reporting and remittance obligations on a person who enters into a contract with a provider of transient accommodations to facilitate the rental of an accommodation. A "facilitator," which would include an online travel company, would be required to report to the provider the final sales price charged to a customer for the rental of an accommodation and to send to the provider the tax due on the sales price. A facilitator who fails to send the provider the amount due would become liable for the tax. A provider who receives tax payments from a facilitator would be required to remit the payments to the Department of Revenue. A provider would not become liable for payments due but not received from a facilitator. Likewise, a facilitator would not be liable for payments sent to a provider but not remitted to the Department. The section also clarifies that the rental of a transient accommodation, whether through the provider or a facilitator, is sourced to the location of the accommodation. The Revenue Laws Study Committee recommended this legislation.

Gross receipts derived from the rental of transient accommodations are subject to State and local sales tax at the general rate, which is currently 7.75% in most counties. Many counties (over 70) and cities (over 85) also levy an occupancy tax on accommodations, with rates ranging from 1% to 6%. The tax does not apply to any private residence or cottage rented for less than 15 days in a calendar year or to any lodging supplied to the same person for 90 or more continuous days.

Deemed "retailers" under the Sales Tax Article, operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are required to collect and remit the tax due. This includes rental agents or real estate brokers who rent private residences or cottages to transients on behalf of the owners. However, under the plain language of the statute, online intermediaries that list available rooms and collect payment for the rental of those rooms are not retailers required to collect local occupancy tax on accommodations because they are not "operators" of those accommodations. This interpretation was the holding in the Fourth Circuit case of *Pitt County v. Hotels.com*.

Generally speaking, a person who wishes to make a reservation for accommodations may contact the accommodation directly, use the services of a commissioned travel agent, or make reservations through an online "intermediary," such as Expedia or Travelocity. Intermediaries contract with accommodation providers for the right to facilitate the reservation of the provider's rooms through their website. The intermediaries have no ownership interest or legal right to the rooms, nor do they bear any risk of loss if rooms are not booked through their site. Under the contract, the intermediary agrees to pay the provider a discounted room rate and then adds a "facilitation fee" or other similarly-named charge to the discounted room rate and also collects an amount that reflects anticipated taxes plus a nominal service or processing fee. Generally speaking, the facilitation fee is not disclosed to the customer or to the provider, and the amount collected for "taxes and fees" is not itemized.

With regard to payment, a consumer who books with the provider directly or uses a travel agent typically provides the hotel or agent with a credit card number to guarantee the reservation and then pays the hotel directly at the time of check-out. A consumer who books through an intermediary pays up front and prior to occupancy. This business model is known as the "merchant model" or the "prepaid

model." Under this model, once the customer occupies the room, the provider bills the intermediary for the discounted room rate plus State and local sales tax and occupancy tax, if applicable, based on that rate. Since the provider does not know the final room rate paid by the customer, it cannot collect sales and occupancy tax based on that amount.

There is little debate that intermediaries are required to remit sales and occupancy taxes to an accommodations provider based on the discounted room rate that they have negotiated. The central issue is to what extent intermediaries may be required to collect sales tax and occupancy tax based on the marked-up rate that they ultimately charge consumers, which includes their service fees.

This section does the following:

- It provides that the State sales tax on accommodations applies to the *sales price* of the rental and to other gross receipts derived from that rental. "Sales price" is currently defined as the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented, and it includes the retailer's costs as well as charges for any services necessary to complete the sale. For purposes of the sales tax on accommodations, the proposal provides that the sales price will be determined as if the rental of the accommodation is a service.
- It provides that a person, other than a rental agent, who, by written contract, is authorized to facilitate the rental of and collect payment for the rental of accommodations is considered a retailer for purposes of determining the sales price of the accommodation. The rationale for incorporating the term "sales price" and deeming a facilitator to be a retailer for purposes of calculating the sales price is to capture the total cost paid by the consumer for an accommodation regardless of whether it is paid to a hotel directly or to a third party that charges facilitation or other service fees in addition to the room rate.
- It requires a person who enters into a contract with the provider of an accommodation to facilitate the rental of accommodations to report the sales price and to send the tax due based on that sales price to the provider of the accommodation. The provider is required to remit the tax payments received from a facilitator to the Department of Revenue. A facilitator who fails to send the provider the amount due would become liable for the tax, and the provider would not be liable for payments due but not received from a facilitator. Likewise, a facilitator would not be liable for payments sent to a provider but not remitted to the Department. The section further provides that these requirements are considered to be terms of a contract between a provider and a facilitator.
- It codifies the current practice with regard to sourcing transactions for the rental of transient accommodations by stating that they are sourced to the location of the accommodation.
- It makes conforming changes to the statute that sets out the uniform provisions for occupancy taxes. In doing so, it imposes the same responsibility and liability on a person who facilitates the rental of an accommodation with regard to occupancy tax as that person would have for State sales tax on accommodations. It also makes clear that the room occupancy tax applies to the same gross receipts and is calculated in the same manner as the State sales tax on accommodations.

This section would become effective January 1, 2011, and apply to gross receipts derived from accommodations provided on or after that date.

MODERNIZE ADMISSIONS TAX AND RESTORE AMENITIES EXCLUSION (Section 31.7, page 163; Senate Bill 1186)

Section 31.7 does three things:

- ***It extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling. The tax would apply to the difference between the face value of the ticket and the price for which the reseller sells the ticket. This provision would become effective January 1, 2011, and apply to admission tickets sold on or after that date.***
- ***It restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. This provision would become effective for charges for admission received on or after August 1, 2010.***
- ***It requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. This provision would be effective when it becomes law.***

Modernize Admissions Tax -- North Carolina imposes a 3% privilege tax on the gross receipts of a person who offers or manages any of the following taxable amusements:

- A dance or athletic contest for which admission fee in excess of 50¢ is charged.
- Amusement or entertainment for which an admission is charged.
- A performance, show, or exhibition, such as a circus or dog show.

G.S. 14-344 limits the total amount a seller or reseller of an admission ticket may charge to "...the combined face value of the ticket, tax and the authorized service fee." The service fee may not exceed $3.00 unless the promoter of the event and the ticket sales agency agree in writing to a different amount and that amount is made known to the public in writing. A violation of this section is punishable as a Class 2 misdemeanor.

In 2008, as part of Senate Bill 1407, the General Assembly enacted G.S. 14-344.1. This statute authorizes a person to resell an admission ticket on the Internet with no cap on price unless the resale is prohibited by the venue. A person who resells an admission ticket under this statute is required to provide a ticket guarantee that must be conspicuously displayed on the person's Website and to direct a prospective purchaser to the ticket guarantee before completion of the resale transaction. The guarantee must provide that a purchaser will be given a full refund if any of the following occurs:

- The event is cancelled.
- The purchaser is denied admission other than due to an act or omission by the purchaser.
- The ticket is not delivered as promised resulting in purchaser's inability to attend event.

Ticket resales are not subject to the admissions tax because the secondary seller is not "giving, offering, managing, or exhibiting" the amusement. The reseller does not fall within the scope of the statute. As a compromise agreement in 2008, the General Assembly required Internet ticket resellers must report their gross receipts for North Carolina events to the Department of Revenue on monthly basis. Since August 2008, there have been 65 reports, reflecting 17 reporting entities.

Subsections (a) through (c) of this section would modernize the tax on admissions as follows:

- Extend the 3% admissions tax to the gross receipts of a person who is engaged in the business of reselling tickets under G.S. 14-344.1. The gross receipts would exclude the price printed on the face of the ticket. Thus, the tax would be imposed on the difference between the price sold and the face value of the ticket. If the price is not printed on the ticket, the tax would apply to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket. This same tax provision passed the Senate when Senate Bill 1407 was being considered during the

2008 Regular Session, but it was removed when the bill was considered in the House Finance Committee. This provision would modernize the admissions tax by recognizing the current business model for the sale and resale of tickets, which did not exist at the time the admissions tax was originally enacted in the 1930s. It would also equalize the admissions tax by treating the markup in a resale transaction the same as the face value price in the first sale.

- Prohibit cities or counties from imposing a privilege license tax on Internet ticket resellers.
- Repeal the reporting requirement. The reporting requirement was added to Senate Bill 1407 when the tax provision was removed. The act originally included a sunset, which required the General Assembly to revisit the legislation. At the time, the rationale for the reporting requirement was to provide the General Assembly with data for when it reconsidered the legislation. By taxing these transactions, there is no need for a reporting requirement.
- Provide for the repeal of G.S. 14-344.1 if a court finds that the privilege tax violates the Internet Tax Freedom Act (ITFA) or is otherwise invalid. ITFA temporarily prohibits states from imposing multiple or discriminatory taxes on electronic commerce. A discriminatory tax is one that is not generally imposed and legally collectible on transactions involving similar property, goods, services or information accomplished through other means. Arguments have been raised as to whether this legislation might violate ITFA because it taxes only those ticket resales that occur on the Internet. However, face-to-face ticket resales for greater than face value are generally illegal in North Carolina. As such, an argument can be made that Internet ticket resales are, in fact, given preferential treatment to the extent they are authorized, with no cap, whereas face-to-face ticket resales are essentially prohibited. A similar transaction cannot be conducted by a means other than the Internet. However, since the issue has been raised, the proposal provides that if a court finds that the privilege tax violates ITFA, then the authority to resell tickets on the Internet is repealed.

This part of the bill would become effective January 1, 2011, and would apply to admission tickets sold on or after that date.

Restore Amenities Exclusion. -- Entertainment venues frequently offer their patrons certain amenities in conjunction with the sale of admission tickets to performances of live entertainment. Those amenities may include parking privileges, preferential or more luxurious seating, access to special concession stands, access to luxury viewing suites, and access to concierge staff. In some cases, the venue will separately state the "seat price" on the face of a ticket with charges over and above that price reflecting the cost of the amenities. In other cases, a purchaser may buy a package or contract for the lease of a suite where the price includes a seat for an event as well as amenities, but the charges are not separately stated.

The admissions tax statute does not specifically address how these amenities are to be taxed. In 1994, a taxpayer requested a written opinion from the Department of Revenue as to whether the admissions tax applied to amenities, and the Department responded that amenities were excludable from the tax. This interpretation was in place for over 15 years, and during that time, the statute has not changed in any substantive way. However, on January 30, 2009, the Department issued a directive, effective the following day, stating that amenities are subject to the admissions tax. Specifically, the directive reads:

> *"Gross receipts are taxes computed on the admission price of the amusement. An admission price is the price paid to enter an event. Effective for tickets for admission sold on or after February 1, 2009, the gross receipts tax is due on the price paid by the customer for admission into an event regardless of whether that price just covers the seat price or also includes amenities."*

G.S. 105-264 provides that it is the duty of the Secretary of Revenue to interpret all laws administered by the Department. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation. The Secretary is permitted to change an interpretation, and that change may apply on and after the effective date of the change, but there is no statutory requirement that the Department provide a certain amount of notice to taxpayers prior to applying a revised interpretation.

The Revenue Laws Study Committee considered this issue because it is a matter of tax policy on which the statute is silent and because the Department reversed its longstanding interpretation of the statute despite the fact that it has remained the same. The Committee concluded that the decision of whether amenities should be subject to the admissions tax is one for the Legislature and should not be determined by an interpretive ruling.

Subsection (a) of this section would restore the Department's pre-2009 interpretation of the admissions tax statute by excluding amenities from the tax. If the charges for the amenities are not separately stated on the face of the ticket, then the charge for admission would be equal to the charge for a ticket to the same event that does not include amenities and that is for a seat located directly in front of or closest to a seat that includes amenities. This provision would become effective for charges for admission received on or after August 1, 2010.

Subsection (d) of this section would require the Department to provide a certain amount of notice to taxpayers if it revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. Under the bill, a revised interpretation would not become effective until the sooner of the following:

- For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

This subsection would become effective when the act becomes law.

IMPROVE TAX AND DEBT COLLECTION PROCESS (Section 31.8, page 164; Senate Bill 1188)

Section 31.8 would improve the tax and debt collection process of the Department of Revenue by:

- ***Expanding the use of the Setoff Debt Collection Act as follows: allow debts owed by a business to be set off against a tax refund due the business, allow a setoff against any type of tax refund, and allow a community college to submit for setoff debts owed the college.***
- ***Authorizing the use of electronic process for sending notice of garnishment.***
- ***Providing for a data match between the Department of Revenue and financial institutions holding accounts of delinquent taxpayers.***
- ***Expanding the Statewide Accounts Receivable Program to allow for collection of the following accounts receivable by setoff against payments the State owes to individuals and businesses: accounts receivable that are submitted to the Department of Revenue under the Setoff Debt Collection Act and overdue tax debts.***

The Revenue Laws Study Committee recommended this legislation. It came to the Committee as a recommendation of the Department of Revenue, developed in collaboration with the Office of State Controller and the North Carolina Bankers Association.

Expansion of Setoff Debt Collection Act. -- The Setoff Debt Collection Act, enacted in 1997, authorizes the Department of Revenue to set off an individual's income tax refund against a debt the individual owes a State agency or local agency.[16] Under the Act, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the tax refund and notifies the taxpayer and the claimant agency.

Subsections (d) through (g) of this section would expand the Setoff Debt Collection Act to allow community colleges to collect debts owed to them through setoff of tax refunds and to allow debts that a business owes a claimant agency to be set off against the entity's tax refund. Currently, the Act only allows debts owed to claimant agencies by individuals to be set off against the individual's income tax refund. The proposal also expands the Act to apply to any type of tax refund, not just income tax refunds.

Notice of Garnishment by Electronic Process. -- The Department of Revenue is authorized by statute to attach and garnish intangible property in payment of taxes owed to the Department. The kinds of property that are subject to attachment and garnishment are wages and salaries, rents, bank deposits, the proceeds of property subject to levy, and property in the Escheat Fund. When the property sought to be attached is the taxpayer's checking account, the garnishee is the bank. When the property is wages, the taxpayer's employer is the garnishee. No more than 10% of a taxpayer's wages or salary per month is subject to attachment and garnishment. Current law requires that the notice of garnishment must be delivered in person or by mail.

Subsection (i) would authorize electronic notice, if the garnishee agrees to this method and the Department and garnishee have an agreement that establishes the protocol for electronic notice. The bill would also streamline the process if the garnishee is a financial institution by reducing the time period for filing a response to the notice of garnishment from 30 days to 20 days and by releasing the notice of garnishment when the institution complies with the notice. All other garnishees will continue to receive a notice of release. Streamlining would be consistent with the current garnishment practice with banks wherein the Department faxes notice of garnishment to a bank and the bank then sends money in the account to the Department within 10 to 15 days.

A "financial institution" is defined as a banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in the business of lending money or receiving or soliciting money on deposit. (G.S. 53B-2).

Data Match between Financial Institutions and the Department of Revenue. – Subsection (h) further streamlines the attachment and garnishment process with financial institutions. The Department would be authorized to submit information to a financial institution on a quarterly basis, or with the agreement of the financial institution, more frequently. The information would identify any delinquent taxpayer to a financial institution and require the financial institution to notify the Department of the amount the institution may hold that belongs to the taxpayer. The Department will reimburse the financial institution for the cost of providing the information. The cost may not exceed the amount that the Department of

[16] State agency includes a unit of the executive, legislative, or judicial branch of State government and a local agency to the extent it administers a program supervised by DHHS. A local agency includes a county, municipality, water and sewer authority, regional joint agency created by interlocal agreement, public health authority, metropolitan sewerage district, or sanitary district.

Health and Human Services currently pays to financial institutions for conducting a data match in order to attach and garnish the account of an absent noncustodial parent.[17]

The federal government has recently issued a proposed rule to implement statutory restrictions on the garnishment of federal benefit payments. These payments are protected under federal law from garnishment and include Social Security benefits, Supplemental Security Income benefits, and VA benefits. The rule sets forth uniform procedures for financial institutions to follow in order to minimize the hardships encountered by federal benefit payment recipients whose accounts are frozen pursuant to a garnishment order. The rule also assists financial institutions to determine whether exempt funds were directly deposited to the account.

Expansion of Statewide Accounts Receivable. -- The Statewide Accounts Receivable Program, enacted in 1993, requires the State Controller to monitor accounts receivable owed to State agencies, to adopt procedures for the management and collection of accounts receivable, and to establish procedures for writing off accounts receivable.[18] The Program also provides for written-off accounts receivable to be set off against payments the State owes to debtors. A written-off accounts receivable is one that has been removed from a State agency's accounts receivable records.

Subsections (a) through (c) of this section would expand the Statewide Accounts Receivable Program as follows:

- Expand the definition of "accounts receivable" to include taxes.
- Allow debts that have been submitted to the Department of Revenue under the Setoff Debt Collection Act to be set off against payments the State owes to these debtors. The following is an example of how this proposal would work. The Department of Revenue will give the State Controller a list of debtors under the Setoff Debt Collection Act. The State Controller will then check to see if any of these debtors are vendors that are owed money by the State for services or goods received by the State. The State Controller will then deduct the amount of the debt from the amount owed by the State. The State Controller will send this amount to the claimant agency owed the debt.

Subsection (h) of this section becomes effective January 1, 2011. This section streamlines the attachment and garnishment process by providing for a data match between financial institutions and the Department of Revenue. The remainder of the section is effective when it becomes law.

REDUCE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES (Section 31.9, page 169)

Section 31.9 applies the provision enacted last session that excludes from a corporation's franchise tax base all billings in excess of costs retroactively to taxable years beginning on or after January 1, 2007.

The State imposes a franchise tax on C-corporations and S-corporations. The tax rate is $1.50 per $1,000[19] and is applied to a company's capital stock, surplus, and undivided profits.[20] The term "surplus" for

[17] The DHHS and financial institutions have developed a data match system that requires a financial institution to provide DHHS the following information on a quarterly basis in order to secure child support: name, SSN, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the financial institution.
[18] An account receivable is an asset of the State reflecting a debt owed to the State. The term includes claims, damages, fees, fines, forfeitures, loans, overpayments, and tuition as well as penalties, interest and other costs authorized by law. The term does not include court costs or fees.
[19] The minimum tax is $35.

franchise tax purposes has a broader and more inclusive meaning than the generally accepted accounting definition. G.S. 105-122(b) provides that surplus and undivided profits includes all liabilities, reserves, and deferred credits unless those items are specifically exempt. One of the exemptions from surplus and undivided profits is "definite and accrued legal liabilities." The Department of Revenue defines a definite and accrued legal liability as one that meets both of the following conditions:

- The liability is definite in amount, meaning it is exactly determined and not merely accurately estimated.
- The liability will be incurred before the end of the taxable year.

Generally accepted accounting principles require that revenue be recorded in the period it is earned regardless of when it is billed or when cash is received. In long-term construction contracts, there is often a mismatch between actual billed revenue and earned revenue. Sometimes elements of a contract are billed in advance and sometimes they are delayed. The accounting solution to this problem is the percentage of completion method of revenue recognition. Under this method of accounting, where the costs can be reasonably estimated, revenue is recognized as production takes place. This method of accounting may result in "billings in excess of costs" or "cost in excess of billings." Billings in excess of costs is a balance sheet liability because it represents unearned income. Cost in excess of billings is a balance sheet asset. For purposes of the State's franchise tax, the balance sheet liability of "billings in excess of costs" is not considered a definite and accrued legal liability because it is based on estimates; therefore, it is included in a corporation's capital base.

The construction industry sought to change this interpretation because it resulted in contractors having to pay taxes on liabilities and for revenue they had not actually received. S.L. 2009-422 adopted the industry's position by providing that billings in excess of costs that are determinable using the percentage of completion principles are exempted from surplus and divided profits, and therefore, excluded from the franchise tax base. The act became effective for taxable years beginning on or after January 1, 2010.

The Department of Revenue audited some companies and assessed additional tax on them for taxable years prior to 2010 for excluding billings in excess of costs from their capital base. This section applies the 2009 law change retroactively to 2007. It also allows a taxpayer that paid franchise tax in taxable years 2007, 2008, or 2009 and that included billings in excess of costs in its capital base to apply to the Department for a refund of any excess tax paid to the extent the refund is the result of the retroactive application of the billings in excess law change. A request for a refund must be made on or before January 1, 2011. A request for a refund received after that date is barred.

FAIR TAX PENALTIES (Section 31.10, page 169)

Section 31.10 provides that a taxpayer may not be assessed a penalty for failure to pay tax when due if the taxpayer pays the tax due within the stated period of time.

North Carolina is a single entity filing state, meaning that a corporation must determine its State net income as if it filed a separate return for federal income tax purposes. Separate entity filing gives corporations with subsidiaries in multiple states the ability to devise ways to shift income from a high effective tax rate state to a low effective tax rate state, often through the use of passive investment companies and inter-company transactions. The Department of Revenue has been aggressive in using the tools available to it to require a corporation to file a consolidated return when it believes the

[20] A corporation's capital base may not be less than 55% of the appraised value of tangible property in NC, nor less than its actual investment in tangible property in the State.

corporation's net income attributable to this State is not accurately reflected on its separate entity filing return.

A taxpayer must pay the full amount of tax payable as shown on the return within the time for filing a return. If the Department of Revenue makes an assessment against a taxpayer, the taxpayer may request a hearing on the issue before the taxpayer must pay the assessed amount.

This section makes the following provisions regarding the payment of the tax due upon a consolidated return:

- A failure to pay tax when due penalty may not be assessed when the Secretary proposes an assessment for tax due that is not shown on the return and the tax due is paid within 45 days of the date of the proposed assessment if the taxpayer does not file a timely request for a Departmental review of the assessment.
- A failure to pay tax when due penalty may not be assessed when the Secretary proposes an assessment for tax due that is not shown on the return and the tax due is paid within 45 days after the date the proposed assessment becomes collectible under G.S. 105-241.22.
- When the taxpayer files a consolidated return and the tax due is paid within 45 days of the date the consolidated return is filed, if the taxpayer does not file a timely request for a Departmental review of the tax.
- When the taxpayer files a consolidated return and the tax due is paid within 45 days of the date the Departmental review of the tax ends.

It also provides that a negligence penalty may not be assessed against the amount of tax shown due on a consolidated return.

This section is effective when it becomes law and applies to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY PROPERTY FACILITY (Section 31.11, added by amendment in Senate Appropriations)

Section 31.11 creates a new tax credit for construction of a facility in North Carolina for the manufacture of renewable energy property. The credit is equal to 25% of the installation and equipment costs of construction paid during the taxable year. The section becomes effective for taxable years beginning on or after January 1, 2011.

This section creates a new tax credit for construction of a facility in North Carolina for the manufacture of renewable energy property. The credit is equal to 25% of the installation and equipment costs of construction paid during the taxable year. Renewable energy property includes all of the following:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials.
- Hydroelectric generators.
- Solar energy equipment.

- Wind equipment.
- Geothermal heat pumps and equipment.

The credit may be taken against the franchise tax or the income tax. The entire credit must be taken in seven equal installments, beginning with the taxable year the facility is placed in service. If the facility is disposed of, or taken out of service, the taxpayer may not take any remaining installments. The credit is subject to the following limitations:

- The credit may not exceed 50% of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.
- Any unused portion of the credit may be carried forward for five years.
- A taxpayer that claims any other credit with respect to the construction of a facility to manufacture renewable energy property may not take this credit with respect to the same facility.

The credit will sunset for facilities placed in service on or after January 1, 2014.

S897-SMRB-65(CSLExf-48) v2

SENATE BILL 897:
Appropriations Act of 2009

2009-2010 General Assembly

Committee:	Senate Appropriations/Base Budget	**Date:**	May 18, 2010
Introduced by:	Sen. Dannelly	**Prepared by:**	Heather Fennell
Analysis of:	Second Edition, as amended		Committee Counsel

FEE PROVISIONS: Senate Bill 897, as amended, authorizes $24.5 million in new and increased fees. A detailed chart of all of the fees is attached; the following is brief summary of the fees:

Natural and Economic Resources, authorizes $1.8 million in fees:

Increased fees:

- Exam and certification fees for pesticide dealers, applicators, and consultants.
- Exam and certification fees for structured pest control.
- Registration and annual fees for the Department of Labor Apprenticeship program
- Hazardous waste fees.

New fees:

- Dam safety fee.
- Fee to advertise in State welcome centers.

No change:

- Regulatory fee for Utilities Commission.

Justice and Public Safety, authorizes $22.4 million in fees:

Increased fees:

- Fees for civil and criminal actions in District Court
- Fees for civil actions in Superior Court.
- Failure to comply in criminal actions.
- Summary ejectment proceedings before a magistrate.
- Fee for defendants appointed counsel in criminal case.
- Fees for probation, parole, and post-release supervision.
- Fees for the Community Service Program.

New fees:

- Fee for filing a motion for summary judgment.
- Fee for assignment of title in
- Fee for filing a counterclaim in domestic violence actions.
- Fee for resuming former or maiden name.

General Government, authorizes $130,000 in fees:

Increased fees:

- Fees filing a contested case at the Office of Administrative Hearings.
- Fees for candidates filing for office.

Health and Human Services, authorizes $145,000 in fees:

New fees:

- Adult Home Care Medication Aide Exam.
- Adult Home Care exam and renewals.

Section Page, Line	Name	Explanation
	Natural and Economic Resources	
11.1 88, 20	Fee Increases for Pesticide Dealers, Pesticide Applicators, and Pest Control Consultants	Increases and creates the following fees: **Fee** — **Current** — **New** Commercial Ground Applicator..... $50 — $75 Aerial Contractor..... $50 — $75 Aerial Pilot..... $50 — $75 Aerial Apprentice..... $50 — $75 Pesticide Dealer..... $50 — $75 Pest Control Consultant.. $50 — $75 Private Applicator Exam.. New — $10 Worker Protection Designated Trainer Exam..... New — $50 Pesticide Dealer Exam.... New — $50 Commercial Applicator Core Exam..... New — $50 Aerial Exam..... New — $50 Pest Control Consultant Exam..... New — $50 Pesticide Subclass/ Category Exams.....New — $20
11.2 90, 49	Structural Pest Control Act Fee Increases	Increases the following fees: **Fee** — **Current** — **New** Structural Certified Applicator Exam..... $10 — $25 Structural License Exam.. $25 — $50 Structural Certified Applicator Card..... $30 — $50 Structural License 1 Phase.....$150 — $200 Structural License 2 Phase.....$215 — $275 Structural License 3 Phase..... $280 — $350 Registered Technician Card.....$25 — $40
12.1 97, 4	Department of Labor/ Apprenticeship Program	Increases the registration and annual fess of the Department of Labor's Apprenticeship Program from $50 to $100.
13.6 108, 9	Damn Safety Fee	Creates a one-time fee of $1,100, payable by electric utility companies based on the number of dams the company owns. The fee is payable to DENR to support one time-limited engineering position and operating funds necessary to perform the evaluation

Section Page, Line	Name	Explanation
		and integration of regulated power plant dams into the Department's dam safety inventory program.
13.8 109, 14	Increase Hazardous Waste Fees	Increases the annual hazardous waste fee of generators of 100 kilograms of hazardous waste in a calendar month from $125 to $170 per year. The fees will be used to support the State's hazardous waste management program.
14.7 118, 36	Fee to Advertise in Welcome Centers	Creates new fees annual for advertisers at a State welcome center: Displays 4" by 9" or smaller - $100. Displays larger than 4" by 9" - $200.
14.14 122, 13	Set Regulatory Fee for Utilities Commission	Sets Utilities Commission regulatory rate at 0.12 percent (0.12%). No change from prior year.
	Justice and Public Safety	
15.5 126, 21	Increase Certain Court Fees	Increases and creates the following fees: **Fee** **Current** **New** District Court – Criminal.....$95.50 $100.50 Failure to Comply.....$25.00 $50.00 Superior Court – Civil.....$93.00 $150.00 District Court – Civil.....$73.00 $100.00 Summary Judgment.....New $40.00 Admin of Estates - Assignment of Title.....New $10.00
15.8 128, 15	Provide Certain Counterclaim Fees in Domestic Violence Actions	Requires a filing fee for counterclaims in a domestic violence action. The filing fee is $100.00.
15.9 128, 22	Modify Fees for Resumption of Maiden or Former Name	Creates a new fee of $10 for resumption of former or maiden name for support of the General Court of Justice.
15.10 129, 3	Increase Fee for Certain Cases Assigned to a Magistrate	Increases the fees for summary ejectment proceedings before a magistrate to $65.00 from $55.00. The fee for proceedings before a magistrate was lowered in 2009 to $55.00, from $63.00.
15.11 129, 24	Increase Attorney Appointment Fee	Increases the fee for defendants in criminal cases for whom an attorney is appointed. The fee is increased to $60.00 from $50.00. The fee was created in 2003.
19.3 132, 6	Increase Fees for Probation, Parole, and Post-release Supervision.	Increases the fees for probation, parole and post-release supervision to $40.00 from $30.00. The fee was last raised in 2002 from $20.00.
19.4 132, 41	Increase Fee for Community Service	Increases the fee for the Community Service Program of the Department of Correction to $330.00 to $225.00.

Section Page, Line	Name	Explanation
	Program.	The program provides oversight of offenders placed under the supervision of the Division of Community Corrections to perform community service hours. The fee was raised last year from $200.00.
	General Government	
25.1 138, 4	Increase Fees for Filing a Contested Case	A filing fee of up to $125 was created in the 2009 Budget (2009-451) for a contested case hearing at the Office of Administrative Hearings. The cap is increased to $500, but limited to limited to contested cases where the amount in controversy is equal or greater than $50,000.
27.1 139, 35	Raise Candidate Filing Fees	Raises the filing fee for the following offices from 1% to 1.5% of the annual salary of the office sought: • Governor. • Lieutenant Governor. • All State Executive Offices. • All District Attorneys of the General Court of Justice. • United States Senator. • Members of the United States House of Representatives. • All County Offices.
	Health and Human Services	
10.36A *Amendment*	DSHR Adult Care Home Administrator/ Medication Aide Fees	Creates the following new fees: Adult Care Home Medication Aide.....$25 Adult Care Home Administrator Exam.....$50 Adult Care Home Administrator Renewal (every two years).....$30

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 897
PROPOSED COMMITTEE SUBSTITUTE S897-CSLExf-47 [v.17]

5/17/2010 5:09:28 PM

Short Title: Appropriations Act of 2010. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2009 AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

TITLE OF ACT

SECTION 1.1. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2010."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year as provided in G.S. 143C-1-2(b).

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are adjusted for the fiscal year ending June 30, 2011, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2009-2010 fiscal year.

Current Operations – General Fund	**2010-2011**
EDUCATION	
Community Colleges System Office	$ 50,744,859

Department of Public Instruction		(219,159,933)
University of North Carolina – Board of Governors		
General Administration		(632,140)
University Institutional Programs		5,846,731
Related Educational Programs		8,195,517
UNC Financial Aid Private Colleges		(1,500,000)
North Carolina School of Science and Mathematics		
UNC Hospitals at Chapel Hill		(2,000,000)
Total University of North Carolina – Board of Governors	$	9,910,108
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Central Management and Support	$	(4,923,834)
Division of Blind Services/Deaf/HH		(632,912)
Division of Child Development		(46,090,555)
Division of Education Services		(5,612,680)
Division of Health Service Regulation		(2,061,346)
Division of Medical Assistance		(349,276,270)
Division of Mental Health		21,595,819
NC Health Choice		6,444,925
Division of Public Health		(6,091,724)
Division of Social Services		(15,645,084)
Division of Vocational Rehabilitation		(3,102,472)
Total Health and Human Services	$	(405,396,133)
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$	(1,938,749)
Department of Commerce		
Commerce		33,952,587
Commerce State-Aid		4,980,564
NC Biotechnology Center		(725,095)
Rural Economic Development Center		2,933,378
Department of Environment and Natural Resources		1,227,571
Department of Labor		(1,411,321)
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$	(54,081,580)
Department of Crime Control and Public Safety		(1,316,174)
Judicial Department		(15,818,245)
Judicial Department – Indigent Defense		(4,194,867)
Department of Justice		(2,990,307)

Department of Juvenile Justice and Delinquency Prevention		(4,737,080)
GENERAL GOVERNMENT		
Department of Administration	$	(2,157,910)
Office of Administrative Hearings		(278,356)
Department of State Auditor		(777,194)
Office of State Controller		8,075,323
Department of Cultural Resources		
Cultural Resources		(3,905,057)
Roanoke Island Commission		(115,926)
State Board of Elections		373,851
General Assembly		(3,295,241)
Office of the Governor		
Office of the Governor		(353,359)
Office of State Budget and Management		(373,164)
OSBM – Reserve for Special Appropriations		(4,650)
Housing Finance Agency		(850,732)
Office of Lieutenant Governor		(54,235)
Department of Revenue		(1,523,641)
Department of Secretary of State		(666,886)
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Reserve for Teachers' and State Employees' Retirement Contribution	$	20,000,000
Reserve for Job Development Investment Grants (JDIG)		(6,600,000)
University Cancer Research Fund		600,000
Reserve for Capital		18,222,000
Debt Service		
General Debt Service		(15,845,385)
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$**	**(597,650,979)**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) Section 2.2(a) of S.L. 2009-451 is repealed. The General Fund availability used in adjusting the 2010-2011 budget is shown below:

	FY 2010-2011
Unappropriated Balance Remaining from Previous Year	3,702,182
Adjustment from Estimated to Actual 2009-2010 Beginning Unreserved Balance	270,080
Beginning Unreserved Fund Balance	**3,972,262**
Revenues Based on Existing Tax Structure	**18,199,339,016**
Nontax Revenues	
Investment Income	57,500,000
Judicial Fees	239,100,000
Disproportionate Share	100,000,000
Insurance	67,000,000
Other Nontax Revenues	182,700,000
Highway Trust Fund/Use Tax Reimbursement Transfer	72,800,000
Highway Fund Transfer	17,600,000
Subtotal Nontax Revenues	**736,700,000**
Total General Fund Availability	**18,940,011,278**
Adjustments to Availability: Senate Bill 897	
IRC Conformity	(1,200,000)
Cap Tax Rate on Family-Owned and Other Small Business Income	(39,700,000)
Lower Sales Tax Compliance Burden on Small Retailers	(7,000,000)
Relieve Annual Report Compliance Burden on Small Business	(400,000)
Extend Sunset on Expiring Tax Incentive Income Tax Credits and Sales Tax Refunds One Year	(3,500,000)
Modernize Sales Tax On Accommodations	(700,000)
Modernize Admissions Tax and Restore Amenities Exclusion	3,000,000
Improve Tax and Debt Collection Process	(1,500,000)
Reduce Franchise Tax Burden On Construction Companies	1,700,000
Department of Revenue Corporate Settlement Initiative	110,000,000
Loss of Estate Tax Revenues for FY 2010-2011	(85,000,000)
Transfer from Disproportionate Share Reserve	35,000,000
Adjust Highway Fund Transfer – Commerce Executive Aircraft Transfer	(500,000)
Increase Justice and Public Safety Fees	22,214,722
Transfer From Severance Reserve Expenditure Account	30,000,000
Commerce Business Recruitment Initiatives (Pending Legislation)	(10,000,000)
Transfer from Tobacco Trust Fund	2,500,000
Subtotal Adjustments to Availabilty: Senate Bill 897	**54,914,722**
Revised General Fund Availability	**18,994,926,000**
Less: General Fund Appropriations	**18,989,677,375**
Unappropriated Balance Remaining	**5,248,625**

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 143C-4-3, the State Controller shall not transfer funds to the Repairs and Renovations Reserve Account on June 30, 2010. This subsection becomes effective June 30, 2010.

SECTION 2.2.(c) Notwithstanding G.S. 143C-4-2, the State Controller shall not transfer funds to the Savings Reserve Account on June 30, 2010. This subsection becomes effective June 30, 2010.

SECTION 2.2.(d) Section 2.2(h) of S.L. 2009-451 reads as rewritten:

"**SECTION 2.2.(h)** Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars ($5,000,000) for the 2009-2010 fiscal year and the sum of seven million five hundred thousand dollars ($7,500,000) for the 2010-2011 fiscal year shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund ~~appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010.~~appropriations."

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2011, according to the following schedule. Amounts set out in brackets are reductions from Highway Fund Appropriations for the 2010-2011 fiscal year.

	2010-2011
Department of Transportation	
Administration	$ 1,663,695
Division of Highways	
Administration	0
Construction	3,840,718
Maintenance	(7,709,150)
Planning and Research	0
OSHA Program	0
Ferry Operations	11,349,869
State Aid	
Municipalities	(785,319)
Public Transportation	0
Airports	500,000
Railroads	6,325,000
Governor's Highway Safety Program	0
Division of Motor Vehicles	617,223
Transfers to Other State Agencies, Reserves	37,087,964
TOTAL	**$ 52,890,000**

HIGHWAY FUND AVAILABILITY

SECTION 3.2. Section 3.2 of S.L. 2009-451 is repealed. The Highway Fund availability used in adjusting the 2010-2011 fiscal year budget is shown below:

Highway Fund Availability Statement	2010-2011
Unappropriated Balance From Previous Year	0
Beginning Fund Balance	0
Estimated Revenue	1,792,540,000
Total Highway Fund Availability	**$1,792,540,000**

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

CURRENT OPERATIONS/HIGHWAY TRUST FUND

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2011, according to the following schedule. Amounts set out in brackets are reductions from Highway Trust Fund Appropriations for the 2010-2011 fiscal year.

Current Operations – Highway Trust Fund	2010-2011
Intrastate System	4,995,162
Urban Loops	2,019,836
Aid to Municipalities	524,109
Secondary Roads	(170,627)
Program Administration	371,520
North Carolina Turnpike Authority	0
Transfer to General Fund	0
Debt Service	0
TOTAL	**7,740,000**

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. Section 4.2 of S.L. 2009-451 is repealed. The Highway Trust Fund availability used in developing the 2010-2011 fiscal year is shown below:

Total Highway Trust Fund Availability	**$ 928,730,000**

PART V. OTHER APPROPRIATIONS

EDUCATION LOTTERY

SECTION 5.1.(a) Pursuant to G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of four hundred forty-one million three hundred forty-seven thousand five hundred dollars ($441,347,500) for the 2010-2011 fiscal year.

SECTION 5.1.(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund pursuant to G.S. 18C-164(d) for the 2010-2011 fiscal year are as follows:

(1)	Class Size Reduction	$ 136,038,041
(2)	Prekindergarten Program	84,635,709

(3)	Public School Building Capital Fund	176,539,000
(4)	Scholarships for Needy Students	44,134,750
Total		$ 441,347,500

SECTION 5.1.(c) Notwithstanding G.S. 18C-164(f) or any other provision of law, excess lottery receipts realized in the 2009-2010 fiscal year in the amount of thirty-one million eight hundred eighty-one thousand forty-six dollars ($31,881,046) shall be transferred to the Public School Building Capital Fund and allocated on the basis of average daily membership (ADM) to those local school administrative units that did not qualify for funding in the 2009-2010 fiscal year pursuant to G.S. 115C-546.2(d)(2). Notwithstanding G.S. 18C-164(f) or any other provision of law, the balance of the excess lottery revenues realized in the 2009-2010 fiscal year shall be used for scholarships for needy students.

SECTION 5.1.(d) Section 5.2.(d) of S.L. 2009-451, as enacted by Section 3N of S.L. 2009-575, is repealed.

SECTION 5.1.(e) Notwithstanding G.S. 18C-164(c), G.S 115C-546.2(d), or any other provision of law, funds appropriated in this section to the Public School Building Capital Fund for the 2010-2011 fiscal year shall be allocated to counties on the basis of average daily membership (ADM). Counties may authorize local school administrative units to use all or part of these funds for classroom teachers.

These funds shall not be included in the computation of "average per pupil allocation for average daily membership" or "per pupil local current expense appropriation" under G.S. 115C-238.29H.

SECTION 5.1.(f) Notwithstanding G.S. 18C-164(c), Article 35A of Chapter 115C of the General Statutes, or any other provision of law, of the funds appropriated in this section for Scholarships for Needy Students, the sum of twenty-six million six hundred sixty-one thousand forty-six dollars ($26,661,046) shall be administered in accordance with the policy adopted by the Board of Governors of The University of North Carolina.

SECTION 5.1.(g) Subsections (c) and (d) of this section become effective June 30, 2010.

INFORMATION TECHNOLOGY AVAILABILITY AND APPROPRIATION

SECTION 5.2. Section 5.3.(b) of S.L. 2009-451 reads as rewritten:

"**SECTION 5.3.(b)** Appropriations are made from the Information Technology Fund for the 2009-2011 fiscal biennium as follows:

Office of Information Technology Services	**FY 2009-2010**	**FY 2010-2011**
Information Technology Operations	~~$5,350,000~~	~~$4,990,000~~
Center for Geographic Information and Analysis		$740,000
Enterprise Security and Risk Management Office		1,101,296
Enterprise Project Management Office		1,795,000
Architecture and Engineering		648,000
Total Information Technology Operations	$5,350,000	$4,284,296
Information Technology Projects	~~$4,462,733~~	~~$4,077,467~~
Enterprise Licensing		$300,000
State Portal		500,000
Enterprise Identity Management		1,250,000
IT Consolidation		2,079,467
Electronic Forms/Digital Signatures		653,704
Total Information Technology Projects	$4,462,733	$4,783,171

Budget and Performance Management System	$1,021,985	0
Budget/Committee Reporting System	$500,000	0
Total	**$11,334,718**	**$9,067,467"**

APPROPRIATION OF CASH BALANCES

SECTION 5.3. Section 5.4 of S.L. 2009-451 reads as rewritten:

"**SECTION 5.4.(a)** State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated ~~and authorized~~ as provided in G.S. 143C-1-2 for the 2009-2011 fiscal biennium as follows:

(1) For all budget codes listed in the Base Budget and Performance Management Information sections of "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2009-2010 fiscal year and the 2010-2011 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.

(2) For all budget codes that are not listed in "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," or in the Budget Support Document, cash balances and receipts are appropriated for each year of the 2009-2011 fiscal biennium up to the level of actual expenditures for the ~~2008-2009~~ 2009-2010 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the ~~2008-2009~~ 2009-2010 fiscal year.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2009-2010 fiscal year and the 2010-2011 fiscal year and shall be used only to pay debt service requirements.

(4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2009-2010 fiscal year and the 2010-2011 fiscal year.

"**SECTION 5.4.(b)** Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

"**SECTION 5.4.(c)** Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year."

OTHER RECEIPTS FROM PENDING GRANT AWARDS

SECTION 5.4. Section 5.6 of S.L. 2009-451 reads as rewritten:

"**SECTION 5.6.** Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Committee on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act. The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the ~~certified~~ authorized budget of the recipient State agency."

PART VI. GENERAL PROVISIONS

EXPENDITURE OF FUNDS IN RESERVES LIMITED

SECTION 6.1. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

BUDGET CODE CONSOLIDATIONS

SECTION 6.2. Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments.

BUDGET REALIGNMENT

SECTION 6.3. Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

BUDGET ADJUSTMENTS AUTHORIZED

SECTION 6.4.(a) Notwithstanding G.S. 143C-6-4(a) or any other provision of law, the maximum amount expended at the budget code level from funds appropriated in Section 2.1 of S.L. 2009-451, as amended, shall not exceed by more than three percent (3%) the amount appropriated for that budget code in Section 2.1 of S.L. 2009-451, as amended.

SECTION 6.4.(b) This section applies to the 2010-2011 fiscal year only.

ESTABLISHING OR INCREASING FEES PURSUANT TO THIS ACT

SECTION 6.5.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in this act.

SECTION 6.5.(b) Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

LEGISLATIVE BUDGET PRIORITIES

SECTION 6.6. The General Assembly finds North Carolina's citizens and businesses are suffering from the effects of a significant State, national, and international financial crisis and that this financial crisis has resulted in large reductions in revenues available to fund the State's budget for the upcoming year and in large increases in demand for State services. The General Assembly further finds that, in spite of the reduced revenues, the State must act decisively to create jobs, encourage economic activity to keep our families working, provide job training and higher education opportunities to the citizens of the State, and protect core government services such as health care for the most vulnerable populations and public safety for the citizens of the State; therefore, the General Assembly provides funding for and support of the following initiatives:

(1) Retention of classroom teachers.
(2) Tax credits for small businesses.
(3) Small Business Assistance Fund.
(4) Preservation of access to health care for vulnerable populations.
(5) Financial aid to needy college and community college students.
(6) Full funding community college enrollment growth to be used to hire additional faculty and student support staff.
(7) Small Business Centers at community colleges.
(8) Business Recruitment.
(9) One North Carolina Small Business.
(10) One North Carolina Fund.
(11) Job Maintenance and Capital Development Fund.
(12) Health science and engineering programs at the community college and university levels.
(13) Energy Research Grants.
(14) Regional Economic Development Commissions.
(15) Home Grown Jobs.
(16) Funding restored for mental health programs.
(17) Tar Heel Work Program.
(18) UNCC Energy Production Infrastructure Center (EPIC).
(19) ECU Dental School Operations.
(20) Sustainable Communities Task Force.
(21) Clean Water State Revolving Fund.
(22) Drinking Water State Revolving Fund.
(23) Minority Support Center.
(24) Tourism Marketing.
(25) In-Source NC.
(26) Lab-to-Market Commercialization Funds.
(27) Capital projects.

AMEND ARRA FUNDS

SECTION 6.7. Section 6.6C.(b) of Session Law 2009-451 reads as rewritten:

"**SECTION 6.6C.(b)** Appropriation of ARRA Funds. – Funds received from ARRA grants and receipts not specified in this act are hereby appropriated in the amounts provided in the notification of award from the federal government or any entity acting on behalf of the federal government to administer federal ARRA funds. ~~Prior to allocation of funds not expressly delineated in this act, the~~ OSBM and affected state agencies shall ~~consult with~~ report to the Joint Legislative Commission on Governmental ~~Operations.~~ Operations on ARRA grants received that are not expressly delineated in this act."

INFORMATION TECHNOLOGY OPERATIONS

SECTION 6.8. Section 6.7 of S.L. 2009-451 reads as rewritten:

"**SECTION 6.7.(a)** Office of Information Technology Services Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Office of Information Technology Services budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services.

"**SECTION 6.7.(b)** Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officers to identify specific State agency requirements prior to the initiation of any enterprise project. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding apportionment of funding. State agencies agreeing to participate in a contract shall:

(1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract.

(2) Transfer the agreed-upon funds to the Office of Information Technology Services in sufficient time for the Office of Information Technology Services to meet contract requirements.

(3) Ensure that enterprise project costs are allocated to participating agencies in an equitable manner.

"**SECTION 6.7.(c)** Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract purchase price at the beginning of the agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

(1) Any advance payment complies with the Office of Information Technology Services budget.

(2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

(3) The procurement complies in all other aspects with applicable statutes and rules.

(4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency

through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Office of Information Technology Services calculation of rates before the Office of State Budget and Management annually approves the proposed rates. The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts.

The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this subsection to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

"**SECTION 6.7.(d)** State agencies developing and implementing information technology projects shall use the State infrastructure to host their projects. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

(1) Using an outside contractor would be more cost-effective for the State.

(2) The Office of Information Technology Services does not have the technical capabilities required to host the application.

(3) Valid security requirements preclude the use of State infrastructure, and a contractor can provide a more secure environment.

"**SECTION 6.7.(e)** Service level agreements developed with supported State agencies shall include metrics for ITS, as well as the supported agencies. When ITS or an agency fails to meet metrics established by the SLA, a report will be provided to the Office of State Budget and Management and the Fiscal Research Division of the General Assembly within 10 days that details the shortfall and provides a corrective action plan with a time line.

"**SECTION 6.7.(f)** The Office of Information Technology Procurement shall assist State agencies in identifying the least expensive source for the purchase of IT goods and services and shall ensure that agencies receive every available discount when purchasing IT goods and services.

"**SECTION 6.7.(g)** The State CIO shall ensure that the agency bills from ITS for information technology goods and services are easily understood and fully transparent."

COORDINATION OF INFORMATION TECHNOLOGY REQUIREMENTS AND GEOGRAPHICAL INFORMATION SYSTEM EFFORTS

SECTION 6.9.(a) The State Chief Information Officer (SCIO), through the Enterprise Program Management Office (EPMO), shall adopt measures to avoid the duplication of information technology capabilities and resources across State agencies. When multiple State agencies require the same or a substantially similar information technology capability, the SCIO shall designate one State agency as the lead to coordinate support and to manage that capability for all State agencies requiring the capability, with the SCIO maintaining oversight of the effort. Further, the EPMO shall:

(1) Review all ongoing and future information technology projects to determine whether the capabilities required for each project, or the specific requirements comprising a component within a project, already exist in a planned, ongoing, or completed information technology project developed by another State agency.

(2) When State agencies request approval for new projects determine if the information technology project has transferable applicability to current or future capabilities required by another State agency.

(3) Upon identifying an existing information technology capability needed by a State agency, assist that agency in determining how best to access existing projects.

(4) Identify all current instances of duplication and work with the affected State agencies to develop and implement a plan to integrate their efforts. These plans shall be reported to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division by January 1, 2011.

SECTION 6.9.(b) All State agencies shall coordinate any Geographic Information System (GIS) initiatives through the Center for Geographic Information and Analysis (CGIA) to ensure that they are not duplicating an existing function. The CGIA shall monitor and approve all new GIS-related information technology projects and expansion budget requests. By January 1, 2011, the CGIA shall make a written report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on the results of these efforts.

CRIMINAL JUSTICE LAW ENFORCEMENT AUTOMATED DATA SERVICES (CJLEADS)

SECTION 6.10.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall:

(1) Continue the implementation of the Criminal Justice Data Integration Pilot Program, which is now known as the Criminal Justice Law Enforcement Automated Data Services (CJLEADS), in Wake County; and

(2) Begin the transfer of the hosting of CJLEADS to the Department of Justice.

The Office of the State Controller shall not expand CJLEADS beyond Wake County.

SECTION 6.10.(b) Effective October 1, 2010, CJLEADS is transferred from the Office of State Controller to the Department of Justice. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 6.10.(c) The Department of Justice shall administer CJLEADS with the assistance of a Leadership Council consisting of:

(1) The Attorney General;

(2) The Director of Administrative Office of the Courts;

(3) The Secretary of the Department of Correction;

(4) The Secretary of Crime Control and Public Safety;

(5) The Secretary of the Department of Juvenile Justice and Delinquency Prevention;

(6) The Commissioner of Motor Vehicles, Department of Transportation;

(7) The President of The North Carolina Association of Chiefs of Police;

(8) The Executive Director of the North Carolina Sheriffs' Association, Inc.; and

(9) A representative of the Federal Bureau of Investigation who shall be a nonvoting member.

SECTION 6.10.(d) The transfer of the hosting of CJLEADS to the Department of Justice shall be completed by July 1, 2011.

SECTION 6.10.(e) Funds appropriated for CJLEADS shall be used only for project requirements of CJLEADS and not for other BEACON data integration requirements.

ITS NETWORK INTEGRATION

SECTION 6.11. Section 6.13.(c) of S.L. 2009-451 as amended by Section 3A(b) of S.L. 2009-575 reads as rewritten:

"**SECTION 6.13.(c)** Following completion of the feasibility study by the Office of Information and Technology Services and the Office of State Budget and Management, and if the Program Evaluation Division and the Fiscal Research Division can verify that the efficiencies and savings identified in the study are valid, accurate, and substantial enough to justify increased coordination, then the Office of Information Technology Services and MCNC

shall develop a plan to identify areas in which it may be feasible to coordinate their operations. The coordination plan shall include at least the following:

(1) Definition of requirements to achieve statewide integration.
(2) Detailed information on the allocation of responsibility for each requirement and component.
(3) An estimate of the associated costs with each requirement or component, including what the costs to each agency would be without coordination.
(4) Priorities for integration.
(5) A schedule for implementation.
(6) Detailed cost information for the development and integration of a single network.
(7) A governance structure for management and oversight of the network.
(8) A means for resolution of any issues identified during the feasibility study.

The coordination plan shall be completed by ~~February 28, 2010,~~ December 1, 2010, and shall be presented to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology."

INFORMATION TECHNOLOGY CONTRACTED PERSONNEL

SECTION 6.12. Section 6.18 of S.L. 2009-451 reads as rewritten:

"**SECTION 6.18.(a)** Beginning July 1, 2009, and notwithstanding any provision of law to the contrary:

(1) No contract for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed ~~for any term longer than 12 months unless otherwise specifically required by a contract in effect on June 30, 2009.~~ without the express written approval of the Statewide Information Technology Procurement Office.
(2) Before any State agency, department, or institution may renew a contract position for information technology personnel the State agency must report to the Statewide Information Technology Procurement Office (SITPO), Office of State Budget and Management (OSBM), to the Office of State Personnel (OSP), to the Office of Information Technology Services (ITS), and to the Fiscal Research Division (FRD) of the Legislative Services Office on the justification for the contract. The report shall explain:
    a. The proposed duration of the contract position. If the contract term is for more than 12 months, why recruitment for an in-house State employee position is not feasible.
    b. Whether the contract position requires unique skills for which the State has a short-term need.
    c. Whether the contract position is required by a specific information technology project and if the position will be terminated upon completion of the project.
    d. The specific work products and completion time lines for the contract position.
(3) Contract positions subject to this subsection shall be reviewed and approved by the Statewide Information Technology Procurement Office and shall be entered in the project portfolio management tool.
(4) Once approved, contract positions will be reviewed by the Office of State Personnel to determine what the market rate is for the type of contractor required, as well as to determine the comparable cost for a State employee. Agencies may not exceed the market rate determined by OSP.
(5) After OSP provides cost data, OSBM must approve funding for the position.

(6) Whenever a State agency, department, or institution determines that only a contractor can fill a position and the position is required to perform an ongoing function within the agency, the head of the State agency must develop and implement a plan to hire or train a qualified State employee to fill that position within 12 months. Within 60 days of hiring the contractor, this plan shall be forwarded to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office.

(7) Any contract position requiring information technology skills is subject to this provision. OSBM may immediately terminate the funding for any information technology position that is filled without following defined procedures.

(8) All information technology personnel contracts shall be competitive and shall be subject to competition each time they expire. Exceptions must be approved by ITS, OSP, and OSBM and can only be approved once for a particular individual. Approved exceptions must be immediately reported to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division of the Legislative Services Office.

"**SECTION 6.18.(b)** By October 1, 2009, and monthly thereafter, each State agency, department, and institution employing information technology personal services contractors, or personnel to perform information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. Each State agency's report shall include at least the following:

(1) For each contracted information technology position:

a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.

b. The name of the individual filling the position and the vendor company, if any, that regularly employees that individual.

c. The type, start date, and the termination date of the contract.

d. The length of time that the individual filling the contracted position has been employed as a contractor.

e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.

f. The salary and benefits cost for a State employee performing the same function.

g. The purchase order number for the position.

h. Whether the position can be converted to a State employee position. This determination shall be made by the SITPO.

i. When the agency anticipates converting the position to a State employee.

(2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.

(3) A determination of whether the information technology functions performed by contractors can be performed by State employees, which shall be validated by the Statewide Information Technology Procurement Office.

(4) All information required by this subsection related to information technology contractors regardless of the contracting source.

(5) A detailed explanation for any differences between the agency report and the Information Technology Expenditures Report annually published by the Office of the State Controller.

"**SECTION 6.18.(c)** This section does not apply to The University of North Carolina and its constituent institutions."

CONTINUING PILOT PROGRAM TO ALLOW PUBLIC-PRIVATE PARTNERSHIPS TO MEET DEPARTMENT OF REVENUE TECHNOLOGY NEEDS

SECTION 6.13. Section 6.20 of S.L. 2009-451 reads as rewritten:

"**SECTION 6.20.(a)** To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) ~~during the 2009-2011 fiscal biennium,~~through June 30, 2015, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of projects under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the "additional components of the PDP" are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services.

Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

(1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;

(2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and

(3) Monthly calculation of increased revenue attributable to contracts executed under this program.

Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General and Highway Funds, up to forty-one million dollars ($41,000,000) may be authorized by the Office of State Budget and Management (i) for the purchases related to the implementation of TIMS and the additional components of the PDP, including payment for services from non-State entities and (ii) toward internal State costs related to the implementation of TIMS and PDP components. The total of any funds expended ~~during the 2009-2011 biennium~~ for implementation of TIMS and the additional PDP components shall not exceed the sum of forty-one million dollars ($41,000,000).

If the Department of Revenue finds that it cannot generate additional benefits totaling forty-one million dollars ($41,000,000) ~~in the 2009-2011 biennium,~~through June 30, 2015, the Department shall immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and Fiscal Research Division, identify any obligations to vendors, identify options for meeting obligations to vendors, and provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

"**SECTION 6.20.(b)** Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP)

(Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

"**SECTION 6.20.(c)** There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve all contracts executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project.

The members of the Committee shall include the following:

(1) The State Budget Director;
(2) The Secretary of the Department of Revenue;
(3) The State Chief Information Officer;
(4) Two persons appointed by the Governor;
(5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on ~~June 30, 2011.~~June 30, 2015.

"**SECTION 6.20.(d)** Beginning October 1, 2009 and quarterly thereafter, the Department of Revenue shall submit reports to the Chairs of the House of Representatives and Senate Committees on Appropriation, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project timeline, (iv) and any issues associated with the operation of the public-private partnership. Within 60 days of implementing the public-private partnership, the Department of Revenue shall provide to the Chairs of the House of Representatives and Senate Appropriations Committees, and Fiscal Research Division, a schedule for vendor payments that identifies sources and amounts of funding anticipated as a result of the project's implementation.

"**SECTION 6.20.(e)** In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation, including, but not limited to, G.S. 147-33.72C and G.S. 147-33.72E."

FUNDING FOR DATA INTEGRATION ENTERPRISE LICENSING AGREEMENTS

SECTION 6.14.(a) If the cost of data integration enterprise licensing agreements for the 2010-2011 fiscal year is in excess of two million dollars ($2,000,000), the Office of Information Technology Services shall recover the excess cost through cost allocation to participating agencies.

SECTION 6.14.(b) The State Chief Information Officer shall develop a plan for the equitable distribution of all costs for executive agency data integration enterprise licensing agreements to the participating agencies. By October 1, 2010, the State Chief Information Officer shall present this plan to the Joint Legislative Oversight Committee on Information Technology and shall provide a copy to Fiscal Research Division.

SECTION 6.14.(c) Beginning with the 2011-2012 fiscal year, all costs for executive agency data integration enterprise licensing agreements shall be allocated to the participating agencies.

NETWORK SECURITY ASSESSMENTS

SECTION 6.15.(a) G.S. 147-33.111 reads as rewritten:

"**§ 147-33.111. State CIO approval of security standards and security assessments.**

(a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this section, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this Article.

(a1) The State Chief Information Officer shall conduct assessments of network vulnerability, including network penetration or any similar procedure. The State Chief Information Officer may contract with another party or parties to perform the assessments. Detailed reports of the security issues identified shall be kept confidential as provided in G.S. 132-6.1(c).

(b) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(c) Before a State agency may enter into any contract with another party for an assessment of network ~~vulnerability, including network penetration or any similar procedure,~~ vulnerability, the State agency shall notify the State Chief Information Officer and obtain approval of the request. ~~The State Chief Information Officer shall refer the request to the State Auditor for a determination of whether the Auditor's office can perform the assessment and testing. If the State Auditor determines that the Auditor's office can perform the assessment and testing, then the State Chief Information Officer shall authorize the assessment and testing by the Auditor. If the State Auditor determines that the Auditor's office cannot perform the assessment and testing, then with the approval of the State Chief Information Officer and State Auditor, the State agency may enter into a contract with another party for the assessment and testing.~~ If the State agency enters into a contract with another party for assessment and testing, after approval of the State Chief Information Officer, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer ~~and the State Auditor~~ with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c).

(d) Nothing in this section shall be construed to preclude the Office of the State Auditor from assessing the security practices of State information technology systems as part of that Office's duties and responsibilities."

SECTION 6.15.(b) G.S. 147-64.6(c)(18) is repealed.

INMATE MEDICAL COST CONTAINMENT

SECTION 6.16.(a) Providers and facilities that deliver medically necessary services to inmates in the Department's custody of the Department of Correction shall charge the Department using the same schedule of charges used for other patients, and the Department may reimburse those providers and facilities at up to seventy percent (70%) of the amount charged. The requirements of this subsection shall apply to all medical and facility services provided outside the correctional facility, including hospitalizations, professional services, medical supplies, and other medications provided to any inmate confined in a correctional facility.

SECTION 6.16.(b) The Department of Correction shall make every effort to contain inmate medical costs by making use of its own hospital and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall make use of hospitals with available capacity or other health care facilities in a region to accomplish that goal. The Department shall work to ensure that care usage is distributed equitably among all hospitals or other appropriate health care facilities, with no one health care facility being required to admit more than five percent (5%) of all patients requiring hospitalization or hospital services, unless doing so would jeopardize the health of an inmate or unless otherwise agreed to by contract. The Department shall also give preference to those hospitals in the same county or an adjoining county to the correctional facility where an inmate requiring hospitalization is incarcerated.

SECTION 6.16.(c) The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement. The Department shall seek reimbursement from Medicaid for those health care costs incurred by the Department in those instances when an inmate's Medicaid eligibility has been temporarily reinstated due to a hospitalization.

SECTION 6.16.(d) The Department of Correction, in consultation with the Office of State Budget and Management, shall study the impact on inmate medical costs resulting from the measures set forth in subsections (a), (b), and (c) of this section. The Department shall present its findings by March 1, 2011, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

SECTION 6.16.(e) If the findings of the Department of Correction demonstrate that the Department has been unable to achieve the savings in inmate medical costs called for in the 2010-2011 budget, the Office of State Budget and Management may require that any hospital that provides health care services to Medicaid and Medicare patients shall also provide services to any inmate confined in a correctional facility at the rates applicable under subsection (a) of this section.

SECTION 6.16.(f) The Department of Correction shall make every effort to explore other cost containment methods not expressly outlined in this section. These methods may include the following:

(1) Contracting with a private third party to manage and provide all inmate medical services;

(2) Partnering with the federal government to allow for treatment of State inmates in federal correctional hospitals; and

(3) Purchasing a fixed number of beds at a hospital.

SECTION 6.16.(g) The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than October 1, 2010, on

(1) The Department's progress with the RFP process initiated pursuant to Section 19.20(b) of S.L. 2009-451, as rewritten by Section 15A of S.L. 2009-575, to contract for claims processing, medical management services, and the development and management of a medical professional and facility provider network.

(2) The anticipated effects on medical care provided to inmates as a result of the new hospital at Central Prison and the updated facilities at the North Carolina Correctional Institute for Women, as well as any other new medical services capacity within the Department. Specifically, the Department shall report on:

a. The types and volumes of services that the new and updated facilities will provide that previously would have been provided by community providers; and

b. The projected types and volumes of services that will still be referred to community providers.

The report shall also address changes in statewide inmate custody that are needed to maximize the utilization of the new facilities and the Department's ability to contract with community providers with the available capacity throughout the State.

SECTION 6.16.(h) The Department of Correction shall report to the Joint Legislative Commission on Governmental Operations no later than October 1, 2010, and quarterly thereafter on:

(1) The volume of services provided by community medical providers that can be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers; and

(2) The volume of services provided by community medical providers that cannot be scheduled in advance and, of that volume, the percentage of those services that are provided by contracted providers.

SECTION 6.16.(i) Section 19.20(a) of S.L. 2009-451, as amended by Section 15A of S.L. 2009-575, is repealed.

PART VII. PUBLIC SCHOOLS

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.1. The State Board of Education shall allocate additional funds for children with disabilities on the basis of three thousand five hundred ninety-eight dollars and fifty-five cents ($3,598.55) per child. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of the 2010-2011 allocated average daily membership in the local school administrative unit. The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.2. The State Board of Education shall allocate additional funds for academically or intellectually gifted children on the basis of one thousand one hundred ninety-two dollars and ninety cents ($1,192.90) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2010-2011 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

STATE FISCAL STABILIZATION FUND APPROPRIATION

SECTION 7.3. In order to ensure compliance with the requirements of Title XIV of the American Recovery and Reinvestment Act of 2009 and notwithstanding any other provision of law, the Office of State Budget and Management shall adjust the State Fiscal Stabilization Fund appropriation amounts, including any associated budget reductions, between the State Public School Fund and The University of North Carolina budget to align with the requirements of the North Carolina State Fiscal Stabilization Fund application as amended for 2010-2011. If associated budget reductions are required within the State Public School Fund, the Office of State Budget and Management shall first adjust the Career Technical Education – Months of Employment allotment prior to adjusting any other allotments within the State Public School Fund.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS ALLOTMENT FORMULA

SECTION 7.4.(a) The State Board of Education shall implement an allotment formula for the North Carolina Virtual Public Schools (NCVPS) beginning with the 2010-2011 school year. In accordance with Section 7.16 of S.L. 2006-66, the allotment formula shall create a sustainable source of funding that increases commensurate with student enrollment and recognizes "the extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM."

SECTION 7.4.(b) The State Board shall use only funds provided through the North Carolina Virtual Public Schools Allotment Formula to fund NCVPS.

SECTION 7.4.(c) The Department of Public Instruction shall take the following steps to implement the North Carolina Virtual Public Schools Allotment Formula:

(1) Project the unduplicated NCVPS enrollment for each local school administrative unit and for each grade level.

(2) Divide the projected unduplicated NCVPS enrollment for each unit by six in order to calculate its ADM-equivalent student enrollment in NCVPS.

(3) Reduce the unit's ADM allotments by seventy-five percent (75%) of its ADM-equivalent student enrollment in NCVPS.

(4) Transfer a dollar amount equal to seventy-five percent (75%) of the unit's ADM-equivalent student enrollment to NCVPS.

NCVPS shall use the funds transferred to it to provide the NCVPS program at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

SECTION 7.4.(d) NCVPS shall provide only high school courses.

SECTION 7.4.(e) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

MORE AT FOUR PROGRAM

SECTION 7.5.(a) The Department of Public Instruction shall continue the implementation of the More at Four prekindergarten program for four-year-olds who are at risk for school failure in all counties. The State prekindergarten program shall serve children who reach the age of four on or before August 31 of that school year and who meet eligibility criteria that indicate a child's risk for school failure. Prekindergarten classrooms shall be operated in public schools, Head Start programs, and licensed child care facilities that choose to participate under procedures defined by the Office of Early Learning within the Department of Public Instruction. All such classrooms shall be subject to the supervision of the Office of Early Learning and shall be operated in accordance with standards adopted by the State Board of Education.

SECTION 7.5.(b) The Office of Early Learning shall specify program standards and requirements addressing:

(1) Early learning standards and curricula;
(2) Teacher education and specialized training;
(3) Teacher in-service training and professional development;
(4) Maximum class size;
(5) Staff-child ratio;
(6) Screenings, referrals, and support services;
(7) Meals; and
(8) Monitoring of sites to demonstrate adherence to State programs standards.

SECTION 7.5.(c) The State Board of Education shall submit an annual report no later than March 15 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, the Office of State Budget and Management, and the Fiscal Research Division. The report shall include the following:

(1) The number of children participating in State prekindergarten.
(2) The number of children participating in State prekindergarten who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
(3) The expected State prekindergarten expenditures for the programs and the source of the local contributions.
(4) The results of an annual evaluation of the program.

SECTION 7.5.(d) The Office of Early Learning shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child of (i) an active duty member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces who is ordered to active duty by the proper authority within the last 18 months or expected to be ordered within the next 18 months or (ii) a member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who was injured or killed while serving on active duty, shall be eligible for the program.

SECTION 7.5.(e) The More at Four program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with More at Four program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State mandates.

SECTION 7.5.(f) The Office of Early Learning shall develop a new More at Four funding model to be implemented in the 2010-2011 fiscal year. The per-child funding rates shall be based on participating provider cost structures and shall require a contribution of local resources to support the full cost of providing high quality prekindergarten. The Office of Early Learning shall implement an administrative cap on More at Four program funding and shall establish parameters for allowable administrative costs.

SECTION 7.5.(g) The Office of Early Learning shall contract with an independent research organization not affiliated with the Department of Health and Human Services, the Department of Public Instruction, the Office of the Governor, or any entity currently funded by or affiliated with the Department of Health and Human Services, the Department of Public Instruction, or the Office of the Governor to produce an annual report to include longitudinal review of the More at Four program and academic, behavioral, and other child-specific outcomes. The review shall include a quasi-experimental research design of a representative sample of children who complete the More at Four program every year and shall report on their sustained progress until the end of grade 9. The review shall also study a representative sample of children who do not enter the More at Four program but who are of the same grade level and demographic as those who complete the program, and their sustained progress shall also be reviewed until the end of grade 9. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year.

LEADERSHIP ACADEMY

SECTION 7.6. Of the funds appropriated in this act to the Department of Public Instruction for the 2010-2011 fiscal year, up to two hundred thousand dollars ($200,000) may be used to support a Leadership Academy that provides professional development to superintendents enabling them to train principals to address critical areas such as student achievement and teacher recruitment and retention.

DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.7.(a) The Department of Public Instruction is not required to eliminate receipt-supported positions for the 2010-2011 fiscal year.

SECTION 7.7.(b) The Department of Public Instruction shall review expenditures of federal funds for personnel and contracts at the State level. Unless the expenditure is a condition of receiving the funds, the Department shall reallocate the funds to local school administrative units whenever possible.

The Department shall report on the reallocation of these funds to local school administrative units, to the Office of the Governor, the chairs of the House of Representatives Committee on Appropriations and the House of Representatives Appropriations Subcommittee on Education, the chairs of the Senate Committee on Appropriations/Base Budget and the Senate Appropriations Committee on Education/Higher Education, and the Office of State Budget and Management no later than January 15, 2011.

CAREER AND COLLEGE – READY, SET, GO!

SECTION 7.8.(a) The State Board of Education shall work with all member institutions of the Education Cabinet and the Joint Governing Boards to focus funding and program priorities to ensure that all North Carolina students graduate prepared to successfully pursue a career or further education. Each Education Cabinet Institution shall prioritize the Governor's Ready, Set, Go! initiative and ensure that all students PK-20:

(1) Are prepared to be successful in school and can successfully progress through PK-20 education. This includes, but is not limited to:

a. Establishment of the Governor's Child Advocacy Council to increase ways for all children to come to school healthy and ready to learn;

b. Investment in early child development programs like Smart Start and More at Four;
c. Investment in smaller class sizes in K-3;
d. Implementation of student diagnostics in grades K-3 and 5 to ensure that all students at a minimum possess grade-level reading, writing, and math skills;
e. Implementation of student diagnostics for career and college readiness in grades 8 and 11 so students graduate prepared for work, college, or technical training; and
f. Implementation of the Student Learning Conditions Survey for grades 7, 9, and 11 that is aligned with the Teacher Working Conditions Survey.

(2) Receive clear standards and high expectations, and benefit from the best teachers and principals that can most effectively help students reach those standards. This includes, but is not limited to:
a. Adoption of the State-led National Common Standards, including Career and College Ready Skills and assessments that prepare students for the global economy;
b. Evaluation of Teacher Preparation programs to identify best practices and programs that produce effective teachers;
c. Increased access to virtual learning opportunities for students and teachers like those provided through the NC Virtual Public School;
d. Increased access to Science, Technology, Engineering and Mathematics (STEM) opportunities;
e. Development of leadership academies that recruit and prepare effective principals;
f. Development of a PK-20 data system to provide comprehensive information on students;
g. Reduction and eventual elimination of low-performing status in North Carolina schools; and
h. Job-imbedded professional development for teachers and principals.

(3) Fully understand and complete the prerequisites for the career, certification, or degree of choice that promotes workforce success. This includes, but is not limited to:
a. Development of academic boot camps for high school students who need additional support in reading, composition, and math;
b. Consolidation of high school transition courses to provide high school students with more college level or career and technical courses;
c. Increased access to virtual college level and specific career and technical courses for high school students;
d. Alignment between high school and college curricula so that all students are prepared for higher education work; and
e. Implementation of NCSuccess, a program designed to increase the number of certificates and associate or bachelor's degrees in higher education.

SECTION 7.8.(b) The Education Cabinet shall report by January 15, 2011, to the Office of the Governor, the Joint Governing Boards, and the Joint Education Oversight Committee on its progress toward reaching the Governor's goal that every North Carolina student will graduate ready to be successful in a career, a 2- or 4-year college, or technical training.

SCHOOL CONNECTIVITY INITIATIVE

SECTION 7.9. Section 7.12.(a) of S.L. 2009-451, as rewritten by Section 3E of S.L. 2009-575, is repealed.

SCHOOL CALENDAR PILOT PROGRAM

SECTION 7.10. Section 7.40 of S.L. 2009-451 reads as rewritten:

"**SECTION 7.40.** The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2009-2010 ~~calendar year~~and the 2010-2011 calendar years for the Wilkes County Schools shall include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months. Notwithstanding G.S. 115C-84.2(d), the opening date for students shall not be before August 24.

If the Wilkes County Board of Education adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 180 days of instruction and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, ~~2010,~~2011, on the administration of the pilot program, cost-savings realized by it, and its impact on student achievement."

NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS (NBPTS) FUNDS

SECTION 7.11.(a) G.S. 115C-296.2(d1) reads as rewritten:

"(d1) Repayment of the Application Fee. – A teacher shall repay the application fee to the State Education Assistance Authority within three years. The State Education Assistance Authority may forgive the loan upon the death or permanent disability of the teacher.

All funds appropriated to, or otherwise received by, the Authority to provide loans to teachers pursuant to this section, all funds received as repayment of loans, and all interest earned on these funds shall be placed in a trust fund. This fund shall be used only for loans made pursuant to this section and administrative costs of the Authority."

SECTION 7.11.(b) The State Board of Education shall transfer funds in the amount of three million two hundred seventy-four thousand five hundred dollars ($3,274,500) from the State Public School Fund to the State Education Assistance Authority for the 2010-2011 fiscal year for NBPTS loans. It is the intent of the General Assembly that these funds are included in the certified budget for the State Education Assistance Authority for the 2011-2012 fiscal year and subsequent fiscal years.

DRIVER EDUCATION

SECTION 7.12. The Highway Safety Research Center Institute of the University of North Carolina at Chapel Hill shall work in collaboration with the Department of Public Instruction and the Governor's Highway Safety Commission to create a standard curriculum to be used for the Driver Education Program in the Department of Public Instruction. The curriculum shall be ready for use in the school year beginning in the fall of 2011 and shall be used for all driver education programs funded with State funds.

PROTECTION OF THE CLASSROOM WHILE MAXIMIZING FLEXIBILITY

SECTION 7.13.(a) Section 7.8 of S.L. 2009-451 reads as rewritten:

"**SECTION 7.8.(a)** The State Board of Education is authorized to adopt emergency rules in accordance with G.S. 150B-21.1A to grant maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. These rules:

(1) Shall authorize the transfer of textbook funds to other allotments to manage funding cuts; and

(2) Shall not permit the transfer of funds from school-based positions to the central office.

"**SECTION 7.8.(b)** ~~For fiscal years 2009-2010 and 2010-2011,~~ For the 2010-2011 fiscal year, local school administrative units shall ~~make every effort to~~ reduce spending whenever and wherever such budget reductions are appropriate ~~with the goal of~~ to ~~protecting~~ protect direct classroom ~~services~~ services. ~~and services for students at risk and children with special needs.~~ Local school administrative units shall implement administrative and other operating efficiencies prior to ~~and minimize~~ the dismissal of classroom-based ~~personnel~~ personnel. Local school administrative units shall maximize federal ~~by maximizing~~ funds received ~~from the~~ including American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5; Keep Our Educators Working Act or any other federal act that provides funding that can be expended on positions; Individuals with Disabilities Act (IDEA); Title I; and Title II funds. Local school administrative units are encouraged to designate all Title I-eligible schools and must maximize attrition prior to the dismissal of classroom-based personnel. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Allocation of teachers and class size requirements in grades K-3 shall remain unchanged.

"**SECTION 7.8.(c)** Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit on the basis of average daily membership.

"**SECTION 7.8.(d)** Each unit shall report to the State Board of Education, the Office of State Budget and Management, and the Department of Public Instruction on the flexibility budget reductions it has identified for the unit, including an explanation of how administrative efficiencies, federal funds, and attrition have been maximized prior to the dismissal of classroom-based personnel, within 30 days of the date this act becomes law."

SECTION 7.13.(b) For fiscal year 2010-2011, local boards of education may also implement furloughs in accordance with Section 29.1 of this act to manage funding amounts.

PROBATIONARY TEACHERS

SECTION 7.14.(a) G.S. 115C-325(c)(5) reads as rewritten:

"(5) Consecutive Years of Service. – If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher.

If a probationary teacher in a full-time permanent position resigns or is not renewed because of a reduction in force and is subsequently rehired by the same school system within three years, there shall be deemed to be no break in the continuity in consecutive years of service for such teacher up to a maximum of three consecutive years towards career status. If, at the time the teacher resigns or is not renewed because of a reduction in force, the teacher had been employed by a school system for four consecutive years

pursuant to G.S. 115C-325(c)(1), or one year pursuant to G.S. 115C-325(c)(2), and the board subsequently rehires such teacher within three years, the board may grant career status immediately upon reemploying the teacher, or vote on the teacher's career status pursuant to G.S. 115C-325(c)(1) or (c)(2) after one additional year of employment."

SECTION 7.14.(b) This act is effective when it becomes law and applies to probationary teacher employed by a local school administrative unit in a full-time permanent position for the 2010-2011 school year.

PART VIII COMMUNITY COLLEGES

CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS

SECTION 8.1.(a) Of the funds appropriated to the Community Colleges System Office for the 2009-2011 fiscal biennium for the College Information System, up to one million two hundred fifty thousand dollars ($1,250,000) shall not revert at the end of each fiscal year but shall remain available until expended. These funds may only be used to purchase periodic system upgrades.

SECTION 8.1.(b) This section becomes effective June 30, 2010.

STATE AID BUDGET FLEXIBILITY

SECTION 8.2. G.S. 115D-31 is amended by adding a new subsection to read:

"(b1) A local community college may use all State funds allocated to it, except for Literacy funds and Customized Training funds, for any authorized purpose that is consistent with the college's Institutional Effectiveness Plan. Each local community college shall include in its Institutional Effectiveness Plan a section on how funding flexibility allows the college to meet the demands of the local community and to maintain a presence in all previously funded categorical programs."

TUITION FOR PRISON INMATES

SECTION 8.3.(a) Funds are appropriated to the Department of Correction in Section 2.1 of this act to provide courses for inmates in State prisons. These funds shall be used only for courses that are known to reduce recidivism.

Courses provided in federal prisons or local jails shall be offered on a self-supporting basis.

SECTION 8.3.(b) The Department of Correction and the Community Colleges System Office shall report to the 2011 General Assembly on:

(1) The implementation of the new funding structure and requirements.

(2) Strategies for implementing their recommendations to:

a. Enhance measurable goals, objectives, and outcomes.

b. Enhance and standardize data collection.

c. Strengthen the continuum of programming from entry to exit, based on assessment of skills and needs.

d. Give individuals the opportunity to use specific skills through work assignments that meet system needs.

e. Tailor programs to specific inmate needs.

f. Increase Cognitive Behavioral Interventions (CBI) courses.

g. Develop an offender-specific human resources development course.

h. Explore additional funding sources.

i. Explore federal grant for wiring courses.

(3) Strategies for reasonably limiting the number of courses an individual takes while in prison.

SECTION 8.3.(c) The Office of State Budget and Management shall transfer sufficient funds from the Department of Correction to the Community Colleges System Office to pay for inmates' tuition for the Fall 2010 semester.

TUITION WAIVERS

SECTION 8.4.(a) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State ~~funds; provided, however, that the~~ funds. The State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees ~~for persons~~for:

(1) Persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent ~~certificate, for training~~ certificate;

(2) Training courses for (i) volunteer firemen, (ii) local fire department personnel, (iii) volunteer rescue and lifesaving department personnel, (iv) local rescue and lifesaving department personnel, (v) Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, ~~local~~ (vi) municipal, county, State, or federal law-enforcement officers, provided that the permanent duty station of the officers is within North Carolina, ~~patients in State alcoholic rehabilitation centers,~~ (vii) all full-time custodial employees of the Department of Correction, and (viii) employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards ~~Commission,~~Commission;

(3) Patients in State alcoholic rehabilitation centers;~~trainees~~

(4) Trainees enrolled in courses conducted under the ~~New and Expanding Industry Program, clients~~ Customized Training Program;

(5) Clients of sheltered ~~workshops, clients~~workshops;

(6) Clients of adult developmental activity ~~programs, students~~programs;

(7) Students in Health and Human Services Development ~~Programs, juveniles~~Programs;

(8) Juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent ~~jurisdiction, members~~jurisdiction;

(9) Members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General ~~Statutes, and elementary~~ Statutes;

(10) Elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation ~~(CPR). Provided further, tuition shall be waived for up~~ (CPR);

(11) Up to six hours of credit instruction and ~~96 contact hours~~ one course of noncredit instruction per academic semester for senior citizens age 65 or

older who are qualified as legal residents of North ~~Carolina. Provided further, tuition shall also be waived for all~~ Carolina;

(12) All courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this ~~section."~~section; and

(13) Human resources development courses for any individual who (i) is unemployed; (ii) has received notification of a pending layoff; (iii) is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or (iv) is working and earning wages at or below two hundred percent (200%) of the federal poverty guidelines."

SECTION 8.4.(b) The Community Colleges System Office shall report to the 2011 General Assembly on the number and cost of courses taken by State law enforcement officers and of courses taken by local law enforcement officers.

SECTION 8.4.(c) The Community Colleges System Office shall make a comprehensive study of the currently authorized tuition waivers and shall report to the 2011 General Assembly on waivers that should be modified or abolished because they are not being used or for other reasons.

COMMUNITY COLLEGE FINANCIAL AID LOANS

SECTION 8.5.(a) The State Board of Community Colleges shall permanently realign its funding formula by increasing the amount allocated in the funding formula for students' services by fifty million dollars ($50,000,000) and by reducing the amount in the funding formula for curriculum and continuing education instruction by a commensurate amount. The revised formula shall ensure that community colleges have the adequate funds and resources necessary to administer and provide financial aid services to students.

SECTION 8.5.(b) G.S. 115D-40.1 reads as rewritten:

"§ 115D-40.1. Financial Assistance for Community College Students.

(a) Need-Based Assistance Program. – It is the intent of the General Assembly that the Community College System make these financial aid funds available to the neediest students who are not eligible for other financial aid programs that fully cover the required educational expenses of these students. The State Board may use some of these funds as short-term loans to students who anticipate receiving the federal HOPE or Lifetime Learning Tax Credits.

(b) Targeted Assistance. – Notwithstanding subsection (a) of this section, the State Board may allocate no more than ten percent (10%) of the funds appropriated for Financial Assistance for Community College Students to:

(1) Students who do not qualify for need-based assistance but who enroll in low-enrollment programs that prepare students for high-demand occupations, and

(2) Students with disabilities who have been referred by the Division of Vocational Rehabilitation and are enrolled in a community college.

(c) Administration of Program. – The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in subsections (a) and (b) of this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance. The

~~The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students including, but not limited to, Pell Grants and HOPE and Lifetime Learning Tax Credits and to actively encourage students to utilize these federal programs and funds. The~~

interest earned on the funds provided in subsections (a) and (b) of this section may be used to support the costs of administering the Community College Grant Program.

(d) Participation in Federal Loan Programs. – All community colleges shall participate in the William D. Ford Federal Direct Loan Program. The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students, including, but not limited to, Pell Grants, HOPE and Lifetime Learning Tax Credits, and the William D. Ford Federal Direct Loan Program, and to actively encourage students to utilize these federal programs and funds."

SECTION 8.5.(c) Subsection (b) of this section becomes effective July 1, 2011. The remainder of this section becomes effective July 1, 2010.

TUITION REFUNDS

SECTION 8.6.(a) A refund of community college tuition shall not be made except under the following circumstances:

(1) A one hundred percent (100%) refund shall be made if the student officially withdraws prior to the first day of class of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.

(2) A seventy-five percent (75%) refund shall be made if the student officially withdraws from the class prior to or on the official ten percent (10%) point of the semester.

(3) For classes beginning at times other than the first week (seven calendar days) of a semester a one hundred percent (100%) refund shall be made if the student officially withdraws from the class prior to the first class meeting. A seventy-five percent (75%) refund shall be made if the student officially withdraws from the class prior to or on the ten percent (10%) point of the class.

(4) A one hundred percent (100%) refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A seventy-five percent (75%) shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.

SECTION 8.6.(b) To comply with applicable federal regulations regarding refunds, federal regulations supersede the provisions of this section.

SECTION 8.6.(c) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.

SECTION 8.6.(d) Community colleges shall adopt local refund policies for classes for which they collect receipts which are not required to be deposited into the State Treasury account.

MANAGEMENT FLEXIBILITY REDUCTION/COMMUNITY COLLEGES

SECTION 8.7. Section 8.24 of S.L. 2009-451 reads as rewritten:

"**SECTION 8.24.** The management flexibility reduction for the North Carolina Community College System shall be allocated by the State Board of Community Colleges in a manner that accounts for the unique needs of each college and provides for the equitable distribution of funds to the institutions consistent with G.S. 115D-5(a). Before taking reductions to instructional budgets, the community colleges shall consider reducing budgets for senior and middle management personnel and for programs that have both low-enrollment and

low-postgraduate success. Colleges shall minimize the impact on student support services and on the retraining of dislocated workers. Colleges shall not reduce funding for the Small Business Centers. The community colleges shall also review their institutional funds to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets."

PART IX. UNIVERSITIES

REPEAL ESCHEAT FUND APPROPRIATION FOR MILLENNIUM TEACHING SCHOLARSHIP LOAN PROGRAM

SECTION 9.1. Section 9.1.(c) of S.L. 2009-451 is repealed.

STUDY FINANCIAL AID CONSOLIDATION

SECTION 9.2.(a) The State Education Assistance Authority, The University of North Carolina, the North Carolina Community College System, and the Fiscal Research Division of the General Assembly shall establish a work group to study jointly the simplification and consolidation of State-funded financial aid for students. North Carolina Independent Colleges and Universities, Inc., shall also be included as a joint member of the work group if it chooses to participate in the study. The State Education Assistance Authority shall be the lead agency for the work group and study.

SECTION 9.2.(b) The purpose of the study is to develop recommendations and options for simplifying and consolidating the delivery of, administration of, and access to State-funded financial aid for students. In conducting the study, the work group shall consider the State's current student financial aid programs and how to consolidate those programs into two categories of State-funded student aid programs: one program that consolidates the State's major need-based programs and one program that consolidates many of the State's scholarship and forgivable loan programs currently available to students who plan to earn degrees and pursue careers in certain professional areas. More specifically the work group shall do the following:

(1) Design a unified need-based financial aid program that combines at a minimum the following three programs into a single need-based financial aid program: The University of North Carolina Need-Based Grant program, the North Carolina Community College Grant program, and the North Carolina Education Lottery Scholarship program established under Article 35A of Chapter 115C of the General Statutes. Currently each of these programs has its own award criteria, formulas, target populations, and funding sources (Escheat Fund, General Fund, and Lottery Funds). As part of its study, the work group shall determine what the appropriate parameters may be for such a unified program by using models that take into account income, expected family contribution, college expenses, type of college attended, and any other factors the work group deems relevant. In designing the program, the work group shall address the issue of proportionality of funding and shall take into account all of the following in its consideration of that issue: the proportionality of funding that currently exists among The University of North Carolina, the North Carolina Community College System, and the North Carolina private colleges and universities; funding sources; accounting for student enrollment change; monetary differences between certain categories of students and whether based on those monetary differences student financial aid should be based on cost of attendance or tuition and fees. The work group may also consider whether it is appropriate to redefine "need" for purposes of student financial aid and to develop a

common formula for the distribution of financial aid and the consequences of any proposed modifications if the decision is made to redefine "need" and develop a common formula. The program shall be designed to: (i) distribute funds in a manner that is consistent with legislative intent, but more easily understood by potential students, and (ii) retain the ability to track lottery funds.

(2) Design a "forgivable loans for service" program that combines at a minimum the following existing programs into one consolidated program that focuses on loans for services: the Nurse Educators of Tomorrow; Nurse Scholars Program; Nurse Education Scholarship Loan Program; Board of Governors Medical Scholarship Loans; Board of Governors Dental Scholarship Loans; Health, Science and Mathematics Student Loan Program; Prospective Teacher Scholarship Loan Program; and the Teacher Assistant Scholarship Program. This single consolidated program shall initially focus on two high area needs: teaching and health professions (including nursing, allied health and medical, dental, and pharmacy careers). In designing this program, the work group may consider the current allocation of funds among the various scholarship and forgivable loan programs, whether it would be appropriate to allow the reallocation and award of funds not distributed as forgivable loans in a specific service area to be awarded as forgivable loans in a different service area, and, if so, what procedure and methodology would be appropriate to trigger the reallocation of funds and provide for the distribution of those funds as awards in a different service area.

SECTION 9.2.(c) In addition to the considerations set out in subsection (b) of this section, the work group shall also consider all of the following:

(1) The time period required to phase out student loans from any of the programs affected by the program consolidation.

(2) How federal funding may affect student financial aid services.

(3) How to deal with current recipients of funds from programs affected by the consolidation.

(4) How to deal with recipients who are paying back loans made through programs affected by the consolidation.

(5) Whether the State Education Assistance Authority should be authorized to extend the repayment period for forgivable loans in hardship circumstances when a good faith effort has been made to repay the loan in a timely manner, and if so, what the appropriate procedure may be for making that determination and extending the repayment period.

(6) Whether there are, and if so how to address, any significant abuses of the financial aid system, particularly by persons who intentionally apply for and receive financial aid but who intend to drop out of school after securing financial aid funds.

(7) Any other issues the work group deems relevant to this study.

SECTION 9.2.(d) The work group shall present its proposed program designs and report its findings and recommendations to the Joint Select Committee on State Funded Student Financial Aid by October 1, 2010. In its report the work group shall also identify options that may vary from the proposed program designs but that are alternatives that the work group determines may also be workable and consistent with the legislative intent of this study. The work group shall also include in the report any legislative changes that may be needed to implement the program designs and work group recommendations.

COORDINATE THE REPORT DUE DATES FOR VARIOUS TEACHER EDUCATION REPORTS

SECTION 9.3.(a) G.S. 116-11 is amended by adding a new subdivision to read:

"(12d) The Board of Governors shall provide a comprehensive annual report on teacher education efforts at The University of North Carolina. The report shall include information about teacher education and recruitment, 2+2 initiatives, distance education programs focused on teacher education, and professional development programs for teachers and school administrators. The teacher education report shall be due on April 15 of each year to the Joint Legislative Education Oversight Committee and the State Board of Education."

SECTION 9.3.(b) G.S. 116-74.21(c) reads as rewritten:

"(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of the biennium and report the results of this study to the Joint Legislative Education Oversight Committee no later than ~~March 1~~April 15 annually."

SECTION 9.3.(c) Section 9.7(c) of S.L. 2008-107 reads as rewritten:

"**SECTION 9.7.(c)** The University of North Carolina and Community Colleges System Office shall report by ~~September 1, 2008,~~ April 15, 2011, and annually thereafter, to the Joint Legislative Education Oversight ~~Commission,~~ Committee, the State Board of Education, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

(1) The courses and programs within the 2+2 E-Learning Initiative;

(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;

(3) The total number of teachers currently in the State's classrooms, by local school administrative unit, who have taken part in this initiative;

(4) The change in the number of teachers available to schools since the program's inception;

(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and

(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement."

SECTION 9.3.(d) Section 9.3(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 9.3.(c)** These results shall be reported by ~~September 1, 2006,~~ April 15, 2011, and annually thereafter to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight ~~Commission,~~ Committee, and the Office of State Budget and Management."

SECTION 9.3.(e) Section 9.9 of S.L. 2002-126 reads as rewritten:

"**SECTION 9.9.** The Board of Governors of The University of North Carolina may allow Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University each to allocate up to one hundred seventy-eight thousand three hundred eighty dollars ($178,380) of the funds allocated to them for focused enrollment growth for a maximum of 20 Prospective Teacher Scholars. These funds may be used to recruit new nonresident students to enter into agreements to: (i) pursue a full-time course of study that will lead to teacher certification in North Carolina and (ii) teach in a North Carolina public school

or a school operated by the United States government in North Carolina for one year for each year that they receive this benefit. The Board of Governors shall establish guidelines and regulations for this pilot program, including methodology for determining its success in increasing the supply of qualified teachers for North Carolina public schools. The Board shall report its guidelines and regulations to guide these pilot programs to the Joint Legislative Education Oversight Committee by ~~November 15, 2002.~~ April 15, 2011. The Board shall report annually to the Committee on the progress of the pilot programs and their costs."

ELIMINATE BIENNIAL DISTANCE EDUCATION REPORTS

SECTION 9.4. Section 11.7 of S.L. 1998-212 reads as rewritten:

"Section 11.7. This act provides funding to The University of North Carolina Board of Governors for degree-related courses provided away from the campus sites of the constituent institutions of The University of North Carolina. The intent of this commitment is to provide expanded opportunities for higher education to more North Carolina residents, including nontraditional students, and to increase the number of North Carolina residents who earn post-secondary degrees.

These funds shall be used for the provision of off-campus higher education programs, including the costs for the development or adaptation of programs for this purpose, and the funds may be used for the costs of providing space and services at the off-campus sites.

Prior to approving funding for off-campus programs in nursing, the Board shall consult with the central office of the Area Health Education Centers (AHEC) to obtain information about regional needs and priorities and to coordinate funding with AHEC efforts in nursing education.

The Board of Governors shall track these funds separately in order to provide data on the costs of providing these programs, including the different costs for various methods of delivery of educational programs. The Board of Governors shall provide for evaluation of these off-campus programs, including comparisons to the costs and quality of on-campus delivery of similar programs, as well as the impact on access to higher education and the educational attainment levels of North Carolina residents. ~~The Board shall provide a preliminary report to the General Assembly by May 1, 2000, and subsequent evaluations, including recommendations for changes, shall be made at least biennially to the Joint Legislative Education Oversight Committee.~~"

REPEAL DUPLICATE STUDY/STATE-FUNDED STUDENT FINANCIAL AID

SECTION 9.5. Section 9.24 of S.L. 2009-451 is repealed.

PERMANENT TRANSFER OF FUNDING TO ROANOKE ISLAND COMMISSION FOR PERFORMING ARTS

SECTION 9.6. Section 9.4 of S.L. 2009-451 reads as rewritten:

"**SECTION 9.4.** The General Assembly finds that in order to expand opportunities for students involved in the performing arts, existing funding for the Summer Institute on Roanoke Island should not be allocated to one specific University of North Carolina institution but instead be allocated directly to the Roanoke Island Commission, so that any interested University of North Carolina institution may have the opportunity to participate in summer arts enrichment and education programs. Therefore, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Summer Institute of the University of North Carolina School of the Arts on Roanoke Island program for the 2009-2011 fiscal biennium, the sum of four hundred sixty-one thousand six hundred forty-six dollars ($461,646) shall be transferred for the 2009-2010 fiscal year to the Roanoke Island Commission, and the ~~sum of four hundred sixty-one thousand six hundred forty-six dollars ($461,646) shall be transferred for the 2010-2011 fiscal year to the Roanoke Island~~

~~Commission.~~ recurring funds appropriated for the 2010-2011 fiscal year to the Board of Governors of The University of North Carolina and allocated to the University of North Carolina School of the Arts for the Summer Institute on Roanoke Island program shall be permanently transferred to the Department of Cultural Resources and allocated to the Roanoke Island Commission. The amount to be transferred shall be equal to the amount of the appropriation remaining after all reductions, prior to and included in the act, are incorporated. The Roanoke Island Commission may use these funds to contract with any of the constituent institutions of The University of North Carolina System to provide music and drama students an education in a professional performing environment while providing a public service to the State. Any available funds may be used to contract with community-based or nonprofit performing arts groups or other performing arts groups supported with State or local funds to provide music and drama on Roanoke Island."

REVIEW OF UNC SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (STEM) PROGRAMS

SECTION 9.7.(a) In order to assess the effectiveness of the science, technology, engineering, and mathematics (STEM) programs administered by The University of North Carolina, General Administration shall compile a comprehensive list of the programs within The University System whose primary objective is to provide community outreach in the form of either (i) teacher professional development programs to strengthen the quality of science or mathematics instruction in the public schools; or (ii) K-12 student enrichment programs in the areas of science, technology, engineering, or mathematics. The University of North Carolina General Administration shall submit the list of STEM programs compiled pursuant to this subsection to the Office of State Budget and Management and the Fiscal Research Division by February 15, 2011.

At a minimum, all of the following programs shall be included in the list:

(1) Pre-College and Teacher Professional Development programs administered through the North Carolina Mathematics and Science Education Network (NC-MSEN).
(2) Summer Ventures Program.
(3) North Carolina Central University Center for Science, Math and Technology Education.
(4) Fayetteville State University CHEER Summer Bridges.
(5) NCSTEM Community Collaborative.

SECTION 9.7.(b) The University of North Carolina General Administration shall conduct a review of each of the programs identified pursuant to subsection (a) of this section and shall report the results to the Office of State Budget and Management and the Fiscal Research Division no later than September 30, 2011, to assist with future funding decisions. The report shall contain the following information for each program:

(1) A description of the program mission, goals, and objectives.
(2) The statutory objectives for the program if applicable.
(3) Annual State appropriation and receipt funding for the program.
(4) Program effectiveness measures for Teacher Professional Development programs to include at a minimum:
    a. A measure of teachers' classroom effectiveness in STEM areas before and after attending a university professional development program.
    b. A measure of math and science educators retained as a result of attending a UNC professional development program.
(5) Program effectiveness measures for student enrichment programs to include at a minimum:

a. A measure of students' expected college and career aspirations before and after attending a STEM program.
b. A measure of students' math and science performance on standardized tests before and after attending a STEM program.
c. A measure of declared STEM majors within the UNC system who attended a UNC-sponsored STEM program.

SECTION 9.7.(c) In addition, the Department of Public Instruction shall survey math and science educators in North Carolina to identify the number of current math and science educators who attended a Pre-College or Summer Ventures program sponsored by The University of North Carolina before entering college. The survey may be conducted in cooperation with ongoing data collection efforts within The University of North Carolina System. The data shall be reported to the Office of State Budget and Management and the Fiscal Research Division by February 15, 2011.

TRANSFER OF A+ SCHOOLS FROM UNC-GREENSBORO TO DEPARTMENT OF CULTURAL RESOURCES

SECTION 9.8. The A+ Schools program is transferred from the University of North Carolina at Greensboro to the North Carolina Arts Council in the Department of Cultural Resources, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer. The program transfer shall include the sum of fifty-eight thousand six hundred thirty-eight dollars ($58,638).

COASTAL DEMONSTRATION WIND TURBINES

SECTION 9.9. Section 9.14 of S.L. 2009-451 reads as rewritten:

"**SECTION 9.14.(a)** Of the funds received by the State and appropriated by United States Public Law 111-005, the American Recovery and Reinvestment Act of 2009, and appropriated in this act to the State Energy Office for the 2009-2010 fiscal year, the sum of three hundred thousand dollars ($300,000) in nonrecurring funds shall be allocated to The University of North Carolina to continue the coastal sounds wind energy study set forth in Section 9.12 of S.L. 2008-107. The University shall contract with a third party by October 1, 2009, to design, permit, procure, construct, establish, ~~operate, and reclaim as appropriate at the end of their economic life~~and operate up to three demonstration turbines and necessary support facilities in the sounds or off the coast of ~~North Carolina by September 1, 2010.~~North Carolina. The contract shall provide for the reclamation and decommissioning of the project at the end of its economic life. The demonstration project shall commence operations as soon as practicable, and, in any event, no later than December 31, 2011.

Any contract entered into between The University and a third party pursuant to this section shall ensure that The University is provided appropriate access to the demonstration turbines and necessary support facilities for research purposes. The actual number and placement of the wind turbines and necessary support facilities shall be determined by the coastal sounds wind energy study in coordination with participating entities. The Director of the Budget shall ensure that any available federal funds are secured by the State to construct the demonstration turbines and necessary support facilities. The University may negotiate and execute any rights-of-way, easements, leases, and any other agreements necessary to construct, establish, and operate the demonstration turbines and supporting facilities, notwithstanding any other provisions of law governing such negotiation and execution of any rights-of-way, easements, leases, or other required agreements required for the facilities authorized under this section.

...

"**SECTION 9.14.(c)** The North Carolina Utilities Commission is directed to facilitate and expedite wind energy pilot projects developed pursuant to this act that come within its jurisdiction to the extent allowed by law and consistent with State statute. A wind turbine

constructed pursuant to this section shall be exempt from the requirements of G.S. 62-110.1. For such wind turbines owned by a public utility, upon an application by the public utility seeking a rider to recover the costs of such project, the Utilities Commission shall establish an annual rider for the public utility to recover the just and reasonable costs, including the utility's cost of debt and equity, of such project upon completion. Should the project development and construction of the demonstration wind turbines be unreasonably delayed beyond the date set forth in subsection (a) of this section for reasons outside the control of the public utility, all just and reasonable costs incurred by the public utility during project development and construction shall nonetheless be recoverable through an annual rider under this subsection, provided that the public utility shall bear the burden of proving by a preponderance of the evidence that the reasons for the delay were beyond its control and its execution of the project was reasonable and prudent. Should the demonstration wind turbines be abandoned prior to completion, the capital costs and AFUDC related to the project shall nonetheless be recoverable under this Article, provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the project was prudent.

..."

COASTAL WAVE ENERGY RESEARCH AND PROTOTYPE PROJECT

SECTION 9.10.(a) In order to provide opportunities for research into tidal, wave, and other ocean-based sources of alternative energy, the University of North Carolina Coastal Studies Institute shall form a consortium with the Colleges of Engineering at North Carolina State University, North Carolina Agricultural and Technical State University, and the University of North Carolina at Charlotte to design and construct a prototype generator to capture energy of ocean waves. The generator shall be attached to or staged from an existing State-owned structure located in the ocean waters of the State and shall be used to support marine or ocean-based research collaborations involving public and private universities.

SECTION 9.10.(b) With respect to the demonstration wave energy facility and necessary support facilities authorized by subsection (a) of this section, the facilities authorized under this act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities, except that the State Property Office shall expedite and grant all easements and use agreements required for construction of the facilities without payment of any fee, royalty, or other cost. Notwithstanding any other provision of law, construction of the facilities authorized by this section shall be exempt from the following statutes and rules implementing those statutes: G.S. 143-48 through 143-64, 143-128, 143-129, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 113A-116 through 113A-128. With respect to any other environmental permits required for construction of the facilities, the Department of Environment and Natural Resources is directed to expedite permitting of the project to the extent allowed by law and shall waive any application fees that would be otherwise applicable to applications for permits required for the facilities and, where possible under applicable law, issue all permits within 40 days of receipt of a complete application.

UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM

SECTION 9.11. G.S. 116-37 reads as rewritten:

"**§ 116-37. University of North Carolina Health Care System.**

(a) Creation of System. –

...

(4) With respect to the provisions of subsections (d), (e), (f), (h), (i), (j), and (k) of this section, the board of directors may adopt policies that make the authorities and responsibilities established by one or more of said subsections ~~separately~~ applicable ~~either~~ to the University of North Carolina

Hospitals at Chapel ~~Hill or~~ Hill, to the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill, ~~or to both.~~to both, or to other persons or entities affiliated with or under the control of the University of North Carolina Health Care System.

...

(b) Board of Directors. – There is hereby established a board of directors of the University of North Carolina Health Care System, effective November 1, 1998.

(1) The board of directors ~~initially~~ shall be composed as follows:

a. A minimum of six members ex officio of said board shall be the President of The University of North Carolina (or the President's designee); the Chief Executive Officer of the University of North Carolina Health Care System; ~~two~~ the Chancellor of the University of North Carolina at Chapel Hill and one additional administrative ~~officers~~ officer of the University of North Carolina at Chapel Hill designated by the ~~Chancellor of that institution;~~Chancellor; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the Dean of the School of Medicine; provided, that if not such a member ex officio by virtue of holding one or more of the offices aforementioned, additional ex officio memberships shall be held by the President of the University of North Carolina Hospitals at Chapel ~~Hill~~ Hill, the faculty member responsible for leading the clinical patient care programs of the School of Medicine, and the Dean of the School of Medicine of the University of North Carolina at Chapel ~~Hill, for a total potential ex officio membership of eight.~~Hill.

b. No less than nine and no more than 21 members at large, which number shall be determined by the board of directors, shall be appointed for four-year terms, commencing on November 1 of the year of appointment; provided, that the initial class of at-large members shall include the persons who hold the appointed memberships on the board of directors of the University of North Carolina Hospitals at Chapel Hill incumbent as of October 31, 1998, with their terms of membership on the board of directors of the University of North Carolina Health Care System to expire on the last day of October of the year in which their term as a member of the board of directors of the University of North Carolina Hospitals at Chapel Hill would have expired. Vacant at-large positions shall be filled by the appointment of persons from the business and professional public at large who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of The University of North Carolina, nor officers or employees of the State. Members shall be appointed by the President of the University, and ratified by the Board of Governors, from among a slate of nominations made by the board of directors of the University of North Carolina Health Care ~~System, said slate to include at least twice as many nominees as there are vacant positions to be filled.~~System. No member may be appointed to more than two full four-year terms in succession;

provided, that persons holding appointed memberships on November 1, 1998, by virtue of their previous membership on the board of directors of the University of North Carolina Hospitals at Chapel Hill, shall not be eligible, for a period of one year following expiration of their term, to be reappointed to the board of directors of the University of North Carolina Health Care System. Any vacancy in an unexpired term shall be filled by an appointment made by the President, and ratified by the Board of Governors, upon the nomination of the board of directors, for the balance of the term remaining.

(2) ~~The board of directors, with each ex officio and at-large member having a vote, shall elect a chairman from among the at-large members, for a term of two years; no person shall be eligible to serve as chairman for more than three terms in succession.~~The Chancellor of the University of North Carolina at Chapel Hill or a board member designated by the Chancellor shall serve as chair of the board of directors.

...

(4) In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the board of directors is authorized to exercise such authority and responsibility and adopt such policies, rules, and regulations as it deems necessary and appropriate, not inconsistent with the provisions of this section or the policies of the Board of ~~Governors.~~ Governors or, to the extent the board's actions affect employees of the University of North Carolina at Chapel Hill, the policies of the University of North Carolina at Chapel Hill. The board may authorize any component of the University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the board of directors may direct. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the Chancellor of the University of North Carolina at Chapel Hill. The board of directors shall keep the Board of Governors and the board of trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education, and research for improvement of the health of the citizens of North Carolina.

(c) Officers. –

(1) The executive and administrative head of the University of North Carolina Health Care System shall have the title of "Chief Executive Officer." The board of directors, ~~in cooperation with~~ the board of trustees and the Chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the Chancellor deem appropriate, shall identify, ~~in cooperation with the Chancellor,~~ two or more persons as candidates for the office, who, pursuant to criteria agreed upon by the boards and the Chancellor, have the qualifications for both the positions of Chief Executive Officer of the University of North Carolina Health Care System and Vice-Chancellor for Medical Affairs of the University of North Carolina

at Chapel Hill. The names of the candidates so ~~identified~~ identified, once approved by the board of directors and the board of trustees, shall be forwarded by the Chancellor to the President of The University of North Carolina, who if satisfied with the quality of one or more of the candidates, will nominate one as Chief Executive Officer, subject to selection by the Board of Governors. The individual serving as Chief Executive Officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the board of directors. That same individual, when serving as Vice-Chancellor for Medical Affairs, shall have all authorities, rights, and responsibilities of a vice-chancellor of the University of North Carolina at Chapel Hill.

...

(3) The board of directors shall elect, on nomination of the Chief Executive Officer, the President of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff employees of the University of North Carolina Health Care System as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer.

...."

UNIVERSITY CANCER RESEARCH FUND

SECTION 9.12. G.S. 116-29.1 reads as rewritten:

"**§ 116-29.1. University Cancer Research Fund.**

...

(c) Cancer Research Fund Committee. – The Cancer Research Fund Committee shall consist of five ex officio members and two appointed members. The five ex officio members shall consist of the following: (i) one member shall be the ~~President of The University of North Carolina,~~ Chancellor of the University of North Carolina at Chapel Hill, (ii) one member shall be the Director of the Lineberger Comprehensive Cancer Center, (iii) one member shall be the Dean of the School of Medicine at The University of North Carolina, (iv) one member shall be the Dean of the School of Pharmacy at The University of North Carolina, and (v) one member shall be the Dean of the School of Public Health at The University of North Carolina. The remaining two members shall be appointed by a majority vote of the standing members of the Committee and shall be selected from persons holding a leadership position in a nationally prominent cancer program.

If any of the specified positions cease to exist, then the successor position shall be deemed to be substituted in the place of the former one, and the person holding the successor position shall become an ex officio member of the Committee."

(d) Chair. – The chair shall be the ~~President of The University of North Carolina.~~ Chancellor of the University of North Carolina at Chapel Hill.

...."

UNC MANAGEMENT FLEXIBILITY REDUCTION

SECTION 9.13.(a) Section 9.19 of S.L. 2009-451 reads as rewritten:

"**SECTION 9.19.** The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina

entities. Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider reducing budgets for senior and middle management personnel, centers and institutes, low enrollment degree programs, speaker series, and nonacademic activities. The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of ~~the~~ The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets. In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification. Budget reductions shall not be considered in funding available for need-based financial aid.

Notwithstanding any other provision of law, for the 2010-2011 fiscal year only, the constituent institutions may, with the approval of the President of The University of North Carolina and the Board of Governors, increase tuition by up to seven hundred fifty dollars ($750.00) per academic year. This increase shall be in addition to other increases authorized for the fiscal year. These funds shall be used only to offset the institutions' management flexibility reductions."

SECTION 9.13.(b) Section 9.23 of S.L. 2009-451 is repealed.

INSTITUTE FOR OUTDOOR DRAMA

SECTION 9.14.(a) The Institute for Outdoor Drama shall be transferred from the University of North Carolina at Chapel Hill to East Carolina University.

SECTION 9.14.(b) Of the funds appropriated to the Department of Commerce, Division of Tourism, Film, and Sports Development, the sum of one hundred fifty thousand dollars ($150,000) shall be transferred to the Board of Governors of The University of North Carolina for the Institute for Outdoor Drama at East Carolina University.

RECRUITMENT OF PHARMACY STUDENTS

SECTION 9.15.(a) The University of North Carolina at Chapel Hill shall collaborate with the University of North Carolina at Asheville and Elizabeth City State University regarding the recruitment of students of pharmacy. The universities shall develop and institute a plan in which potential pharmacy students are informed of the pharmacy programs at each of the public universities in an effort to recruit those students to State schools.

SECTION 9.15.(b) The Board of Governors shall make funds in the amount of forty-four thousand dollars ($44,000) available to Elizabeth State University for the 2010-2011 fiscal year for the recruitment and academic support of pharmacy students.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ELECTRONIC BENEFITS TRANSFER SYSTEM

SECTION 10.1. The Department of Health and Human Services, Division of Child Development, shall implement an Electronic Benefits Transfer system for child care subsidy. The Department shall review all current electronic card system operations as related to Child Support Enforcement and Food and Nutrition to determine whether coordination may occur among the three-card systems that result in cost-savings.

The Department shall monitor the implementation of the "smart card" system pilot program in Georgia and similar technology in other states. The Department shall submit a report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the implementation of Georgia's pilot program and other states' programs and provide any recommendations for a card system program in this State by May 1, 2011.

REPEAL POLICIES TO FACILITATE AND EXPEDITE USE OF CHILD CARE SUBSIDY FUNDS

SECTION 10.2. Section 10.4 of S.L. 2009-451 is repealed.

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.3. Section 10.7.(g) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.7.(g)** For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. ~~The Department of Health and Human Services shall determine the level of funds that need to be expended in order to draw down all federal recovery funds and shall direct the local partnerships to spend at least at the determined level. The local partnerships shall not spend at a level less than that directed by the Department.~~"

COST SHARE HEALTH-RELATED EXPENDITURES WITH MEDICAID

SECTION 10.4. The Division of Public Health and the Division of Medical Assistance shall coordinate with the North Carolina Partnership for Children, Inc., to cost share the health-related expenditures with Medicaid. The Division of Child Development shall transfer the amount of planned expenditures for health-related activities to the Division of Public Health to coordinate the cost-sharing through local health departments. The Division of Child Development shall report on these activities by October 1, 2010, to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.5. Section 10.10 of S.L. 2009-451 reads as rewritten:

"**SECTION 10.10.** The Division of Child Development of the Department of Health and Human Services shall increase the allowance that county departments of social services may use for administrative costs from four percent (4%) to five percent (5%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan. The increase shall be effective for the 2009-2010 ~~fiscal year.~~ and 2010-2011 fiscal years."

MENTAL HEALTH CHANGES

SECTION 10.6.(a). Section 10.12.(b) of S.L. reads as rewritten:

"**SECTION 10.12.(b)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars ($20,121,644) for the 2009-2010 fiscal year and the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars ($20,121,644) for the 2010-2011 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State in all LME catchment areas and according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. The Department shall work to ensure that these contracts are awarded equitably around all regions of the State. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the

individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.6.(b). Section 10.12.(f) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.12.(f)**

~~(1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall continue implementation of the current Supports Intensity Scale (SIS) assessment tool pilot project if the pilot project has demonstrated that the SIS tool:~~

~~a. Is effective in identifying the appropriate array and intensity of services, including residential supports or placement, for individuals assessed.~~

~~b. Is valid for determining intensity of support related to resource allocation for CAP-MR/DD, public and private ICF-MR facilities, developmental disability group homes, and other State or federally funded services.~~

~~c. Is used by an assessor that does not have a pecuniary interest in the determinations resulting from the assessment.~~

~~d. Determines the level of intensity and type of services needed from developmental disability service providers.~~

~~(2) The Department shall report on the progress of the pilot project by May 1, 2010. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:~~

~~a. The infrastructure that will be needed to assure that the administration of the assessment tool is independent from service~~

~~delivery, the qualifications of assessors, training and management of data, and test-retest accountability.~~

~~b. The cost to (i) purchase the tool, (ii) implement the tool, (iii) provide training, and (iv) provide for future expansion of the tool statewide.~~

The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require the seven LMEs participating in the current Supports Intensity Scale (SIS) assessment tool pilot project to administer a SIS assessment to all clients with developmental disabilities. The participating LMEs shall use the results of the SIS assessment to assign clients with developmental disabilities to one of the Tiers within the CAP-MR/DD Waiver and to other needed services, according to their relative intensity of need."

TERM LIMITS FOR COUNTY MANAGERS ON AREA MENTAL HEALTH BOARDS

SECTION 10.7. G.S. 122C-118.1(d) reads as rewritten:

"(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of county managers on an area board may be for the duration of their employment as a county manager. The terms of the other members on the area board shall be for three years, except that upon the initial formation of an area board one-third shall be appointed for one year, one-third for two years, and all remaining members for three years. Members, other than county managers, shall not be appointed for more than two consecutive terms. Board members serving as of July 1, 2006, may remain on the board for one additional term. This subsection applies to all area authority board members regardless of the procedure used to appoint members under subsection (a) of this section."

REPEAL SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 10.8. Section 10.13 of S.L. 2009-451 is repealed.

JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDERS AND PUBLIC SAFETY

SECTION 10.9. Section 10.21D.(i) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.21D.(i)** The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before May 1, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives ~~on or before December 31, 2010,~~ upon the completion of its work by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate ~~on December 31, 2010, or upon the filing of is final report, whichever occurs first.~~upon the completion of its work."

CLOSURE PLAN FOR DOROTHEA DIX HOSPITAL

SECTION 10.10. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall do all of the following with respect to Dorothea Dix Hospital:

(1) By August 1, 2010, submit an itemized operations budget for the 2010-2011 fiscal year to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

(2) By October 1, 2010, develop and submit a plan for closing the hospital no later than June 30, 2011, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.11. Section 10.23.(c) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.23.(c)** The Department of Health and Human Services shall report on the following with respect to funds appropriated to the CFEHDI for the 2009-2010 fiscal year. The report shall address the following:

(1) Which community programs and local health departments received CFEHDI grants.
(2) The amount of funding each program or local health department received.
(3) Which of the minority populations were served by the programs or local health departments.
(4) Which counties were served by the programs or local health departments.
(5) What activities were planned and implemented by the programs or local health departments to fulfill the community focus of the CFEHDI program.
(6) How the activities implemented by the programs or local health departments fulfilled the goal of reducing health disparities among minority populations.

The report shall also include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State. The Department shall submit the report not later than ~~March 15, 2010~~,March 14, 2011, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

SUPPLEMENTAL FUNDS FOR HEALTH INITIATIVES FROM HEALTH AND WELLNESS TRUST FUND

SECTION 10.12. The Health and Wellness Trust Fund Commission shall allocate from funds available in the Health and Wellness Trust Fund in the 2010-2011 fiscal year the sum of three million two hundred ninety-seven thousand dollars ($3,297,000) for health initiatives in the Department of Health and Human Services in accordance with the following:

(1)	Stroke Prevention	$450,000
(2)	Improve Birth Outcomes	$247,000
(3)	Prevent Neural Tube Birth Defects	$350,000
(4)	Prevent Blindness	$150,000
(5)	Amyotrophic Lateral Sclerosis (ALS)	$300,000
(6)	Adolescent and Teen Pregnancy Prevention	$650,000
(7)	Healthy Carolinians	$100,000
(8)	North Carolina Arthritis Patient Services	$ 50,000
(9)	Rural Hospital Operation & Maintenance	$1,000,000

These funds shall supplement and not supplant other funds allocated within the Division of Public Health for these activities.

IMMUNIZATION CHANGES

SECTION 10.13. Section 10.29A of S.L. 2009-451 is amended by adding a new subsection to read:

"(c) The General Assembly finds that health insurers licensed to practice in this State currently provide reimbursement for the full series of standard immunizations recommended by the federal Centers for Disease Control and Prevention (CDC) and the American Academy of Family Physicians, and required by the North Carolina Immunization Program. The covered immunizations include all of the following:

(1) Diphtheria, Pertussis, Tetanus Toxoid (DPT)
(2) Polio
(3) Measles, Mumps, Rubella (MMR)
(4) Influenza
(5) Pneumococcal vaccine
(6) Human Papilloma virus (HPV)
(7) Haemophilus Influenzae Type b (Hib) vaccine
(8) Hepatitis B
(9) Meningococcal vaccine
(10) Chicken Pox
(11) Rotavirus
(12) Shingles

The General Assembly also finds that, consistent with G.S. 130A-153, physicians and local health departments currently administer the required immunizations listed in subdivisions (1) through (12) of this subsection, that are supplied by the federal government at no cost through the Vaccine For Children (VFC) program, to uninsured and under-insured children with incomes below two hundred percent (200%) of the federal poverty level. Therefore, the General Assembly eliminates the State appropriation for the purchase of childhood vaccines for which health care providers, including local health departments, should be billing health insurers."

NORTH CAROLINA HEALTH CHOICE EMERGENCY ROOM VISIT CO-PAYMENTS

SECTION 10.14. Under the North Carolina Health Choice Program for Children, the co-payment for nonemergency visits to the emergency room for children whose family income is at or below one hundred fifty percent (150%) of the federal poverty level is ten dollars ($10.00). The co-payment for children whose family income is between one hundred fifty-one percent (151%) and two hundred percent (200%) of the federal poverty level is twenty-five dollars ($25.00).

COMMUNITY CARE OF NORTH CAROLINA

SECTION 10.15. Section 10.36 of S.L. 2009-451 reads as rewritten:

"~~**SECTION 10.36.(a)** Given the primary care case management foundation established by Community Care of North Carolina (CCNC), the Department shall build upon that foundation to ensure quality care and cost control of care provided to Medicaid patients.~~

~~**SECTION 10.36.(b)** The Department shall contract with CCNC participating physicians and local CCNC networks to manage the care of Medicaid recipients through a per member per month reimbursement.~~

~~**SECTION 10.36.(c)** The Department shall ensure that, through CCNC participating physicians and networks, the Department is striving to follow tenets adapted from the National Committee of Quality Assurance's (NCQA) national measures for patient centered Medical Homes Models. The Department shall consult with local CCNC networks to achieve all of the following:~~

~~(1) Identify priority diseases, conditions, and patients for care management.~~
~~(2) Develop, adopt, and implement protocols for consistent and effective care management of those diseases, conditions, and patients.~~

~~(3) Identify data elements necessary for effective delivery and management of medical care and care management services.~~

~~(4) Develop and implement a system to measure, analyze, and report clinical performance and service performance by physicians and networks.~~

~~**SECTION 10.36.(d)** Consistent with subdivision (1) of subsection (c) of this section, the Department shall (i) identify baseline data on priority diseases, conditions, patients, and populations, and on physicians and networks; (ii) identify patient, physician, and network performance measures, and (iii) develop and implement data systems to gather, analyze, and report on those performance measures. The Department shall begin work immediately to implement this subsection.~~

~~**SECTION 10.36.(e)** The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than December 31, 2009, on the performance measures adopted pursuant to subsection (d) of this section. Beginning July 1, 2010, and every six months thereafter, the Department shall submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division evaluating the performance of each of the 14 CCNC Networks based on the performance measures adopted pursuant to subsection (d) of this section.~~

"**SECTION 10.36.(f)** The Department of Health and Human Services (Department) shall conduct a Request for Proposal process to solicit bids from qualified outside entities with proven experience in conducting actuarial and health care studies and evaluations to annually report on the Medicaid cost savings achieved by the ~~CCNC~~ Community Care of North Carolina (CCNC) networks during a 12-month period. Beginning ~~December 31, 2010,~~ March 1, 2011, and every year thereafter, the Department shall submit a report on the Medicaid cost savings achieved by the CCNC networks, which shall include children, adults, and the aged, blind, and disabled, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

"**SECTION 10.36.(g)** By October 1, 2010, the Department and the Division of Medical Assistance (DMA) shall contract with North Carolina Community Care Networks, Inc. (NCCCN, Inc.) and the 14 participating local CCNC networks represented by NCCCN, Inc. to provide standardized clinical and budgetary coordination, oversight, and reporting for a State-wide Enhanced Primary Care Management System for Medicaid enrollees. The contract with NCCCN, Inc., shall build upon and expand the existing successful CCNC primary care case management model to include comprehensive State-wide quantitative performance goals and deliverables which shall include all of the following areas: (i) service utilization management, (ii) budget analytics, (iii) budget forecasting methodologies, (iv) quality of care analytics, (v) participant access measures, and (vi) predictable cost containment methodologies.

"**SECTION 10.36.(g1)** NCCCN, Inc., shall report quarterly to the Department and to the Office of State Budget and Management (OSBM) on the development of the statewide Enhanced Primary Care Case Management System and its defined goals and deliverables as agreed upon in the contract. Beginning July 1, 2010, NCCCN, Inc., shall submit a quarterly report to the Secretary of Health and Human Services, OSBM, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the progress and results of implementing the quantitative, analytical, utilization, quality, cost containment, and access goals and deliverables set out in the contract. NCCCN, Inc., shall conduct its own analysis of the CCNC system to identify any variations from the development plan for the Enhanced Primary Care Case Management System and its defined goals and deliverables set out in the contract between DMA and NCCCN, Inc. Upon identifying any variations, NCCCN,

Inc., shall develop and implement a plan to address the variations. NCCCN, Inc., shall report the plan to DMA within 30 days after taking any action to implement the plan.

"**SECTION 10.36.(h)** By July 1, 2011, the Department and OSBM shall assess the performance of NCCCN, Inc., and CCNC regarding the goals and deliverables established in the contract. Based on this assessment, the Department and DMA shall expand, cancel, or alter the contract with NCCCN, Inc., and CCNC effective October 1, 2011. Expansion or alteration of the contract may reflect refinements based on clearly identified goals and deliverables in the areas of quality of care, participant access, cost containment, and service delivery.

"**SECTION 10.36.(i)** By July 1, 2011, the Department, DMA, and NCCCN, Inc., shall finalize a comprehensive plan that establishes management methodologies which include all of the following: (i) quality of care measures, (ii) utilization measures, (iii) recipient access measures, (iv) performance incentive models in which past experience indicates a benefit from financial incentives, (v) accountable budget models, (vi) shared savings budget models, and (vii) budget forecasting analytics as agreed upon by the Department, DMA, and NCCCN, Inc. In the development of these methodologies, the Department, DMA, and NCCCN, Inc., shall consider options for shared risk. The Department and DMA shall provide assistance to NCCCN, Inc., in meeting the objectives of this section.

"**SECTION 10.36.(j)** Beginning with the 2010-2011 fiscal year, the Department shall establish a separate line item in Budget Code 14445 for all expenditures in DMA associated with managed care activities pertaining to the utilization of Medicaid expenditures through CCNC.

"**SECTION 10.36.(k)** The Department shall not increase the per member per month funding to CCNC without prior approval from the General Assembly."

MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FUNDS/IMPLEMENTATION OF MMIS

SECTION 10.16. Section 10.41.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.41.(a)** Of the funds appropriated in this act to the Department of Health and Human Services (Department), the sum of ~~ten million seven hundred sixty five thousand one hundred fifty three dollars ($10,765,153) for fiscal year 2009-2010 and the sum of eight million sixty four thousand one hundred twenty eight dollars ($8,064,128)~~ eleven million seven hundred thirty-seven thousand four hundred fourteen dollars ($11,737,414) for fiscal year 2010-2011 shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the procurement, design, development, and implementation of the new Medicaid Management Information System (MMIS) and to fund the central management of the project. The Department shall utilize all prior year earned revenues received for the MMIS. In the event that the Department does not receive prior year earned revenues in the amounts authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the MMIS."

ELIMINATE STATE FUNDING FOR CHILD SUPPORT OFFICES

SECTION 10.17. Section 10.46A of S.L. 2009-451 is amended by adding a new subsection to read:

"**SECTION 10.46A.(c)** Notwithstanding G.S. 143-64.03 and G.S. 143-64.05, the Secretary of Department of Health and Human Services may transfer State-owned equipment, including computers, printers, and furniture, used by State-operated child support offices to administer child support enforcement programs to a county government or the Eastern Band of the Cherokee Indians for the sole purpose of facilitating the county government or the Eastern Band of the Cherokee Indians' administration of the child support program. The transfer shall

be at no cost to the county government or the Eastern Band of the Cherokee Indians and shall occur no later than July 1, 2010.

The county government or the Eastern Band of the Cherokee Indians assuming responsibility for the child support program effective July 1, 2010, shall identify from the existing equipment and office furnishings which items will be needed to administer the child support program. A comprehensive list of items to be transferred shall be compiled and signed by the manager of the State-operated child support office and the manager of the county or tribal child support office and the signed list shall serve as official documentation of the transfer. Copies of the documentation shall be provided to the Department of Health and Human Services Controller's Office and the Department of Administration. Any equipment not included in the transfer shall revert to the Department of Administration, Division of Surplus Property."

CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM/USE OF ESCHEAT FUND

SECTION 10.18. Section 10.50 of S.L. 2009-451 reads as rewritten:

"**SECTION 10.50.(a)** There is appropriated from the Escheat Fund income to the Department of Health and Human Services the sum of three million one hundred sixty-eight thousand two hundred fifty dollars ($3,168,250) for the 2009-2010 fiscal year. These funds shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 1087ll. The Department shall collaborate with the State Education Assistance Authority to develop policies and procedures for the distribution of these funds.

If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f).

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

The purpose for which funds are appropriated under this section is in addition to other purposes for which Escheat Fund income is distributed under G.S. 116B-7 and shall not be construed to otherwise affect the distribution of funds under G.S. 116B-7.

"**SECTION 10.50.(a1)** Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of ~~three million one hundred sixty-eight thousand two hundred fifty dollars ($3,168,250)~~one million five hundred eighty-four thousand one hundred twenty-five dollars ($1,584,125) for the 2010-2011 fiscal year shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 1087ll.

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

"**SECTION 10.50.(b)** Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of fifty thousand dollars ($50,000) for the 2009-2010 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2010-2011 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA). The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

"**SECTION 10.50.(c)** Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of five hundred thousand dollars ($500,000) for the

2009-2010 fiscal year and the sum of ~~five hundred thousand dollars ($500,000)~~three hundred thirty-nine thousand four hundred ninety-three dollars ($339,493) for the 2010-2011 fiscal year shall be used to contract with an entity to develop and administer the child welfare postsecondary support program described under subsection (a) of this section, which development and administration shall include the performance of case management services.

"**SECTION 10.50.(d)** Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State."

TANF BENEFIT IMPLEMENTATION

SECTION 10.19. Section 10.51 of S.L. 2009-451 reads as rewritten:

"**SECTION 10.51.(a)** The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY ~~2009-2011,~~"2010-2012," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, ~~2009,~~2010, through September 30, ~~2011.~~2012. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2009 General Assembly.

"**SECTION 10.51.(b)** The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan FY ~~2009-2011,~~2010-2012, as approved by this section are: Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

"**SECTION 10.51.(c)** Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2009 through 2011, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection ~~shall~~ may remain under their current county designation through September 30, ~~2009.~~2012.

"**SECTION 10.51.(d)** For the ~~2009-2010~~2010-2011 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the 2008-2009 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108A-27.11(b).

"**SECTION 10.51.(e)** In the event that Departmental projections of Work First Family Assistance and Work First Diversion Assistance for the ~~2009-2010~~2010-2011 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

EXTEND REPORTING DATE/EVALUATION OF CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS OF COUNTY DEPARTMENT OF SOCIAL SERVICES

SECTION 10.20. Section 10.52.(b) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.52.(b)** The Program Evaluation Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by ~~December 1, 2010~~ February 1, 2011."

ELIMINATION OF THE OFFICE OF EDUCATION SERVICES/TRANSFER RESIDENTIAL AND PRESCHOOLS TO THE DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 10.21.(a) The Office of Education Services (OES) within the Department of Health and Human Services is hereby dissolved and the Central Office, Resource Support, Governor Morehead School Outreach, Deaf/Blind, and Exceptional Children Support programs within OES are eliminated.

SECTION 10.21.(b) In accordance with G.S. 143A-6, the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, the Governor Morehead School for the Blind, the Governor Morehead Preschool, Early Intervention Services – Preschool, and Family Resource Center programs operated within the Office of Education Services are transferred to the Department of Public Instruction, Exceptional Children Division, by Type I transfer. In addition, the School Administrator position, #60089692, and School Speech-Language Pathologist position, #60039336, shall be transferred to the Department of Public Instruction, Exceptional Children Division, to continue to provide technical assistance to Local Education Agencies and support collaborative efforts with the following:

(1) North Carolina Central University, Visual Impairment Training Program.
(2) East Carolina University, Teacher Support Program for Students with Deaf-Blindness.
(3) East Carolina University, Project E.A.R.
(4) Department of Health and Human Services, Division of Public Health, Early Intervention Services.
(5) Beginnings for Parents of Children Who Are Deaf or Hard of Hearing.
(6) University of North Carolina Center for the Acquisition of Spoken Language through Listening Enrichment (CASTLE).

SECTION 10.21.(c) The Office of State Budget and Management, the Department of Health and Human Services, and the Department of Public Instruction shall effect this Type I transfer no later than July 1, 2010.

SECTION 10.21.(d) Upon transfer, the Director of the Exceptional Children Division shall assume the functions of the Superintendent of the Local Education Agency comprised of the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, and the Governor Morehead School for the Blind. The Department shall establish an Assistant Director position to augment management of residential school and itinerant preschool programs.

SECTION 10.21.(e) The Department of Public Instruction shall reinstate the residential and instructional schedules for the Governor Morehead School for the Blind, Eastern North Carolina School for the Deaf, and North Carolina School for the Deaf in effect before February 8, 2010. Residential students shall have the opportunity to arrive at their respective schools on the evening of the day before commencement of academic instruction for the week. The Department of Public Instruction shall also reinstate on-site summer school programming for these schools.

MEDICAID POLICY CHANGES

SECTION 10.22.(a) Section 10.58.(d) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.58.(d)** Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and

payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payments will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

...

(28) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy ~~program, except that the Department shall not impose limitations on brand name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand name drug is medically necessary and has written on the prescription order the phrase "medically necessary."~~program. The Department may impose prior authorization requirements on brand-name drugs in instances where the phrase "medically necessary" is written on the prescription.

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. Notwithstanding this subdivision to the contrary, the Secretary of Health and Human Services may prevent substitution of a generic equivalent drug, including a generic equivalent that is on the State maximum allowable cost list, when the net cost to the State of the brand-name drug, after

consideration of all rebates, is less than the cost of the generic equivalent. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, major depressive disorder or ~~(ii) HIV/AIDS, except that the Department of Health and Human Services shall continually review utilization of medications under the State Medical Assistance Program prescribed for Medicaid recipients for the treatment of mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder. The Department may, however, with respect to drugs to treat mental illnesses, develop guidelines and measures to ensure appropriate usage of these medications, including FDA approved indications and dosage levels.~~ (ii) HIV/AIDS. Medications prescribed for the treatment of mental illness shall be included on the Preferred Drug List (PDL). The Department of Health and Human Services, Division of Medical Assistance, may initiate prior authorization for the prescribing of drugs specified for the treatment of mental illness for the purpose of identifying providers who fail to prescribe those drugs in accordance with indications and dosage levels approved by the federal Food and Drug Administration or in accordance with best practices. The Department may ~~also~~ require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and
b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

...

(30) Experimental or trial procedures. – Coverage is limited to procedures that are recognized or approved by a nationally recognized professional specialty organization.

(31) Medicaid as secondary payer claims. – The Department shall apply Medicaid medical policy to recipients who have primary insurance other than Medicare, Medicare Advantage, and Medicaid. The Department shall pay an amount up to the actual coinsurance or deductible or both, in

accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care."

SECTION 10.22.(b) Section 10.58.(e) of S.L. reads as rewritten:

"**SECTION 10.58.(e)** Provider Performance Bonds and Visits. –

(1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

a. The provider fails to demonstrate financial viability,

b. The Department determines there is significant potential for fraud and abuse,

c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

(1a) The Department may waive or limit the requirements of this paragraph for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

a. The provider's or provider class's dollar amount of monthly billings to Medicaid.

b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.

c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.

d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.

e. The need to ensure adequate access to care.

In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

(2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: ~~hospital outpatient providers,~~ physicians, nurse practitioners, nurse midwives, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these

services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life threatening disorder or as an alternative to more costly care options."

SPECIALTY DRUG PROVIDER NETWORK

SECTION 10.23. The Department of Health and Human Services shall create a specialty drug provider network that requires best practices, prevents overutilization, and allows for drug reimbursement rate negotiations for hemophilia, hepatitis C, and intravenous immunoglobulin (IVIG) drugs.

STATEWIDE EXPANSION OF CAPITATED 1915(B)/(C) BEHAVIORAL HEALTH WAIVERS

SECTION 10.24. The Division of Medical Assistance and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services may expand the capitated 1915(b)/(c) waivers which have been operating in the Piedmont Behavioral Healthcare Local Management Entity (LME) catchment area as a demonstration program since April 2005. The Divisions shall add additional LMEs to the waiver program as they demonstrate readiness to participate through a request for proposal process. The waiver program shall include all Medicaid-covered mental health, developmental disabilities, and substance abuse services. Expansion of the waiver to additional LMEs shall be contingent upon approval by the Centers for Medicare and Medicaid Services.

STUDY MEDICAID PROVIDER RATES

SECTION 10.25.(a) The Department of Health and Human Services, Division of Medical Assistance shall, initiate a study or contract out for a study of reimbursement rates for Medicaid providers and program benefits. The study shall include the following information:

(1) A comparison of Medicaid reimbursement rates in North Carolina with reimbursement rates in surrounding states and with rates in two additional states; and

(2) A comparison of Medicaid program benefits in North Carolina with program benefits provided in surrounding states and with rates in two additional states. Selected provider rates shall be studied for the initial report.

SECTION 10.25.(b) The Department shall report its initial findings to the Governor, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 1, 2011.

SECTION 10.25.(c) Funds appropriated to the Department of Health and Human Services may be used to complete this study.

MEDICAID FRAUD PREVENTION

SECTION 10.26.(a) The Department of Health and Human Services (Department) is authorized to create a fraud prevention program that uses information, lawfully obtained,

from State and private databases to develop a fraud risk analysis of Medicaid providers and recipients. This analysis would be used to prevent fraud before it takes place and to achieve cost avoidance savings. While it is the intent that this initiative allow broad new access to information and databases across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to authorized persons.

SECTION 10.26.(b) The information obtained by the Department pursuant to subsection (a) of this section shall be privileged and confidential, is not a public record pursuant to G.S. 132-1, and may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. The Department shall release data collected pursuant to this section to the following persons only:

(1) An individual who requests the individual's own Medicaid recipient information.

(2) A provider who requests the provider's Medicaid provider information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Medicaid Fraud Investigations Unit. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.

(4) To a court pursuant to a lawful court order in a criminal action.

The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual recipients or providers of Medicaid services.

SECTION 10.26.(c) Notwithstanding any other provision of law to the contrary, the Department may modify or extend existing contracts to achieve Medicaid fraud prevention savings in a timely manner, subject to review and approval by the Secretary of the Department of Administration. The requirements of G.S. 143-59 apply to contracts entered into, modified, or extended pursuant to this section.

SECTION 10.26.(d) The Department shall report on the activities conducted under this section, including actions taken relating to compliance with G.S. 143-59 and any contract modifications or extensions that are approved pursuant to this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Office of State Budget and Management, and the Fiscal Research Division on or before April 1, 2011.

SECTION 10.26.(e) The authority granted to the Department under this section expires one year following the effective date of this section. The Department shall destroy all records and information obtained pursuant to this section after five years. Any records or information turned over to the State Bureau of Investigation or a court of competent jurisdiction shall not be subject to the destruction requirements of this subsection.

STUDY HIV MEDICAID WAIVER

SECTION 10.27. By November 1, 2010, the Department of Health and Human Services, Divisions of Medical Assistance and Public Health, shall jointly study and report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the financial and programmatic feasibility of reducing the waiting list for the AIDS Drug Assistance Program (ADAP) by expanding eligibility for Medicaid to HIV-positive individuals with incomes at or below one hundred thirty-three percent (133%) of the federal poverty level. The study shall include an assessment of the cost-effectiveness of using State dollars to expand Medicaid eligibility to this population as compared to using State dollars for ADAP. The study may also consider any planning and coordination benefits the State may derive from expanding Medicaid eligibility to HIV-positive individuals, in

preparation for the expansion of Medicaid eligibility in calendar year 2014 to all individuals with incomes at or below one hundred thirty-three percent (133%) of the federal poverty level. If, as a result of the study, the Divisions of Medical Assistance and Public Health conclude that expanding Medicaid eligibility to HIV-positive individuals with incomes at or below one hundred thirty-three percent (133%) of the federal poverty level is a cost-effective means for the State to eliminate its ADAP waiting list, then the Division of Medical Assistance shall apply to the Centers for Medicare and Medicaid Services (CMS) for an appropriate waiver to implement this expansion in Medicaid eligibility. If approved by CMS, the Division shall not implement the waiver except as authorized by an act of the General Assembly appropriating funds for this purpose.

ELIMINATE REIMBURSEMENT OF "NEVER EVENTS"

SECTION 10.28. The Department of Health and Human Services, Division of Medical Assistance, shall modify its Medicaid State Plan, as detailed by the Centers for Medicare and Medicaid Services in its July 31, 2008, letter to State Medicaid Directors, to ensure that inpatient hospital reimbursement is not provided for Hospital-Acquired Conditions (HACs) that are identified as nonpayable by Medicare. The State Plan Amendment addressing this "Never Event" modification shall apply to all Medicaid reimbursement provisions in section 4.19A of the North Carolina Medicaid State Plan governing inpatient hospital reimbursement, including Medicaid supplemental or enhanced payments and Medicaid disproportionate share hospital payments.

AMEND MEDICAID PROVIDER APPEALS PROCESS

SECTION 10.29.(a) Section 10.15A(e1) of S.L. 2008-107 reads as rewritten:

"**SECTION 10.15A.(e1)** For the purpose of expediting the resolution of appeals by providers of community support services or ~~provider appeals~~ personal care services (PCS) and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement ~~on a temporary basis~~ a community ~~support~~ support/PCS provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community ~~support~~ support/PCS provider appeals process shall apply to a provider of community support services ~~provider:~~or PCS:

(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support ~~services,~~ services or PCS, or to deny, suspend, or revoke a provider agreement to provide community support ~~services.~~services or PCS.

(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

SECTION 10.29.(b) Section 10.15A(e2) of S.L. 2008-107, as amended by Section 1.1(c) of S.L. 2009-550, reads as rewritten:

"**SECTION 10.15A.(e2)** The appeals process for providers of community support ~~provider appeals process~~ services or PCS shall be developed and implemented as follows:

...

(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the

notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

b. The hearing is held in Wake County, except that the hearing officer ~~may, after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing~~may take testimony and receive evidence by telephone or other electronic ~~means or hold the hearing in a county in which the petitioner resides.~~means. The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.

c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.

(3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

d. The appeal hearing shall be recorded. If a petition for judicial review is ~~filed pursuant to subsection (f) of this section, a transcript will be prepared and made~~filed, the Department shall include a copy of the recording of the hearing as part of the official ~~report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party.~~record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

...

(8) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid PCS provider on or after July 1, 2010, and for all Medicaid PCS provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2010, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 90 days from the date of the filing of the petition for hearing shall not apply to (i) PCS provider petitions that were filed at the Office of Administrative

Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeals process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid PCS providers under the Medical Assistance Program."

SECTION 10.29.(c) Sections 10.15A(e3) and 10.15A(e4) of S.L. 2008-107 read as rewritten:

"**SECTION 10.15A.(e3)** Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its ~~statutory~~ authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services or PCS pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community ~~support~~ support/PCS provider appeal process. A provider of community support services or PCS whose ~~endorsement,~~endorsement or Medicaid ~~participation, or services have~~participation has been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. ~~Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending.~~ This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008. This subsection also applies to appeals by providers of PCS pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2010.

"~~**SECTION 10.15A.(e4)** The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process.~~"

SECTION 10.29.(d) G.S. 122C-151.4(g) reads as rewritten:

"(g) This section does not apply to providers of community support services or personal care services who appeal directly to the Department of Health and Human Services under the Department's community ~~support~~ support/PCS provider appeal ~~process.~~process."

SECTION 10.29.(e) G.S. 150B-1(e)(16) reads as rewritten:

"(16) The Department of Health and Human Services with respect to contested cases commenced by (i) Medicaid providers appealing a ~~denial~~ denial, recoupment, suspension, or reduction in reimbursement for community support or personal care services, or a denial, suspension, or revocation of a Medicaid provider agreement for community support or personal care services, or a denial, suspension, or revocation of a Medicaid provider agreement for community support or personal care services, and (ii) providers of community support or personal care services ~~providers~~

appealing decisions by the LME to deny or withdraw the provider's endorsement."

AMEND MEDICAID RECIPIENT APPEALS PROCESS

SECTION 10.30.(a) Section 10.15A.(h1) through (h6) of S.L. 2008-107, as amended by Section 3.13.(b) of S.L. 2008-118, Section 2.(a) of S.L. 2009-526, Section 2.(b) of S.L. 2009-526, and by ss. 1.1(a) and (b) of S.L. 2009-550 reads as rewritten:

"**SECTION 10.15A.(h1)**

(1) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase "adverse determination" means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.

(2) Notice. – Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.

d. The effective date of the adverse determination.

e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.

g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.

i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.

j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.

(3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

(4) Appeal Request Form. – Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.

b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.

c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.

d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.

e. A space for the applicant's or recipient's signature and date.

(5) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

"SECTION 10.15A.(h2)

(1) Application. – This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any

provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.

(2) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Office of Administrative Hearings shall schedule and hear all contested Medicaid cases within 55 days of submission of a request for appeal. Hearings shall be conducted telephonically or by video technology, however the recipient or applicant, or the recipient's or applicant's representative may request that the hearing be conducted before the administrative law judge in-person. An in-person hearing shall be conducted in Wake County, however for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or applicant. Good cause shall include but is not limited to the applicant's or recipient's impairments limiting travel or the unavailability of the applicant's or recipient's treating professional witnesses. The Department shall provide written notice to the recipient or applicant of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's or applicant's county of residence. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by the Office of Administrative Hearings, and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by the Office of Administrative Hearings, the Office of Administrative Hearings shall immediately dismiss the contested case provision.

(3) Mediation. – Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the Office of Administrative Hearings shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. Upon completion of the mediation, the mediator shall inform the Office of Administrative Hearings and the Department within 24 hours of the resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, the case shall be dismissed by the Office of Administrative Hearings. The Office of Administrative Hearings shall not conduct any contested Medicaid cases hearings until it has received notice

from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subdivision shall restrict the right to a contested case hearing.

(4) Burden of Proof. – The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

(4a) New Evidence.- The petitioner shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its determination to deny, reduce, terminate or suspend a benefit. When such evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.

(4b) Issue for Hearing.- For each penalty imposed or benefit reduced, terminated, or suspended, the hearing shall determine whether the Department substantially prejudiced the rights of the petitioner and if the Department, based upon evidence at the hearing:

a. Exceeded its authority or jurisdiction;
b. Acted erroneously;
c. Failed to use proper procedure;
d. Acted arbitrarily or capriciously; or,
e. Failed to act as required by law or rule.

(5) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Office of Administrative Hearings shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing.

"**SECTION 10.15A.(h3)** From funds available to the Department of Health and Human Services for the ~~2008-2009~~2010-2011 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

"**SECTION 10.15A.(h4)** Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to

appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"**SECTION 10.15A.(h5)** Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

~~"**SECTION 10.15A.(h6)** The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process.~~"

SECTION 10.30.(b) The Revisor of Statutes shall codify the statutes set forth in Section #.(a).

SECTION 10.30.(c) Not later than October 1, 2011, the Office of Administrative Hearings shall submit a report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the number, status, and outcome of contested Medicaid cases handled by the Office pursuant to the appeals process established in Section #.(a) of this act. The report shall include information on the number of contested Medicaid cases resolved through mediations and through formal hearings, the outcome of settled and withdrawn cases, and the number of incidences in which the Division of Medical Assistance reverses the decision of an administrative law judge.

ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE

SECTION 10.31. Section 10.64.(b) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.64.(b)** For the 2009-2010 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred twenty-four million nine hundred ninety-four thousand nine hundred fifty-four dollars ($124,994,954) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2010-2011 fiscal year, the Department of Health and Human Services shall deposit from its revenues ~~one hundred million dollars ($100,000,000)~~one hundred thirty-five million dollars ($135,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. These deposits shall represent the return of General Fund appropriations provided to the Department of Health and Human Services to provide indigent care services at State-owned and operated mental hospitals. The treatment of any revenue derived from federal programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Volume 2, Part 225."

MEDICAID PREFERRED DRUG LIST

SECTION 10.32. Section 10.66.(c) of S.L. 2009-451 reads as rewritten:

"**SECTION 10.66.(c)** The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including:

(1) Guidelines for the presentation and review of drugs for inclusion on the preferred drug list,

(2) The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness,

(3) An appeals process for the resolution of disputes, and

(4) Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug ~~list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug~~ list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall: (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates."

MEDICAID PREFERRED DRUG LIST (PDL) REVIEW PANEL

SECTION 10.33.(a) The Secretary of the Department of Health and Human Services shall establish a Preferred Drug List (PDL) Policy Review Panel within 60 days after the effective date of this section. The purpose of the PDL Policy Review Panel is to review the Medicaid PDL recommendations from the Department of Health and Human Services, Division of Medical Assistance, and the Physician Advisory Group (PAG) Pharmacy and Therapeutics (P&T) Committee.

SECTION 10.33.(b) The Secretary shall appoint the following individuals to the review panel:

(1) The Director of Pharmacy for the Division of Medical Assistance.
(2) A representative from the PAG P&T Committee.
(3) A representative from the Old North State Medical Society.
(4) A representative from the North Carolina Association of Pharmacists.
(5) A representative from Community Care of North Carolina.
(6) A representative from the North Carolina Psychiatric Association.
(7) A representative from the North Carolina Pediatric Society.
(8) A representative from the North Carolina Academy of Family Physicians.
(9) A representative from the North Carolina Chapter of the American College of Physicians.

Individuals appointed to the Review Panel, except for the Division's Director of Pharmacy, shall only serve a two-year term.

SECTION 10.33.(c) Within 30 days after the Department, in consultation with the PAG P&T Committee, publishes a proposed policy or procedure related to the Medicaid PDL, the Review Panel shall hold an open meeting to review the recommended policy or procedure along with any written public comments received as a result of the posting. The Review Panel shall provide an opportunity for public comment at the meeting. After the conclusion of the meeting, the Review Panel shall submit policy recommendations about the proposed Medicaid PDL policy or procedure to the Department.

LOCK NARCOTIC PRESCRIPTIONS INTO SINGLE PHARMACY/PROVIDER

SECTION 10.34. The Department of Health and Human Services, Division of Medical Assistance, shall lock narcotic prescription medications provided to Medicaid enrollees into a single pharmacy and provider, as follows:

(1) Enrollees may be prescribed narcotic medications by only one prescribing physician, and may not change the prescribing physician at any time without prior approval or authorization by the Division.

(2) Enrollees may have prescriptions for narcotic medications filled at only one pharmacy, and may not change to another pharmacy at any time without prior approval or authorization by the Division. For the purposes of this section, all locations of the same chain of pharmacies shall constitute one pharmacy.

AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM

SECTION 10.35. Section 10.68A.(a) of S.L. 2009-451, as amended by Section 5A of S.L. 2009-575, reads as rewritten:

"**SECTION 10.68A.(a)** For the purpose of enabling the Department of Health and Human Services, Division of Medical Assistance, to achieve the budget reductions enacted in this act for the Medicaid program, the Department may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary and subject to the requirements of subsection (e) of this section:

(1) Electronic transactions. –

a. Within 60 days of notification of its procedures via the DMA Web site, Medicaid providers shall follow the Department's established procedures for securing electronic payments. No later than September 1, 2009, the Department shall cease routine provider payments by check.

b. Effective September 1, 2009, all Medicaid providers shall file claims electronically to the fiscal agent. Nonelectronic claims submission may be required when it is in the best interest of the Department.

c. Effective September 1, 2009, enrolled Medicaid providers shall submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.

(2) Clinical coverage. – The Department of Health and Human Services, Division of Medical Assistance, shall amend applicable clinical policies and submit applicable State Plan amendments to CMS to implement the budget reductions authorized in the following clinical coverage areas in this act:

a. Consolidate and reduce Targeted Case Management and case management functions bundled within other Medicaid services.

b. Take appropriate action to lower the cost of HIV case management, including tightening service hours and limiting administrative costs. The Department shall maintain HIV case management as a stand-alone service outside of departmental efforts to consolidate case management services.

c. Eliminate coverage of therapeutic camps. The Department shall report on or before October 1, 2009, on the plan to transition children out of mental health residential therapeutic camps. The Department shall submit the report to the Joint Legislative Oversight Committee

on Mental Health, Developmental Disabilities, and Substance Abuse Services.

~~(3) Medicaid Personal Care Service provision. Upon the enactment of this act, the Division of Medical Assistance shall implement the following new criteria for personal care services (PCS):~~

~~a. Independent assessment by an entity that does not provide direct PCS services for evaluation of the recipient prior to initiation of service. The independent assessment will determine the qualifying Activities of Daily Living (ADL), the level of assistance required, and the amount and scope of PCS to be provided, according to policy criteria.~~

~~b. Independent assessment or review from the assigned Community Care of North Carolina (CCNC) physician of the continued qualification for PCS services under the revised PCS policy criteria.~~

~~c. Establishment of time limits on physician service orders and reauthorization in accordance with the recipient's diagnosis and acuity of need.~~

~~d. Add the following items to the list of tasks that are not covered by this service: nonmedical transportation, errands and shopping, money management, cueing, and prompting, guiding, or coaching.~~

~~e. Online physician attestation of medical necessity.~~

~~f. If sufficient reduction in cost is not achieved with the revised policy, the Secretary shall direct the Division of Medical Assistance to further modify the policy to achieve targeted cost savings.~~

~~Recipients currently receiving PCS services shall be reviewed under the above criteria, and those recipients not meeting the new criteria shall be terminated from the service within 30 days of the review. The Department shall review usage of personal care services in adult care homes to determine if overuse is occurring and shall report its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before December 1, 2009.~~

(3) Medicaid Personal Care Service provision. – The Department of Health and Human Services, Division of Medical Assistance, shall reform the Personal Care Services (PCS) and Personal Care Services-Plus (PCS-Plus) programs provided under the State Medicaid plan as follows:

a. Terminate all services provided under these two PCS programs and implement two new PCS programs, PCS-C and PCS-ADE, effective January 1, 2011, or whenever approval is received from CMS.

b. Determine the most effective and efficient means for Medicaid to manage the cost, quality, and utilization of personal care services through one of the available funding options, including revised Medicaid plan optional services, a §1915(c) home and community-based services (HCBS) waiver, or through a §1915(i) option that allows states to establish home- and community-based services that can target specific populations.

c. Submit applications or State plan amendments to CMS as required to obtain approval for two PCS programs, as follows:

1. PCS for Children (PCS-C) – To assist families to meet their needs for personal care assistance for children, including individuals under the age of 21 receiving comprehensive and

preventative child health services through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

2. PCS for Disabled and Elderly (PCS-ADE) – To meet the needs of individuals 21 years of age or older who, because of a medical condition, disability, or cognitive impairment, demonstrate extensive or higher levels of unmet needs for assistance in at least three of the five activities of daily living (ADLs) that include eating, dressing, bathing, toileting, and mobility. PCS-ADE shall target individuals at the highest level of need who are able to safely remain in the home and who do not meet the State's criteria for nursing facility placement.

d. Establish program limitations:

1. PCS-C shall be limited to no more than 60 hours of service per month, unless additional services are required to correct or ameliorate defects and physical and mental illnesses and conditions as defined in 42 U.S.C. § 1396d(r)(5) in accordance with a plan of care approved by DMA or its designee.

2. PCS-ADE shall be limited to no more than 80 hours of service per month in accordance with a plan of care approved by DMA or its designee.

e. For both programs, require that:

1. Services are provided in a manner that supplements not supplants family roles and responsibilities and care provided by informal caregivers.

2. Prior to admission to PCS, the recipient be seen by his or her primary or attending physician and that the recipient's physician authorizes referral for PCS in writing and attests to the medical necessity for PCS. The Department of Health and Human Services shall track and analyze from the written referrals to detect and address overutilization of PCS services.

3. Initial assessments and continuing need reassessments be performed by an Independent Assessment Entity (IAE) that is not a PCS service provider.

4. The IAE authorize the amount of service to be provided on a "needs basis," as determined by each recipient's degree of functional disability and level of unmet needs for hands-on personal assistance in the five qualifying ADLs.

5. PCS shall not be used to perform household chores not directly related to the qualifying ADLs, nonmedical transportation, money management, running errands, and shopping, and nonhands-on assistance such as cueing, prompting, guiding, or coaching in accordance with the Medicaid Clinical Coverage Policy for each program.

6. Transition qualified recipients into the programs at such time that all approvals from CMS have been obtained; Medicaid Clinical Coverage Policies have been posted, reviewed, and approved as required; and all appropriate implementation tasks have been completed.

(4) MH/DD/SA Personal Care and Personal Assistance Services Provision. – A denial, reduction, or termination of Medicaid-funded personal care services shall result in a similar denial, reduction, or termination of State-funded MH/DD/SA personal care and personal assistance services.

(5) Community Support and other MH/DD/SA services. – The Department of Health and Human Services shall transition community support child and adult, individual and group services to other defined services on or before June 30, 2010. The Division of Medical Assistance and the Division of MH/DD/SA shall take the steps necessary for the Medicaid and the State-funded community support program to provide for transition and discharge planning to recipients currently receiving community support services. The following shall occur:

a. The Department shall submit to CMS: (i) revised service definitions that separate case management functions from the Community Support definition and (ii) a new service definition for peer support services for adults with mental illness and/or substance abuse ~~disorders.~~ disorders, for implementation no sooner than January 1, 2011.

b. No new admissions for community support individual or group shall be allowed during this transition period unless the Department determines appropriate alternative services are not available, in which case limited community support services may be provided during the transition period. LMEs will be responsible for referring eligible consumers to appropriate alternative services.

c. Authorizations currently in effect as of the date of enactment of this act remain valid. Any new authorization or subsequent reauthorization is subject to the provisions of this act.

d. No community support services shall be provided in conjunction with other enhanced services. Until CMS approves the new case management definition, professional level community support may be provided in conjunction with residential Level III and IV to assist in recipient discharge planning. Up to a maximum of 24 hours of case management (professional level) functions may be provided over a 90-day authorization period as approved by the prior authorization vendor.

e. The current moratorium on community support provider endorsement shall remain in effect.

f. A provider of community support services whose endorsement has been withdrawn or whose Medicaid participation has been terminated is not entitled to payment during the period the appeal is pending, and the Department shall make no payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for valid claims, and reimburse the provider for payments withheld during the period of appeal.

g. Effective 60 days from the enactment of this act, the paraprofessional level of community support shall be eliminated, and from this date the Department shall not use any Medicaid or State funds to pay for this level of service.

h. Thirty days after the enactment of this act, any concurrent request shall be accompanied with a discharge plan. Submission of the

discharge plan will be a required document for a request to be considered complete. Failure to submit the discharge plan will result in the request being returned as "unable to process." Discharge from the service must occur within 90 days after the submission of the discharge plan.

i. Any community support provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.

j. Medical and financial record retention is the responsibility of the provider and shall be in compliance with the record retention requirements of their Medicaid provider agreement or State-funded services contract. Records shall also be available to State, federal, and local agencies.

k. Failure to comply with notification, recipient transition planning, or record maintenance shall result in suspension of further payment until such failure is corrected. In addition, failure to comply shall result in denial of enrollment as a provider for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

(6) Community Support Team. – Authorization for a Community Support Team shall be based upon medical necessity as defined by the Department and shall not exceed 18 hours per week. The Division of Medical Assistance shall do an immediate rate study of the Community Support Team to bring the average cost of service per recipient in line with Assertive Community Treatment Team (ACTT) services. The Division shall also revise provider qualifications and tighten the service definition to contain costs in this line item. Not later than December 1, 2009, the Division of Medical Assistance shall report its findings on the rate study and any actions it has taken to conform with this subdivision to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(7) MH Residential. – The Department of Health and Human Services shall restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure that total expenditures are within budgeted levels. All restructuring activities shall be in compliance with federal and State law or rule. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring shall address all of the following:

a. Submission of the therapeutic family service definition to CMS.

b. The Department shall reexamine the entrance and continued stay criteria for all residential services. The revised criteria shall promote least restrictive services in the home prior to residential placement.

During treatment, there must be inclusion in community activities and parent or legal guardian participation in treatment.

c. Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act. Any providers enrolled after the enactment of this act shall be subject to existing endorsement and nationally accrediting requirements. In the interim, providers who are nationally accredited will be preferred providers for placement considerations.

d. Before a child can be admitted to Level III or Level IV placement, one or more of the following shall apply:

1. Placement shall be a step down from a higher level placement such as a psychiatric residential treatment facility or inpatient.
2. Multisystemic therapy or intensive in-home therapy services have been unsuccessful.
3. The Child and Family Team has reviewed all other alternatives and recommendations and recommends Level III or IV placement due to maintaining health and safety.
4. Transition or discharge plan shall be submitted as part of the initial or concurrent request.

e. Length of stay is limited to no more than 120 days. Any exceptions granted will require an independent psychiatric assessment, Child and Family Team review of goals and treatment progress, family or discharge placement setting are actively engaged in treatment goals and objectives and active participation of the prior authorization of vendor.

f. Submission of discharge plan is required in order for the request to be considered complete. Failure to submit a complete discharge plan will result in the request being returned as unable to process.

g. Any residential provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.

h. Record maintenance is the responsibility of the provider and must be in compliance with record retention requirements. Records shall also be available to State, federal, and local agencies.

i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be conditions that prevent enrollment for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

j. On or before October 1, 2009, the Department shall report on its plan for transitioning children out of Level III and Level IV group homes. The Department shall submit the reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(8) Reduce Medicaid rates. – Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce Medicaid provider rates to accomplish the reduction in funds for this purpose enacted in this act. The Secretary shall consider the impact on access to care through primary care providers and critical access hospitals and may adjust the rates accordingly. The rate reduction applies to all Medicaid private and public providers with the following exceptions: federally qualified health clinics, rural health centers, State institutions, hospital outpatient, pharmacies, and the noninflationary components of the case-mix reimbursement system for nursing facilities. Medicaid rates predicated upon Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required. Inflationary increases for Medicaid providers paying provider fees (private ICF-MRs and nursing facilities) can occur if the State share of the increases can be funded with provider fees.

(9) Medicaid identification cards. – The Department shall issue Medicaid identification cards to recipients on an annual basis with quarterly updates.

(10) The Department of Health and Human Services shall develop a plan for the consolidation of case management services. The plan shall address the time line and process for implementation, the vendors involved, the identification of savings, and the Medicaid recipients affected by the consolidation. Consolidation under this subdivision does not apply to HIV case management. By December 1, 2009, the Department shall report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

(11) For the purpose of promoting cost-effective utilization of outpatient mental health services for children, DMA shall require prior authorization for services following the 16th visit.

(12) Provision of Medicaid Private Duty Nursing (PDN) – DMA shall change the Medicaid Private Duty Nursing Program provided under the State Medicaid Plan, as follows:

a. Restructure the current PDN Program to provide services that are:

1. Provided only to qualified recipients under the age of 21;
2. Authorized by the recipient's primary care or attending physician;
3. Limited to 16 hours of service per day, unless additional services are required to correct or ameliorate defects and physical and mental illnesses and conditions as defined in 42 U.S.C. § 1396d(r)(5);
4. Approved based on an initial assessment and continuing need reassessments performed by an Independent Assessment Entity (IAE) that does not provide PDN services and authorized in amounts that are medically necessary based on the recipient's medical condition, amount of family assistance available, and other relevant conditions and circumstances, as defined by the Medicaid Clinical Coverage Policy for this service.
5. Provided in accordance with a plan of care approved by DMA or its designee.

b. Develop and submit to CMS a § 1915(c) Home and Community-Based Services Waiver for individuals dependent on technology to substitute for a vital body function.

c. Once approved by CMS and upon approval of the Medicaid Clinical Coverage Policy, transition all qualified recipients age 21 and older currently receiving PDN to waiver services provided under the Technology Dependent Waiver."

IMPLEMENT INDEPENDENT ASSESSMENTS ON MENTAL HEALTH SERVICES

SECTION 10.36.(a) The Department of Health and Human Services, Division of Medical Assistance, shall require that, prior to the delivery of enhanced mental health services in the Medicaid program, an independent assessment be conducted that meets all of the following criteria:

(1) An initial assessment or a continuing need reassessment is performed by an Independent Assessment Entity (IAE) that is not the provider of the services in question.

(2) The IAE authorizes the type and amount of service to be provided based on the specific health condition and needs of the intended recipient of the service.

SECTION 10.36.(b) The Department of Health and Human Services, Division of Medical Assistance, shall provide a report of savings generated and other findings relating to the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2011.

DHHS BLOCK GRANTS

SECTION 10.37.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2011, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES
(TANF) FUNDS

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance	$41,435,452
02.	Work First County Block Grants	94,453,315
03.	Work First Electing Counties	2,378,213
04.	Work First – Boys and Girls Clubs	2,500,000
05.	Work First – After-School Services for At-Risk Children	1,639,714
06.	Work First – After-School Programs for At-Risk Youth in Middle Schools	400,000
07.	Work First – Connect, Inc. (Work Central)	440,000

08.	Work First – Citizens Schools Program	360,000
09.	Adoption Services – Special Children's Adoption Fund	3,000,000
10.	Family Violence Prevention	2,200,000
11.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
12.	Child Welfare Collaborative	1,129,115
	Division of Child Development	
13.	Subsidized Child Care Program	65,843,377
	Division of Public Health	
14.	Teen Pregnancy Initiatives	450,000
	Department of Public Instruction	
15.	More at Four	16,176,036
	DHHS Programs	
16.	Community Services	17,000,000
	DHHS Administration	
17.	Division of Social Services	1,093,176
18.	Office of the Secretary	75,392
	Transfers to Other Block Grants	
	Division of Child Development	
19.	Transfer to the Child Care and Development Fund	84,330,900
	Division of Social Services	
20.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	1,750,000
21.	Transfer to Social Services Block Grant for Maternity Homes	943,002
22.	Transfer to Social Services Block Grant for Teen	

	Pregnancy Prevention Initiatives	2,500,000
23.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
24.	Transfer to Social Services Block Grant for Foster Care Services	390,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) FUNDS		$359,440,083

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance	$46,392,544

Division of Child Development

02.	Subsidized Child Care	20,000,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)		$66,392,544

SOCIAL SERVICES BLOCK GRANT

Local Program Expenditures

Divisions of Social Services and Aging and Adult Services

01.	County Departments of Social Services (Transfer from TANF – $4,500,000)	$ 28,868,189
02.	State In-Home Services Fund	2,101,113
03.	State Adult Day Care Fund	2,155,301
04.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	609,455
05.	Foster Care Services (Transfer from TANF – $390,000)	1,997,619
06.	Maternity Homes (Transfer from TANF)	943,002
07.	Special Children Adoption Incentive Fund	500,000

08.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	1,750,000
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
10.	Child Advocacy Centers	375,000
	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	
11.	Mental Health Services Program	422,003
12.	Developmental Disabilities Services Program	5,000,000
13.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
	Division of Child Development	
14.	Subsidized Child Care Program	1,156,744
	Division of Vocational Rehabilitation	
15.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
	Division of Public Health	
16.	Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000
DHHS Program Expenditures		
	Division of Aging and Adult Services	
17.	UNC-CARES Training Contract	247,920
	Division of Services for the Blind	
18.	Independent Living Program	3,633,077
	Division of Health Service Regulation	
19.	Adult Care Licensure Program	411,897
20.	Mental Health Licensure and Certification Program	205,668
DHHS Administration		

21.	Division of Aging and Adult Services	688,436
22.	Division of Social Services	892,624
23.	Office of the Secretary/Controller's Office	138,058
24.	Office of the Secretary/DIRM	87,483
25.	Division of Child Development	15,000
26.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
27.	Division of Health Service Regulation	235,625
28.	Office of the Secretary-NC Inter-Agency Council for Coordinating Homeless Programs	250,000
29.	Office of the Secretary	48,053

Transfers to Other State Agencies

Department of Administration

30.	NC Commission of Indian Affairs In-Home Services for the Elderly	203,198

Transfers to Other Block Grants

Division of Public Health

31.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819

TOTAL SOCIAL SERVICES BLOCK GRANT $ 60,867,890

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Low-Income Energy Assistance Program (LIEAP)	$ 70,909,401
02.	Crisis Intervention Program (CIP)	40,373,328

Local Administration

Division of Social Services

03.	County DSS Administration	6,362,505
DHHS Administration		
04.	Division of Social Services	275,000
05.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	8,128
06.	Office of the Secretary/DIRM	276,784
07.	Office of the Secretary/Controller's Office	12,332
Transfers to Other State Agencies		
Department of Commerce		
08.	Weatherization Program	500,000
09.	Heating Air Repair and Replacement Program (HARRP)	8,103,157
10.	Local Residential Energy Efficiency Service Providers – Weatherization	25,000
11.	Local Residential Energy Efficiency Service Providers – HARRP	266,375
12.	Department of Commerce Administration – Weatherization	25,000
13.	Department of Commerce Administration – HARRP	266,375
14.	Department of Administration – N.C. State Commission of Indian Affairs	129,807
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		$ 127,533,192
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
Local Program Expenditures		
Division of Child Development		
01.	Subsidized Child Care Services (CCDF)	$153,889,889
02.	Contract Subsidized Child Care Services Support	547,600

03. Subsidized Child Care Services (Transfer from TANF)	84,330,900
04. Quality and Availability Initiatives	23,726,564
05. TEACH	3,800,000
Division of Social Services	
06. Local Subsidized Child Care Services Support	$19,340,596
DHHS Administration	
Division of Child Development	
07. DCD Administrative Expenses	6,539,277
Division of Central Administration	
08. DHHS Central Administration – DIRM Technical Services	774,317
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	$292,949,143
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	
Local Program Expenditures	
Division of Child Development	
01. Subsidized Child Care Services (CCDF)	$5,980,997
02. Electronic Benefits Transfer System	4,000,000
DHHS Program Expenditures	
Division of Child Development	
03. Quality and Availability Initiatives	2,904,787
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	$12,885,784
MENTAL HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
01. Mental Health Services – Adult	$ 5,124,810

02.	Mental Health Services	1,731,432
03.	Mental Health Services – Child	5,421,991
04.	Administration	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		$ 12,378,233

SUBSTANCE ABUSE PREVENTION
AND TREATMENT BLOCK GRANT

Local Program Expenditures

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

01.	Substance Abuse Services – Adult	$ 19,278,310
02.	Substance Abuse Services	2,729,770
03.	Substance Abuse Treatment Alternative for Women	8,107,303
04.	Substance Abuse – HIV and IV Drug	5,116,378
05.	Substance Abuse Prevention – Child	7,186,857
06.	Substance Abuse Services – Child	4,940,500
07.	Institute of Medicine	250,000
08.	Administration	250,000

Division of Public Health

09.	Risk Reduction Projects	633,980
10.	Aid-to-Counties	209,576
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		$ 48,702,674

MATERNAL AND CHILD HEALTH BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	Children's Health Services	7,534,865
02.	Women's Health	7,701,691

03.	Oral Health	38,041
DHHS Program Expenditures		
Division of Public Health		
04.	Children's Health Services	1,368,778
05.	Women's Health	135,452
06.	State Center for Health Statistics	179,483
07.	Quality Improvement in Public Health	14,646
08.	Health Promotion	88,746
09.	Office of Minority Health	55,250
10.	Immunization Program – Vaccine Distribution	382,648
DHHS Administration		
Division of Public Health		
11.	Division of Public Health Administration	631,966
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT		$ 18,131,566
PREVENTIVE HEALTH SERVICES BLOCK GRANT		
Local Program Expenditures		
Division of Public Health		
01.	NC Statewide Health Promotion	$1,730,653
02.	Services to Rape Victims	197,112
03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819
DHHS Program Expenditures		
Division of Public Health		
04.	NC Statewide Health Promotion	1,623,117
05.	Oral Health	70,000

06. State Laboratory of Public Health	16,600
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	$3,783,301
COMMUNITY SERVICES BLOCK GRANT	
Local Program Expenditures	
Office of Economic Opportunity	
01. Community Action Agencies	$ 17,968,944
02. Limited Purpose Agencies	998,275
DHHS Administration	
03. Office of Economic Opportunity	998,274
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 19,965,493
COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	
Local Program Expenditures	
Office of Economic Opportunity	
01. Community Action Agencies	$ 10,000,000
TOTAL COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	$ 10,000,000

GENERAL PROVISIONS

SECTION 10.37.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.

(2) A delineation of the proposed State and local administrative expenditures.

(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.

(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.

(5) A projection of current year expenditures by program or activity.

(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 10.37.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing block grants administered by the Department of

Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Office of State Budget and Management shall not approve funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing block grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section. The Office of State Budget and Management shall report on these changes.

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

SECTION 10.37.(d) Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2011, according to the schedule enacted for State fiscal year 2010-2011 or until a new schedule is enacted by the General Assembly.

SECTION 10.37.(e) All changes to the budgeted allocations to the Block Grants or contingency funds and other grants related to existing block grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. The report shall include an itemized listing of affected programs, including associated changes in budgeted allocations. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS

SECTION 10.37.(f) The sum of one million ninety-three thousand one hundred seventy-six dollars ($1,093,176) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.37.(g) The sum of two million two hundred thousand dollars ($2,200,000) appropriated under this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall develop jointly a plan for utilizing these funds. The plan shall

include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2010. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2010, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2010. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 10.37.(h) The sum of one million six hundred thirty-nine thousand seven hundred fourteen dollars ($1,639,714) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration.

SECTION 10.37.(i) The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars ($14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for the 2010-2011 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

SECTION 10.37.(j) The sum of three million dollars ($3,000,000) appropriated in this section in TANF funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2010-2011 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of S.L. 2009-451. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.37.(k) The sum of four hundred thousand dollars ($400,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for the 2010-2011 fiscal year shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and

gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools.

SECTION 10.37.(l) In implementing the use of TANF funds, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

SECTION 10.37.(m) The sum of four hundred forty thousand dollars ($440,000) appropriated in this section to the Department in TANF funds for the 2010-2011 fiscal year shall be transferred to Connect, Inc. Connect, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Connect, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in the nine counties served by Connect, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2011.

SECTION 10.37.(n) The sum of two million five hundred thousand dollars ($2,500,000) appropriated in this section to the Department in TANF funds for Boys and Girls Clubs for the 2010-2011 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 10.37.(o) The sum of one million one hundred twenty-nine thousand one hundred fifteen dollars ($1,129,115) appropriated in this section to the Department of Health and Human Services in TANF funds for the 2010-2011 fiscal year shall be used to continue support for the Child Welfare Collaborative.

SECTION 10.37.(p) The sum of three hundred sixty thousand dollars ($360,000) appropriated to the Department of Health and Human Services, Division of Social Services, under this section in TANF funds for the 2010-2011 fiscal year shall be used to continue support for the Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance County public school systems.

SECTION 10.37.(q) The sum of seventeen million dollars ($17,000,000) appropriated in this section to the Department of Health and Human Services in TANF funds for the 2010-2011 fiscal year for community services shall be used to support TANF-eligible programs. The Department, upon review and approval of the Office of State Budget and Management, shall implement an equivalent reduction of General Fund appropriations and shall transfer the appropriations to support community services.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS

SECTION 10.37.(r) The sum of twenty million dollars ($20,000,000) appropriated under this section from TANF Emergency Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used for subsidized child care services. Payment for subsidized child care services provided with TANF Emergency Contingency funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.37.(s) The sum of forty-six million three hundred ninety-two thousand five hundred forty-four dollars ($46,392,544) appropriated under this section from TANF Emergency Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to support assistance payments provided under the Work First Family Assistance program.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.37.(t) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for coordinating homeless programs, child medical evaluations, and community services provided by Children's Advocacy Centers are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.37.(u) The sum of one million seven hundred fifty thousand dollars ($1,750,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.

(2) Provide training for residential child caring facilities.

(3) Provide for various other child welfare training initiatives.

SECTION 10.37.(v) The sum of nine hundred forty-three thousand two dollars ($943,002) appropriated in this section to the Department of Health and Human Services in the Social Services Block Grant for the 2010-2011 fiscal year shall be used to support maternity home services.

SECTION 10.37.(w) The sum of one million nine hundred ninety-seven thousand six hundred nineteen dollars ($1,997,619) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2010-2011 fiscal year shall be allocated in support of State foster home children.

SECTION 10.37.(x) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.37.(y) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require a fifty percent (50%) local match.

SECTION 10.37.(z) The sum of three hundred seventy-five thousand dollars ($375,000) appropriated in this section in the Social Services Block Grant for the 2010-2011 fiscal year shall be allocated to the Division of Social Services to support community services provided by Children's Advocacy Centers on behalf of children who are victims of child abuse.

SECTION 10.37.(aa) The sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2010-2011 fiscal year shall be used to continue a Mental Health Services Program for children.

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.37.(bb) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional

funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.37.(cc) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.37.(dd) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SECTION 10.37.(ee) If American Recovery and Reinvestment Act of 2009 funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

SECTION 10.37.(ff) The sum of two hundred fifty thousand dollars ($250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2010-2011 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to study the following:

(1) The availability of Medicaid and State-funded mental health, developmental disabilities, and substance abuse services to active duty, reserve, and veteran members of the military and National Guard. The study should discuss the current availability of services, the extent of use, and any gaps in services.

(2) Issues related to cost, quality, and access to appropriate and affordable health care for all North Carolinians. The North Carolina Institute of Medicine (NCIOM) may use funds appropriated for the 2007-2009 fiscal biennium to continue the work of its Health Access Study Group to study these issues. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.

(3) Short-term and long-term strategies to address issues within adult care homes that provide residence to persons who are frail and elderly and to persons suffering from mental illness.

The Institute shall make an interim report to the Governor's Office, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2010, which may include recommendations and proposed legislation, and shall issue its final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening. In the event members of the General Assembly serve on the NCIOM Health Access Study Group, they shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Health Access Study Group may include in

its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.37.(gg) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2010-2011 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 10.37.(hh) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FEE INCREASES FOR PESTICIDE DEALERS, PESTICIDE APPLICATORS, AND PEST CONTROL CONSULTANTS

SECTION 11.1.(a) G.S. 143-440 reads as rewritten:

"**§ 143-440. Restricted use pesticides regulated.**

(a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted use pesticide" upon the grounds that, in the judgment of the Board (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restriction on its sale, purpose, use or possession are required.

(b) The Board may include in any such restricted use regulation the time and conditions of sale, distribution, or use of such restricted use pesticides, may prohibit the use of any restricted use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted use pesticides will be used only as labeled or as further restricted by regulation; may require the certification and recertification of private applicators and, charge a fee of up to ten dollars ($10.00), with the fee set at a level to make the certification/recertification program self-supporting, and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted use pesticides. The Board may authorize the use of restricted use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. A nonrefundable fee of ten dollars ($10.00) shall be charged for each examination required by this section. This examination fee is in addition to the certification or recertification fee, and any other fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

(c) A fee of fifty dollars ($50.00) shall be charged for examination of individuals seeking to be designated as Worker Protection Designated Trainers, in accordance with provisions of the Federal Worker Protection Standard set forth in 40 C.F.R. Part 170, and subsequent amendments to those regulations."

SECTION 11.1.(b) G.S. 143-448(b) reads as rewritten:

"**§ 143-448. Licensing of pesticide dealers; fees.**

...

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~fifty dollars ($50.00).~~seventy-five dollars ($75.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

...."

SECTION 11.1.(c) G.S. 143-449(b) reads as rewritten:

"**§ 143-449. Qualifications for pesticide dealer license; examinations.**

...

(b) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide dealer. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides. A nonrefundable fee of fifty dollars ($50.00) shall be charged for each examination required by this section. This examination fee is in addition to any fee authorized pursuant to any other provision of Article 4C of Chapter 106 of the General Statutes.

...."

SECTION 11.1.(d) G.S. 143-452(b) reads as rewritten:

"**§ 143-452. Licensing of pesticide applicators; fees.**

...

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars ($25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five-dollar ($25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made."

SECTION 11.1.(e) G.S. 143-453 reads as rewritten:

"**§ 143-453. Qualifications for pesticide applicator's license; examinations.**

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed

as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the examination required by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (b) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the core examination, and an additional twenty dollars ($20.00) shall be charged for each additional specific classification licensure. Such examination fees shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes.

...."

SECTION 11.1.(f) G.S. 143-455 reads as rewritten:

"**§ 143-455. Pest control consultant license.**

(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by a non-refundable annual fee of ~~fifty dollars ($50.00).~~seventy-five dollars ($75.00).

(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. A nonrefundable fee of fifty dollars ($50.00) shall be charged for the consultant examination, and an additional twenty dollars ($20.00) shall be charged for each additional specific classification licensure permitted by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in publications recognized by the Board as appropriate for a specific consulting classification or subclassification.

...."

STRUCTURAL PEST CONTROL ACT FEE INCREASES

SECTION 11.2.(a) G.S. 106-65.27 reads as rewritten:

"**§ 106-65.27. Examinations of applicants; fee; license not transferable.**

(a) Certified Applicator. – All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or subphase of structural pest control for which application is made and shall include, where relevant, the following areas of competency:

(1) Label and labeling comprehension.
(2) Safety factors associated with pesticides – toxicity, precautions, first aid, proper handling, etc.
(3) Influence of and on the environment.
(4) Pests – identification, biology, and habits.
(5) Pesticides – types, formulations, compatibility, hazards, etc.
(6) Equipment – types and uses.
(7) Application techniques.
(8) Laws and regulations.

An applicant for a certified applicator's identification card shall submit an examination fee of ~~ten dollars ($10.00)~~twenty-five dollars ($25.00) for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase may be taken at the same time at any regularly scheduled examination. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made.

(b) License. – Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or subphase in which he is applying for a license. Frequency of such examinations shall be at the discretion of the Committee, provided that a minimum of two examinations shall be given annually. The examination will cover each phase or subphase of structural pest control for which application is being made. All applicants for a license shall register with the Division on a prescribed form. A license examination fee of ~~twenty five dollars ($25.00)~~fifty dollars ($50.00) shall be charged for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase of structural pest control may be taken at the same time.

...."

SECTION 11.2.(b) G.S. 106-65.31 reads as rewritten:

"**§ 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards.**

(a) Certified Applicator's Identification Card. – The fee for issuance or renewal of a certified applicator's identification card shall be ~~thirty dollars ($30.00).~~fifty dollars ($50.00). Within 75 days after the employment of a certified applicator, the licensee shall apply to the Division for the issuance of a certified applicator's identification card. A certified applicator's identification card shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their card on or before June 30 but make application before January 1 of the following year may have their card renewed without having to be reexamined unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). All applicants submitting applications for the renewal of their cards after June 30 shall not use or supervise the use of restricted use pesticides until a new card has been issued.

Any certified applicator whose employment is terminated with a licensee or agent prior to the end of any license year may at any time prior to the end of the license year be reissued a certified applicator's identification card for the remainder of the license year as an employee of

another licensee or agency or as an individual for a fee of five dollars ($5.00). The licensee shall notify the Division of the termination or change in status of any certified applicator.

Any certified applicator whose identification card is lost or destroyed or changed in any way may be reissued a new card for the remainder of the license year for a fee of five dollars ($5.00).

(b) License. – The fee for the issuance or renewal of a license for any one phase of structural pest control shall be ~~one hundred fifty dollars ($150.00).~~two hundred dollars ($200.00). Each additional phase shall be ~~sixty-five dollars ($65.00).~~seventy-five dollars ($75.00). The fee for each subphase shall be fifteen dollars ($15.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars ($10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars ($10.00).

(b1) Registration. – Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of ~~twenty-five dollars ($25.00)~~forty dollars ($40.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of twenty-five dollars ($25.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five dollars ($5.00).The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires.

When a license is reissued, the licensee shall be responsible for registering and securing identification cards for all existing employees who engage in structural pest control within 10 days of the reissuance of the license.

A certified applicator who is not an employee of a licensed individual shall register the names of all employees under his supervision who are engaged in the performance of structural pest control with the Division and shall purchase a registered technician's identification card for each such employee.

...."

CONSOLIDATE GRADE "A" MILK PROGRAM INTO DAIRY PROGRAM AND STUDY FEE STRUCTURE

SECTION 11.3.(a) All functions, powers, duties, and obligations previously vested in the Grade "A" Milk Sanitation Program within the Division of Environmental Health of the Department of Environment and Natural Resources are transferred to and vested in the Food

and Drug Protection Division of the Department of Agriculture and Consumer Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 11.3.(b) The Department of Agriculture and Consumer Services shall study the development of a schedule of fees for the Grade "A" Milk Sanitation Program consistent with the existing fee schedule for the Dairy Program. In its study under this subsection, the Department of Agriculture and Consumer Services shall consider the costs associated with operating the Grade "A" Milk Program.

SECTION 11.3.(c) The Department of Agriculture and Consumer Services shall report not later than January 15, 2011, to the House and Senate Appropriation Subcommittees on Natural and Economic Resources and the Fiscal Research Division on the results of its study under subsection (b) of this section. The Department of Agriculture and Consumer Services shall include in this report what fee schedule the Department recommends as well as any findings, other recommendations, or legislative proposals.

SECTION 11.3.(d) Part 9 of Article 8 of Chapter 130A of the General Statutes is recodified as Article 28C of Chapter 106 of the General Statutes, to be entitled "Grade 'A' Milk Sanitation"; G.S. 130A-274 is recodified as G.S. 106-266.30; G.S. 130A-275 is recodified as G.S. 106-266.31; G.S. 130A-276 is recodified as G.S. 106-266.32; G.S. 130A-277 is recodified as G.S. 106-266.33; G.S. 130A-278 is recodified as G.S. 106-266.34; and G.S. 130A-279 is recodified as G.S. 106-266.35.

SECTION 11.3.(e) G.S. 106-266.30, as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.30. Definitions.**

The following definitions shall apply throughout this ~~Part:~~Article:

(1) "Grade 'A' milk" means fluid milk and milk products which have been produced, transported, handled, processed and distributed in accordance with the provisions of the rules adopted by the ~~Commission.~~Board of Agriculture.

(2) "Milk" means the lacteal secretion practically free from colostrum obtained by the milking of one or more cows, goats, or other lactating animals."

SECTION 11.3.(f) G.S. 106-266.31, as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.31. ~~Commission~~ Board to adopt rules.**

~~Notwithstanding the provisions of G.S. 106-267 et seq., the Commission is authorized and directed to~~The Board of Agriculture shall adopt rules relating to the sanitary production, transportation, processing and distribution of Grade "A" milk. The rules, in order to protect and promote the public health, shall provide definitions and requirements for: (i) the sanitary production and handling of milk on Grade "A" dairy farms; (ii) the sanitary transportation of Grade "A" raw milk for processing; (iii) the sanitary processing of Grade "A" milk; (iv) the sanitary handling and distribution of Grade "A" milk; (v) the requirements for the issuance, suspension and revocation of permits; and (vi) the establishment of quality standards for Grade "A" milk. The rules shall be no less stringent than the 1978 Pasteurized Milk Ordinance recommended by the U.S. Public Health Service/Food and Drug Administration as amended effective January 1, 1982. The ~~Commission~~ Board of Agriculture may adopt by reference the U.S. Public Health Service/Food and Drug Administration 1978 Pasteurized Milk ~~Ordinance, and any amendment thereto~~Ordinance, as amended."

SECTION 11.3.(g) G.S. 106-266.32, as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.32. Permits required.**

No person shall produce, transport, process, or distribute Grade "A" milk without first having obtained a valid permit from the ~~Department.~~Department of Agriculture and Consumer Services."

SECTION 11.3.(h) G.S. 106-266.33, as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.33. Duties of the Department.**

The Department of Agriculture and Consumer Services shall enforce the rules of the ~~Commission~~ Board of Agriculture governing Grade "A" milk by making sanitary inspections of Grade "A" dairy farms, Grade "A" processing plants, Grade "A" milk haulers and Grade "A" distributors; by determining the quality of Grade "A" milk; and by evaluating methods of handling Grade "A" milk to insure compliance with the provisions of the rules of the ~~Commission.~~Board of Agriculture. The Department of Agriculture and Consumer Services shall issue permits for the operation of Grade "A" dairy farms, processing plants and haulers in accordance with the provisions of the rules of the ~~Commission~~ Board of Agriculture and shall suspend or revoke permits for violations in accordance with the rules."

SECTION 11.3.(i) G.S. 106-266.34, as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.34. Certain other authorities of Department of Agriculture and Consumer Services not replaced.**

This ~~Part~~ Article shall not repeal or limit the Department of Agriculture and Consumer Services' authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and Consumer ~~Services~~ Services, and any other function of the Department of Agriculture and Consumer Services concerning Grade "A" milk ~~which~~ under any other Article under this Chapter that is not inconsistent with this Article."

SECTION 11.3.(j) G.S. 106-266.35 as recodified under subsection (d) of this section, reads as rewritten:

"**§ 106-266.35. Sale or dispensing of milk.**

Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The ~~Commission~~ Board of Agriculture may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN CONSUMPTION" in letters at least one-half inch in height. Any raw milk or raw milk product dispensed as animal feed shall also include on its label the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." "Sale" or "sold" shall mean any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd."

SECTION 11.3.(k) G.S. 130A-21(b) is repealed.

SECTION 11.3.(l) G.S. 106-143 reads as rewritten:

"**§ 106-143. Article construed supplementary.**

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Public Health or the Department of Environment and Natural Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, ~~milk,~~ milk products, shellfish, finfish, or other foods, or food products, or the production, handling, or processing of these items."

CONSOLIDATE SPAY/NEUTER PROGRAM INTO ANIMAL WELFARE PROGRAM AND PROVIDE ADDITIONAL FUNDING

SECTION 11.4.(a) All functions, powers, duties, and obligations previously vested in the Spay/Neuter Program within the Department of Health and Human Services are transferred to and vested in the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 11.4.(b) Of the funds appropriated in this act to the Department of Agriculture and Consumer Services for the 2010-2011 fiscal year, including those in special funds, the sum of one hundred thousand dollars ($100,000) shall be used to fund the Spay/Neuter Program under Article 5 of Chapter 19A of the General Statutes.

SECTION 11.4.(c) Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.7. Contribution by individual for spaying and neutering of dogs and cats.**

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to be used for the spaying and neutering of dogs and cats through the Spay/Neuter Account established in the Department of Agriculture and Consumer Services by G.S. 19A-62. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The Secretary shall include in the income tax instructions an explanation that the contributions will be used for the spaying and neutering of dogs and cats in order to reduce the population of unwanted animals in the State. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer to be deposited in the Spay/Neuter Account established in G.S. 19A-62."

SECTION 11.4.(d) The General Assembly finds that the funds generated by subsection (c) of this section are intended to be additional funding for the spaying and neutering of dogs and cats through the Spay/Neuter Account established in G.S. 19A-62 and are not intended to replace current appropriations for the spaying and neutering of dogs and cats.

SECTION 11.4.(e) G.S. 90A-61 reads as rewritten:

"**§ 19A-61. Spay/Neuter Program established.**

There is established in the Department of ~~Health and Human Services~~Agriculture and Consumer Services a statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State. The program shall consist of the following components:

(1) Education Program. – The Department shall establish a statewide program to educate the public about the benefits of having cats and dogs spayed and neutered. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine, other State agencies and departments, county and city health departments and animal control agencies, and statewide and local humane organizations. The Department may employ outside consultants to assist with the education program.

(2) Local Spay/Neuter Assistance Program. – The Department shall administer the Spay/Neuter Account established in G.S. 19A-62. Monies deposited in the account shall be available to reimburse eligible counties and cities for the direct costs of spay/neuter surgeries for cats and dogs made available to low-income persons."

SECTION 11.4.(f) G.S. 19A-62 reads as rewritten:

"**§ 19A-62. Spay/Neuter Account established.**

(a) Creation. – The Spay/Neuter Account is established as a nonreverting special revenue account in the Department of ~~Health and Human Services.~~Agriculture and Consumer Services. The Account consists of the following:

(1) The portion of the fee imposed under G.S. 130A-190(b)(4) for obtaining a rabies vaccination tag from the Department of ~~Health and Human Services.~~Agriculture and Consumer Services.

(2) Ten dollars ($10.00) of the additional fee imposed by G.S. 20-79.7 for an Animal Lovers special license plate.

(3) Any other funds available from appropriations by the General Assembly or from contributions and grants from public or private sources.

(b) Use. – The revenue in the Account shall be used by the Department of ~~Health and Human Services~~Agriculture and Consumer Services as follows:

(1) If the revenue generated by the portion of the fee imposed under G.S. 130A-190(b)(3) is less than forty-seven thousand five hundred dollars ($47,500) for the fiscal year, then funds up to the difference between forty-seven thousand five hundred dollars ($47,500) and the amount of revenue generated may be used from this Account to fund rabies education and prevention programs.

(2) Twenty percent (20%) shall be used to develop and implement the statewide education program component of the Spay/Neuter Program established in ~~G.S. 19A-61(a).~~G.S. 19A-61.

(3) Up to twenty percent (20%) of the money in the Account may be used to defray the costs of administering the Spay/Neuter Program established in this Article.

(4) Funds remaining after deductions for the education program and administrative expenses shall be distributed quarterly to eligible counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed during the previous year. A county or city is ineligible to receive funds under this subdivision unless it requires the owner to show proof of rabies vaccination at the time of the procedure or, if none, require vaccination at the time of the procedure.

(c) Report. – ~~In February of each year~~By October 1 of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

SECTION 11.4.(g) G.S. 19A-64(b) reads as rewritten:

"(b) Application. – A county or city eligible for reimbursement of spaying and neutering costs from the Spay/Neuter Account shall apply to the Department of ~~Health and Human Services~~Agriculture and Consumer Services by the last day of January, April, July, and October of each year to receive a distribution from the Account for that quarter. The application shall be submitted in the form required by the Department and shall include an itemized listing of the costs for which reimbursement is sought."

SECTION 11.4.(h) G.S. 19A-65 reads as rewritten:

"**§ 19A-65. Annual Report Required From Every Animal Shelter in Receipt of State or Local Funding.**

Every county or city animal shelter, or animal shelter operated under contract with a county or city or otherwise in receipt of State or local funding shall prepare an annual report setting forth the numbers, by species, of animals received into the shelter, the number adopted out, the number returned to owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled. The report shall be filed with the Department of ~~Health and Human Services~~Agriculture and Consumer Services by August 1 of each year."

SECTION 11.4.(i) Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2010.

PART XII. DEPARTMENT OF LABOR

DEPARTMENT OF LABOR/APPRENTICESHIP PROGRAM

SECTION 12.1. G.S. 94-12 reads as rewritten:

"**§ 94-12. Fees.**

The following fees are imposed on each apprentice who is covered by a written apprenticeship agreement entered into under this Chapter: (i) a new registration fee of ~~fifty dollars ($50.00);~~ one hundred dollars ($100.00) and (ii) an annual fee of ~~fifty dollars ($50.00).~~one hundred dollars ($100.00). ~~Each fee authorized by this section is payable as thirty dollars ($30.00) by the sponsor and twenty dollars ($20.00) by the apprentice. The sponsor shall collect the fees authorized by this section from the apprentice and remit the total fees owed by the sponsor and the apprentice to the Department of Labor.~~ The fees are departmental receipts and must be applied to the costs of administering the apprenticeship program. The Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes to implement this section. ~~The provisions of this section shall not apply to the State, a department or agency of the State, or any political subdivision of the State or an apprentice of the State, a department or agency of the State, or any political subdivision of the State.~~"

PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CONSOLIDATE FOUR DENR SUBUNITS WITHIN THE NEW DIVISION OF ENVIRONMENTAL ASSISTANCE AND OUTREACH

SECTION 13.1.(a) The Division of Environmental Assistance and Outreach is established as a new division within the environmental area of the Department of Environment and Natural Resources. All functions, powers, duties, and obligations previously vested in the following subunits of the Department of Environment and Natural Resources are transferred to, vested in, and consolidated within the Division of Environmental Assistance and Outreach by a Type I transfer, as defined in G.S. 143A-6:

(1) The Office of Environmental Education.
(2) The Customer Service Center.
(3) The Division of Pollution Prevention and Environmental Assistance.
(4) The Small Business Ombudsman.

SECTION 13.1.(b) G.S. 18B-902(h) reads as rewritten:

"(h) Recycling Plan Required. – Each applicant for an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall prepare and submit with the application a plan for the collection and recycling of all recyclable beverage containers of all beverages to be sold at retail on the premises. A permittee who is not able to find a recycler for its beverage containers may apply to the Alcoholic Beverage Control Commission for a one-year stay of the requirement to implement a recycling program in compliance with G.S. 18B-1006.1. The application shall be made in a form specified by the Commission, shall detail the efforts made by the permittee to provide for the collection and recycling of beverage containers, and shall specify the impediments to implementation of a recycling plan. The Commission shall submit all such applications to the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach of the Department of Environment and Natural Resources for review and certification. The Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach shall investigate each application and prepare a summary of its investigation and shall submit the summary to the Commission along with a notation indicating certification or denial of the application. A permittee whose application for a stay is certified by the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach shall not be required to comply with

the recycling requirement of the alcoholic beverage laws and regulations during the one-year stay period so certified."

SECTION 13.1.(c) G.S. 130A-309.12(a)(6) reads as rewritten:

"(6) Providing funding for the activities of the Division of ~~Pollution Prevention and~~ Environmental ~~Assistance.~~Assistance and Outreach."

SECTION 13.1.(d) G.S. 130A-309.63(b)(2) reads as rewritten:

"(2) The Department may use up to forty percent (40%) of the revenue in the Account to make grants to encourage the use of processed scrap tire materials. These grants may be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or other components of tires for use in products such as fuel, tires, mats, auto parts, gaskets, flooring material, or other applications of processed tire materials. These grants shall be made in consultation with the Department of Commerce, the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach of the Department, and, where appropriate, the Department of Transportation. Grants to encourage the use of processed scrap tire materials shall not be used to process tires."

SECTION 13.1.(e) G.S. 136-28.8(g) reads as rewritten:

"(g) On or before October 1 of each year, the Department shall report to the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach of the Department of Environment and Natural Resources as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. On or before December 1 of each year, the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach shall prepare a summary of this report and submit the summary to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee. The summary of this report shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 13.1.(f) G. S. 143-58.2(d) reads as rewritten:

"(d) The Department of Administration, in cooperation with the Division of ~~Pollution Prevention and~~ Environmental Assistance and Outreach of the Department of Environment and Natural Resources, shall identify materials and supplies with recycled content that meet appropriate standards for use by State departments, institutions, agencies, community colleges, and local school administrative units."

SECTION 13.1.(g) The Revisor of Statutes shall make any other conforming statutory changes necessary to reflect the transfer under subsection (a) of this section that are not included in this section.

CONSOLIDATE CERTAIN ENVIRONMENTAL HEALTH PROGRAMS FROM DENR TO DHHS; AMEND ON-SITE WASTEWATER CERTIFICATION

SECTION 13.2.(a) The following sections of the Division of Environmental Health that support programs implemented through local health departments and programs primarily focused on food safety and other public health concerns are transferred from the Department of Environment and Natural Resources to the Division of Public Health of the Department of Health and Human Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

(1) Environmental Health Services Section.
(2) Public Health Pest Management Section.
(3) On-Site Water Protection Section.
(4) Radiation Protection Section.
(5) Office of Education and Training.

SECTION 13.2.(b) G.S. 90A-51 reads as rewritten:

"**§ 90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

...

(2a) "Environmental health practice" means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; milk and dairy sanitation; shellfish sanitation; recreational water quality; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of ~~Environmental~~ Public Health of the Department of Health and Human Services to State and local environmental health professionals to enforce rules adopted by the Commission for Public ~~Health or the Environmental Management Commission.~~Health. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells."

SECTION 13.2.(c) G.S. 90A-55(a) reads as rewritten:

"(a) Board Membership. – The Board shall consist of 12 members who shall serve staggered terms: the Secretary of ~~Environment and Natural Resources,~~Health and Human Services, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of ~~Environmental Health~~Public Health of the Department of ~~Environment and Natural Resources,~~Health and Human Services, and seven practicing environmental health specialists who qualify by education and experience for registration under this Article, six of whom shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board."

SECTION 13.2.(d) G.S. 90A-55(c) reads as rewritten:

"(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for the Governor's consideration in appointments, except for the two representatives of the Department of ~~Environment and Natural Resources~~Health and Human Services recommended by the Secretary of ~~Environment and Natural Resources~~Health and Human Services and the local health director recommended by the North Carolina Local Health Directors Association."

SECTION 13.2.(e) G.S. 90A-71 reads as rewritten:

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) "Board" means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) "Contractor" means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(3) "Conventional wastewater system" has the same meaning as in G.S. 130A-343(a)(3).

(4) "Department" means the Department of ~~Environment and Natural Resources.~~Health and Human Services.

(5) "Inspector" means a person who conducts an inspection ~~of an on-site wastewater system at any time after the local health department has issued~~

~~an operation permit pursuant to G.S. 130A-337.~~in accordance with rules adopted by the Board.

(5a) "Inspection" means an examination of an on-site wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that satisfies all of the following criteria:

a. Is requested by a lending institution, realtor, prospective homebuyer, or other impacted party as a condition of sale, refinancing, or transfer of title.

b. Meets the minimum requirements established by the Board.

(6) "On-site wastewater system" means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.

(7) "Person" means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(8) "Wastewater treatment facility" means a mechanical or chemical treatment facility serving a site with multiple wastewater sources."

SECTION 13.2.(f) G.S. 90A-72 reads as rewritten:

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system ~~in the State~~permitted under Article 11 of Chapter 130A of the General Statutes without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system as permitted under Article 11 of Chapter 130A of the General Statutes without being certified ~~as an inspector at the required level of certification for the specified system.~~in accordance with the provisions of this Article.

(b) Applicability. – This Article does not apply to the following:

(1) A person who is employed ~~by, or performs labor and services for,~~by a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or ~~inspector.~~inspector in charge.

(2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed ~~distribution system~~gravel trench dispersal media when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate ~~family.~~family who reside in the same dwelling.

(3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being ~~constructed.~~constructed or who provides corrective services and labor for an on-site wastewater system ancillary to the building being constructed.

(4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

(7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

(8) A person employed by the Department of Health and Human Services, a local health department, or a local health district, when conducting a regulatory inspection of an on-site wastewater system for purposes of determining compliance."

SECTION 13.2.(g) G.S. 90A-73(a)(2) reads as rewritten:

"(2) One member appointed by the Governor who, at the time of appointment, is a certified ~~water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes,~~water pollution control system operator pursuant to Article 3 of this Chapter, to a term that expires on 1 July of years evenly divisible by three."

SECTION 13.2.(h) G.S. 90A-73(c), 90A-73(d), and 90A-73(i) are repealed.

SECTION 13.2.(i) G.S. 90A-74 reads as rewritten:

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

...

(4) To develop and administer examinations for ~~each grade level of certification.~~specific grade levels of certification as approved by the Board. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

...

(10a) To employ staff necessary to carry out the provisions of this Article and to determine the compensation, duties, and other terms and conditions of employment of its staff.

(10b) To employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(11) To conduct other services necessary to carry out the purposes of this Article."

SECTION 13.2.(j) G.S. 90A-75 is amended by adding a new subsection to read:

"(c1) Use of Fees. – All fees collected pursuant to this Article shall be held by the Board and used by the Board for the sole purpose of administering this Article."

SECTION 13.2.(k) G.S. 90A-76 is repealed.

SECTION 13.2.(l) G.S. 90A-77(a) reads as rewritten:

"(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Submits a properly completed application to the Board.

(3) ~~If the applicant has prior experience providing on site wastewater system services, submits affidavits of three persons not related to the applicant for whom the applicant provided on site wastewater services.~~Completes the

basic on-site wastewater education program approved by the Board for the specific grade level.

~~(4) If the applicant has no prior experience, completes the basic on-site wastewater education program approved by the Board.~~

(5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.

(6) Pays the applicable fees set by the Board for the particular application and grade level.

(7) For the specific grade ~~levels greater than conventional systems,~~level, as determined by the Board, passes a written or oral examination that tests the applicant's proficiency in all of the following areas:

a. Principles of public and environmental health associated with on-site wastewater systems.

b. Principles of construction and safety.

c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.

d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system."

SECTION 13.2.(m) G.S. 90A-81(b) reads as rewritten:

"(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of ~~Environmental~~ Public Health of the Department or a local health department."

SECTION 13.2.(n) G.S. 90A-81(c) reads as rewritten:

"(c) Injunction. – The Board may ~~ask the Attorney General to~~in its own name seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The ~~Attorney General~~Board may bring an action for an injunction ~~in the name of the State~~ in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction."

SECTION 13.2.(o) G.S. 104E-5 reads as rewritten:

"§ 104E-5. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

...

(6) "Department" means the ~~State Department of Environment and Natural Resources.~~Department of Health and Human Services.

...."

SECTION 13.2.(p) G.S. 104E-8(c)(6) reads as rewritten:

"(c) The 10 ex officio members shall be appointed by the Governor, shall be members or employees of the following State agencies or their successors, and shall serve at the Governor's pleasure:

...

(6) The Division of ~~Environmental~~ Public Health of the Department."

SECTION 13.2.(q) G.S. 104E-9 reads as rewritten:

"§ 104E-9. Powers and functions of Department of ~~Environment and Natural Resources.~~ Health and Human Services.

(a) The Department of ~~Environment and Natural Resources~~ Health and Human Services is authorized:

...

(b) The Division of ~~Environmental~~ Public Health of the Department shall develop a training program for tanning equipment operators that meets the training rules adopted by the Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training program."

SECTION 13.2.(r) G.S. 106-307.2(b) reads as rewritten:

"(b) The State Veterinarian shall notify the State Health Director and the Director of the Division of ~~Environmental~~ Public Health in the Department of ~~Environment and Natural Resources~~Health and Human Services when the State Veterinarian receives a report indicating an occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever, virus infections, and any other disease or condition transmissible to humans that the State Veterinarian determines may have been caused by a terrorist act."

SECTION 13.2.(s) G.S. 120-70.33(3) reads as rewritten:

"**§ 120-70.33. Powers and duties.**

The Joint Select Committee shall have the following powers and duties:

...

(3) To evaluate actions of the Radiation Protection Commission, the radiation protection programs administered by the Division of ~~Environmental~~ Public Health of the Department of ~~Environment and Natural Resources,~~Health and Human Services, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;"

SECTION 13.2.(t) The Revisor of Statutes shall make any other conforming statutory changes that are necessary to reflect the transfers under subsection (a) of this section.

SECTION 13.2.(u) Any funds remaining as of June 30, 2010, in the On-Site Wastewater Certification Fund created in G.S. 90A-76 as a nonreverting account within the Department of Environment and Natural Resources shall be credited to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board and shall be used in accordance with G.S. 90A-75, as amended by this section.

SECTION 13.2.(v) This transfer is effective July 1, 2010, and funds transferred shall be net of any changes enacted by this section.

CONSOLIDATE SHELLFISH SANITATION AND RECREATIONAL WATER QUALITY SECTION WITHIN THE DIVISION OF MARINE FISHERIES

SECTION 13.3.(a) The Shellfish Sanitation and Recreational Water Quality Section of the Division of Environmental Health of the Department of Environment and Natural Resources is transferred to, vested in, and consolidated within the Division of Marine Fisheries of the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.3.(b) G.S. 130A-231 is repealed.

SECTION 13.3.(c) The Revisor of the Statutes shall make any other conforming statutory changes necessary to reflect this transfer that are not included in this section.

CONSOLIDATE PUBLIC WATER SUPPLY SECTION WITHIN DIVISION OF WATER RESOURCES

SECTION 13.4.(a) The Public Water Supply Section of the Division of Environmental Health of the Department of Environment and Natural Resources is transferred

to, vested in, and consolidated within the Division of Water Resources of the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6.

SECTION 13.4.(b) The Revisor of Statutes shall make any other conforming statutory changes necessary to reflect this transfer that are not included in this section.

SUSTAINABLE COMMUNITIES TASK FORCE

SECTION 13.5.(a) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31. North Carolina Sustainable Communities Task Force.

"**§ 143B-344.34. North Carolina Sustainable Communities Task Force – findings.**

(a) The General Assembly finds that the rapid growth of the urban and suburban areas of North Carolina and the economic challenges facing many of the State's urban cores, rural areas, and smaller communities create a significant need for the strategic use of resources to plan and accommodate healthy and equitable development without compromising natural systems and the needs of future generations of North Carolinians.

(b) The General Assembly finds that the following principles describe sustainable development for North Carolina's communities:

(1) Better transportation choices. – Offering safe, reliable, and economical motorized and nonmotorized transportation options to decrease household transportation costs, reduce dependence on foreign oil, improve air quality, reduce greenhouse gas emissions, and promote public health.

(2) Equitable, affordable housing. – Encouraging the provision to North Carolina citizens of all ages, incomes, races, and ethnicities expanded location-, water-, and energy-efficient housing choices that increase mobility, decrease the impact on existing water and energy infrastructure, and lower the combined cost of housing and transportation.

(3) Enhanced economic competitiveness. – Expanding business access to markets and improving North Carolina's economic competitiveness through reliable and timely access to employment centers, educational opportunities, services, and other basic needs by workers.

(4) Support of existing communities. – Targeting public funds toward existing communities that are using strategies such as transit-oriented, mixed-use development, and land recycling to increase community revitalization, enhance the efficiency and cost-effectiveness of public works investments, and protect rural landscapes.

(5) Coordination and leverage of State policies and investment. – Aligning State and local government policies and funding to remove barriers to collaboration, leverage funding, and increase the accountability and effectiveness of government in planning for future growth.

(6) Recognize and support communities and neighborhoods. – Preserving and enhancing the unique characteristics of rural, urban, and suburban communities by investing in healthy, safe, and walkable neighborhoods.

"**§ 143B-344.35. North Carolina Sustainable Communities Task Force – creation; purpose; duties.**

There is created within the Department of Environment and Natural Resources the North Carolina Sustainable Communities Task Force to lead and support the State's sustainable communities initiatives. The duties of the Task Force shall be as follows:

(1) To apply for and receive, on behalf of the State, funding from federal, public, or private initiatives, grant programs, or donors that will foster sustainable development in North Carolina.

(2) To promote regional partnerships and to assist local governments and regional or interlocal organizations in North Carolina in seeking and managing funding from federal, public, or private initiatives, grant programs, or donors related to the planning, development, or redevelopment of the State's communities in a sustainable manner.

(3) To identify federal funding opportunities related to sustainable development.

(4) To provide technical assistance to eligible State agencies, local governments, nonprofits or regional collaborations, and partnerships in applying for federal and other funding opportunities. This technical assistance shall include the development of scenario planning tools, progress measurement metrics, and public participation strategies for use by all applicants.

(5) To recommend policies for the support, promotion, and encouragement of sustainable communities to the Secretaries of the Departments of Commerce, Environment and Natural Resources, and Transportation, the General Assembly, and the Governor.

(6) To recommend annually to the Governor appropriations for sustainable development programs.

(7) To develop a common local government sustainable practices scoring system incorporating the principles set forth in G.S. 143B-344.34(b).

(8) To pursue opportunities to combine the efforts of State agencies related to development and infrastructure; to study how existing regional and interlocal organizations could improve their organization and reduce unnecessary overlap and duplication of services; and to better integrate State efforts and investments with regional and local efforts. The Task Force shall include in its recommendations under subdivisions (5) and (6) of this section any recommendations for legislation necessary to implement any potential improvements identified under this subdivision.

"**§ 143B-344.36. North Carolina Sustainable Communities Task Force – membership; staffing; sunset.**

(a) Membership and Advice. – The Task Force shall consist of 11 members who reflect the diversity of the State. The Secretaries of Commerce, Environment and Natural Resources, and Transportation and the Director of the North Carolina Housing Finance Agency shall each designate a representative to the Task Force from their agencies. The Secretary of Administration shall designate a representative from that Department who is familiar with the management and development of State-owned lands and buildings. The Secretary of Health and Human Services shall designate a representative from the Division of Public Health of the Department of Health and Human Services who is familiar with the impact of the built environment on human health. The Governor shall appoint the remaining five members under a specified subdivision of this subsection as follows:

(1) One member who is a representative of a nonprofit organization involved in the planning, advocacy, or creation of sustainable development.

(2) One member who is a representative of a county government.

(3) One member who is a representative of city government.

(4) One member who is a representative of a council of government or other regional collaborative organization.

(5) One member with professional training in planning who is a representative of the North Carolina Chapter of the American Planning Association.

The Secretaries of Administration, Commerce, Environment and Natural Resources, Health and Human Services, and Transportation, or their designees, shall advise the Task Force on sustainable development activities within the responsibility of their respective departments and

shall cooperate with the Task Force in jointly seeking funds from federal, public, or private initiatives, grant programs, or donors.

(b) Terms, Vacancies. – The members of the Task Force appointed by the Governor shall have a term of office of four years and shall serve until their successors are appointed and qualified. An appointment to fill a vacancy shall be for the unexpired balance of the term. The remaining members of the Task Force shall serve at the pleasure of the appointing authority.

(c) Staff. – The Departments of Administration, Commerce, Environment and Natural Resources, Health and Human Services, and Transportation shall provide clerical and professional staff support to the Task Force.

(d) Compensation. – The public members of the Task Force shall receive per diem and necessary travel and subsistence expenses payable to members of State boards and agencies as set forth by G.S. 138-5 and G.S. 138-6, respectively.

(e) Sunset. – This Part expires June 30, 2021.

"**§ 143B-344.37. North Carolina Sustainable Communities Task Force – reports.**

(a) Beginning in 2011, the Task Force shall report to the Governor, the House and Senate Commerce Committees, and the Joint Legislative Commission on Governmental Operations no later than October 1 each year. The report shall include the following elements:

(1) Policy recommendations and suggested legislation.

(2) Funding applied for and received in the prior fiscal year.

(3) Population, employment, building permit, and related socioeconomic data for each metro region of the State, including 25-year projections of population and employment and any other demographic trends the Task Force finds relevant, with commentary on any changing trends in the data that might affect planning for sustainable development and infrastructure. Where possible, the Task Force shall use data already collected by the State Demographer, the United States Census Bureau, and any other state or federal agency.

(4) An inventory of State policies and programs that influence positively or negatively the ability to develop sustainable communities.

(5) An overview of all State funding initiatives (including State-allocated federal funding initiatives) used to support housing, infrastructure, water quality, and land preservation, including, at a minimum, the following:

a. The Clean Water Management Trust Fund.

b. The Parks and Recreation Trust Fund.

c. The Agriculture Development and Farmland Preservation Trust Fund.

d. The Natural Heritage Trust Fund.

e. The Highway Fund and the Highway Trust Fund.

f. The Congestion Relief and Intermodal Transportation 21st Century Fund.

g. The North Carolina Main Street Program and the Main Street Solutions Fund.

h. The Housing Trust Fund and the low-income housing tax credit funds administered by the Housing Finance Agency.

i. Funds from the Public School Building Capital Fund used by counties for the purchase of land for public school buildings.

j. The tax credits for renewable energy property, historic rehabilitation, and mill rehabilitation set forth in Chapter 105 of the General Statutes.

The overview should include the current funding level, changes in funding over the previous fiscal year, and how the funding initiative has contributed

to sustainable development, or, in the case of a tax credit, the number and geographical distribution of taxpayers taking the credit, the amount of credits claimed, and how the credit has contributed to sustainable development.

(b) For purposes of this section, "metro region of the State" includes the following Statistical Areas defined by the United States Census Bureau:

(1) The Research Triangle region (made up of the Durham-Chapel Hill and the Raleigh-Cary Metropolitan Statistical Areas).

(2) The North Carolina portion of the Charlotte-Gastonia-Concord Metropolitan Statistical Area.

(3) The Greensboro-Winston-Salem-High Point Combined Statistical Area.

(4) The Asheville Metropolitan Statistical Area.

(5) The Hickory-Lenoir-Morganton Metropolitan Statistical Area.

(6) The Fayetteville Metropolitan Statistical Area.

(7) The Wilmington Metropolitan Statistical Area.

(8) The Greenville Metropolitan Statistical Area.

(9) The Jacksonville Metropolitan Statistical Area.

(10) The Rocky Mount Metropolitan Statistical Area.

(11) The Goldsboro Metropolitan Statistical Area.

(12) Any other Metropolitan Statistical Area that includes counties of the State and that has a population of 100,000 or more within the State."

SECTION 13.5.(b) G.S. 120-123 is amended by adding a new subdivision to read:

"(79) The North Carolina Sustainable Communities Task Force, as established in Article 7 of Chapter 143B of the General Statutes."

SECTION 13.5.(c) Grant Funding for Regional Sustainable Development Partnerships. – The Task Force shall, from funds available, provide a grants program for regional bodies, cities, or counties within regions that comply with the following requirements:

(1) The regional body, city, or county is a part of a regional sustainable development partnership covering any of the metro regions identified in G.S. 143B-344.37(b), as enacted by subsection (a) of this section. This partnership may include any Metropolitan Planning Organizations, Regional Planning Organizations, and regional transit agencies in existence in the region, along with representatives of the Departments of Commerce, Transportation, and Environment and Natural Resources.

(2) The partnership has submitted a workplan to the North Carolina Sustainable Communities Task Force showing the activities to be funded and the public information process through which activities are selected and prioritized.

(3) All members of the partnership have adopted a jointly developed memorandum of agreement describing how coordinated planning activities will be undertaken.

In awarding any grant funding, the Task Force shall utilize the common local government sustainable practices scoring system set forth in G.S. 143B-344.35, as enacted by subsection (a) of this section. In its consideration of grant applications, the Task Force may also consider any offers by a partnership to provide matching funds.

SECTION 13.5.(d) Reports. – The Departments of Commerce, Transportation, and Environment and Natural Resources shall report by October 1 each year, beginning in 2010, to the House and Senate Commerce Committees and the Joint Legislative Commission on Governmental Operations. The report shall provide information regarding each Department's progress in implementing the sustainable development principles set forth in G.S. 143B-344.34 as enacted by subsection (a) of this section.

SECTION 13.5.(e) Staffing. – The Department of Environment and Natural Resources shall transfer the vacant District Planner position in the Division of Coastal Management to the Task Force and shall fill the position in a timely manner in order to provide support for the operations and activities of the Task Force. For administrative purposes, the Task Force shall be located in the Department's Division of Environmental Assistance and Outreach, and the Division will also provide appropriate administrative and clerical support for the activities of the Task Force.

DAM SAFETY FEE

SECTION 13.6.(a) A one-time Dam Evaluation Fee of one thousand one hundred dollars ($1,100) per equivalent dam unit shall be paid to the Department of Environment and Natural Resources by electric utility companies in a lump sum payment based on the number of dams owned by each company that fall under the jurisdiction of the Part 3 of Article 21 of Chapter 143 of the General Statutes. Fees collected pursuant to this section shall be used to support one time-limited engineering position and operating funds necessary to perform the evaluation and integration of regulated power plant dams into the Department's dam safety inventory program. These fees shall remain available to the Department and shall not revert until the evaluation and integration of regulated power plants is complete.

SECTION 13.6.(b) This section becomes effective October 1, 2010.

LITTER REDUCTION FROM DRIVE-THROUGH RESTAURANTS

SECTION 13.7.(a) G.S. 130A-309.06(a) is amended by adding a new subdivision to read:

"**§ 130A-309.06. Additional powers and duties of the Department.**

(a) In addition to other powers and duties set forth in this Part, the Department shall:

...

(15) Require that all restaurants selling food or beverages from a drive-through window provide receptacles for disposal of recyclable materials or solid waste that might otherwise end up as litter on and adjacent to roads and highways of the State. The receptacles shall be accessible to customers in vehicles who purchase food or beverages from the drive-through window. Nothing in this subdivision shall require any restaurant providing receptacles for solid waste and recyclable materials to accept quantities of those materials that are greater than the capacity of a reasonably provided and maintained receptacle.

...."

SECTION 13.7.(b) G.S. 130A-22(a) reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day for a violation involving a voluntary remedial

action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars ($100.00) for a first violation; two hundred dollars ($200.00) for a second violation within any 12-month period; and five hundred dollars ($500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter or of any rule adopted pursuant to G.S. 130A-309.06(a)(15). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

...."

INCREASE HAZARDOUS WASTE FEES

SECTION 13.8. G.S. 130A-294.1(f) reads as rewritten:

"(f) A person who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of one hundred ~~twenty-five dollars ($125.00).~~seventy dollars ($170.00)."

INCREASE ADMINISTRATIVE CAP FOR INACTIVE HAZARDOUS WASTE SITES PROGRAM

SECTION 13.9. G.S. 130A-295.9(1) reads as rewritten:

"**§ 130A-295.9. Solid waste disposal tax; use of proceeds.**

It is the intent that the proceeds of the solid waste disposal tax imposed by Article 5G of Chapter 105 of the General Statutes shall be used only for the following purposes:

(1) Funds credited pursuant to G.S. 105-187.63(1) to the Inactive Hazardous Sites Cleanup Fund shall be used by the Department of Environment and Natural Resources to fund the assessment and remediation of pre-1983 landfills, except up to ~~seven percent (7%)~~thirteen percent (13%) of the funds credited under this subdivision may be used to fund administrative expenses related to the assessment and remediation of pre-1983 landfills and other inactive hazardous waste sites."

STRENGTHEN PLASTIC BAG RECYCLING

SECTION 13.10.(a) G.S. 130A-309.121 reads as rewritten:

"**§ 130A-309.121. Definitions.**

As used in this Part, the following definitions apply:

(1) Plastic bag. – A carryout bag composed primarily of thermoplastic synthetic polymeric material, which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.

(2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in G.S. 105-164.3, to consumers.

(2a) Recycled content. – Content that is either postconsumer, postindustrial, or a mix of postconsumer and postindustrial.

(3) Recycled paper bag. – A paper bag that meets all of the following requirements:

a. The bag is manufactured from one hundred percent (100%) recycled content.~~content, including postconsumer content, postindustrial content, or a mix of postconsumer and postindustrial content.~~

b. The bag displays the words "made from recycled material" and "recyclable."

~~(4) Retail Chain. – Five or more stores located within the State that are engaged in the same general field of business and (i) conduct business under the same business name or (ii) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.~~

(5) Retailer. – A person who offers goods for sale in this State to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods for free or for a nominal charge.~~goods and (i) has more than 5,000 square feet of retail or wholesale space or (ii) is one of a retail chain.~~

(6) Reusable bag. – ~~A durable plastic bag with handles that is~~ A bag with handles that is specifically designed and manufactured for multiple reuse and is made of one of the following materials: ~~at least 2.25 mils thick~~

a. Nonwoven polypropylene or other plastic material with a minimum weight of 80 grams per square meter. ~~and is specifically designed and manufactured for multiple reuse or a bag made of~~

b. ~~cloth~~ Cloth or other machine washable ~~fabric with handles.~~fabric."

SECTION 13.10.(b) From funds available to the Department of Environment and Natural Resources, the Division of Waste Management and the Division of Environmental Assistance and Outreach shall monitor plastic bag use reduction resulting from the implementation of Part 2G of Article 9 of Chapter 130A of the General Statutes and shall report to the Environmental Review Commission on or before January 15, 2012, on the impacts the ban enacted by that Part has had on plastic bag litter in coastal waterways adjacent to areas where that Part applies.

SECTION 13.10.(c) Subsection (a) of this section becomes effective January 1, 2011.

PARKS AND RECREATION TRUST FUND/AUTHORITY TO CONSIDER OPERATING EXPENSES

SECTION 13.11. G.S. 113-44.15 reads as rewritten:

"**§ 113-44.15. Parks and Recreation Trust Fund.**

(a) Fund Created. – There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust Fund, monies credited to the Trust Fund pursuant to G.S. 105-228.30(b), and other monies appropriated to the Trust Fund by the General Assembly. Investment earnings credited to the assets of the Fund shall become part of the Fund.

(b) Use. – Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition, and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes.

(2) Thirty percent (30%) to provide matching funds to local governmental units or public authorities as defined in G.S. 159-7 on a dollar-for-dollar basis for local park and recreation purposes. The appraised value of land that is donated to a local government unit or public authority may be applied to the matching requirement of this subdivision. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land

and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

(b1) Geographic Distribution. – In allocating funds in the Trust Fund under this section, the North Carolina Parks and Recreation Authority shall make geographic distribution across the State to the extent practicable.

(b2) Administrative Expenses. – Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects, acquiring land, and administration of local grants programs.

(b3) Operating Expenses for State Parks System Allocations. – In allocating funds in the Trust Fund under subdivision (1) of subsection (b) of this section, the North Carolina Parks and Recreation Authority shall consider the operating expenses associated with each capital project, repair and renovation project, and each land acquisition. In considering the operating expenses, the North Carolina Parks and Recreation Authority shall determine both:

(1) The minimal anticipated operating expenses, which are determined by the minimum staff and other operating expenses needed to maintain the project.

(2) The optimal anticipated operating budget, which is determined by the level of staff and other operating expenses required to achieve a more satisfactory level of operation under the project.

(c) Reports. – The North Carolina Parks and Recreation Authority shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on allocations from the Trust Fund from the prior fiscal year. For funds allocated from the Trust Fund under subdivision (b1) of this section, this report shall include the operating expenses determined under subdivisions (1) and (2) of subsection (b3) of this section.

..."

RECLASSIFY SEVEN VACANT POSITIONS IN THE DIVISION OF PARKS AND RECREATION

SECTION 13.12. The Division of Parks and Recreation of the Department of Environment and Natural Resources shall reclassify seven vacant positions within the Division and shall fill these reclassified positions in a timely manner in order to provide support for new or expanding parks within the State Parks System, as defined in G.S. 113-44.9.

STATE PARKS SYSTEM PLAN

SECTION 13.13. G.S. 113-44.11 is amended by adding a new subsection to read:

"(d) No later than October 1 of each year, the Department shall submit electronically the State Parks System Plan to the Environmental Review Commission, the Senate and the House of Representatives Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division. Concurrently, the Department shall submit a summary of each change to the Plan that was made during the previous fiscal year."

NO NEW FEES FOR PARKING IN STATE PARKS

SECTION 13.14. Notwithstanding any provision to the contrary, the funds appropriated to the Department of Environment and Natural Resources for State Parks for the 2010-2011 fiscal year shall not be reduced or replaced with fees for parking at State Parks, unless these fees were charged prior to the 2010-2011 fiscal year. No fees shall be charged and

no fees shall be collected for parking in a State Park during the 2010-2011 fiscal year, unless these fees were charged prior to the 2010-2011 fiscal year.

AUTHORITY FOR THE DEPARTMENT OF REVENUE TO SHARE INFORMATION WITH DENR

SECTION 13.15. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(40) To furnish the Division of Forest Resources of the Department of Environment and Natural Resources pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Secretary of Environment and Natural Resources is able to comply with G.S. 113A-193 under the Primary Forest Product Assessment Act."

DIVISION OF MARINE FISHERIES AND DIVISION OF FOREST RESOURCES AIRCRAFT MAINTENANCE

SECTION 13.16.(a) The Division of Marine Fisheries of the Department of Environment and Natural Resources shall use mechanics employed by the Division of Forest Resources of the Department of Environment and Natural Resources for the purpose of performing aircraft maintenance for all aircraft of the Division of Marine Fisheries except for a particular instance when this would be impracticable.

SECTION 13.16.(b) The Division of Forest Resources of the Department of Environment and Natural Resources shall perform aircraft maintenance using its mechanics for all aircraft of the Division of Marine Fisheries, except for a particular instance when this would be impracticable. The Division of Forest Resources shall develop a process to establish priorities for the aviation maintenance needs of all the aircraft in both the Division of Forest Resources and the Division of Marine Fisheries.

PURCHASE OF COMPUTER SOFTWARE BY DENR FOR DENR AIRCRAFT FLIGHTS AND MAINTENANCE RECORDKEEPING

SECTION 13.17. The Department of Environment and Natural Resources shall purchase computer software to be used to establish and maintain a record of the flights and the maintenance of aircraft of the Department of Environment and Natural Resources. For the purchase under this section, the Department of Environment and Natural Resources shall use funds realized from the sale of aircraft by the divisions within the department that operate aircraft. The Department of Environment and Natural Resources shall work with the Division of Marine Fisheries, the Division of Forest Resources, and the Aviation Division of the Department of Transportation to develop the specifications for this software system and to evaluate the best product available to accomplish the purpose set forth in this section. The Department should evaluate all available options, including the purchase of a commercially available system and the purchase of a license to use a software system that is currently used by another State agency. The purchase under this section is subject to all State laws and rules regarding the procurement of distributed information technology assets, as defined in G.S. 147-33.81.

REPORT ON DENR AVIATION ACTIVITIES

SECTION 13.18.(a) No later than October 1, 2010, the Department of Environment and Natural Resources shall submit a report to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division. The report shall:

(1) Describe the uses of the State aircraft fleet within the control of either the Division of Forest Resources of the Department of Environment and Natural Resources or the Division of Marine Fisheries of the Department of Environment and Natural Resources; and

(2) Describe the progress of the Department of Environment and Natural Resources in implementing the eight management practices that were recommended by the Program Evaluation Division of the General Assembly in its report entitled "Selling 25 Underutilized Aircraft May Yield Up to $8.1 Million and Save $1.5 Million Annually" (Report 2010-04), based upon its study of the State's aircraft fleets, as authorized by Section 14.6 of S.L. 2009-451.

SECTION 13.18.(b) The Department of Environment and Natural Resources shall include in its report under subsection (a) of this section a summary of the Conklin & de Decker report that is due to be submitted to the Division of Forest Resources in August 2010, including any recommendations included in the Conklin & de Decker report and a description of the Department's plan to implement the Conklin & de Decker report recommendations.

FISHERY RESOURCE GRANT FUNDS TO BE USED FOR AT-SEA OBSERVER PROGRAM

SECTION 13.19.(a) Of the funds appropriated to the Department of Environment and Natural Resources for the Fishery Resource Grant Program for the 2010-2011 fiscal year, the sum of three hundred thousand dollars ($300,000) shall be used by the Division of Marine Fisheries to develop and establish the At-Sea Observer Program. Establishing and funding the At-Sea Observer Program is necessary to meet federal requirements to monitor gill net fisheries statewide and record sea turtle and other endangered and threatened species interactions.

SECTION 13.19.(b) The funds allocated under subsection (a) of this section shall be used to establish and support three Marine Fisheries Technician II positions to provide at-sea-observer coverage. In establishing the positions under this section, it is the intent of the General Assembly to enable gill net fishing to continue in North Carolina and to enhance the ability of the Division of Marine Fisheries to collect and analyze data necessary to determine the health of fish stock, such as measures of spawning stock biomass, mortality, recruitment, and sustainable harvest levels. Actions recommended in Fishery Management Plans, which are developed in accordance with G.S. 113-182.1 to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries, rely upon these data.

GRASSROOTS SCIENCE PROGRAM

SECTION 13.20. Section 13.7.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 13.7.(a)** Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million four hundred eleven thousand seven hundred thirteen dollars ($3,411,713) for the 2009-2010 fiscal year and the sum of ~~three million four hundred eleven thousand seven hundred thirteen dollars ($3,411,713)~~three million two hundred forty-one thousand one hundred twenty-seven dollars ($3,241,127) for the 2010-2011 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2009-2010	2010-2011
Aurora Fossil Museum	$57,875	~~$57,875~~54,981
Cape Fear Museum	$157,787	~~$157,787~~149,898
Carolina Raptor Center	$109,931	~~$109,931~~104,434
Catawba Science Center	$143,429	~~$143,429~~136,258
Colburn Earth Science Museum, Inc.	$73,054	~~$73,054~~69,401
Core Sound Waterfowl Museum	$49,000	~~$49,000~~46,550
Discovery Place	$649,608	~~$649,608~~617,128
Eastern NC Regional Science Center	$49,000	~~$49,000~~46,550
Fascinate-U	$79,451	~~$79,451~~75,478
Granville County Museum Commission, Inc.–Harris Gallery	$55,294	~~$55,294~~ 52,529
Greensboro Children's Museum	$132,374	~~$132,374~~ 125,755
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$152,499	~~$152,499~~ 144,874
Highlands Nature Center	$77,683	~~$77,683~~ 73,799
Imagination Station	$84,313	~~$84,313~~ 80,097
The Iredell Museums, Inc.	$60,080	~~$60,080~~ 57,076
Kidsenses	$79,656	~~$79,656~~ 75,673
Museum of Coastal Carolina	$76,460	~~$76,460~~ 72,637
The Natural Science Center of Greensboro, Inc.	$182,627	~~$182,627~~ 173,496
North Carolina Museum of Life and Science	$372,229	~~$372,229~~ 353,618
Pisgah Astronomical Research Institute	$49,000	~~$49,000~~ 46,550
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	$49,000	~~$49,000~~ 46,550
Rocky Mount Children's Museum	$70,809	~~$70,809~~ 67,269
Schiele Museum of Natural History and Planetarium, Inc.	$224,956	~~$224,956~~ 213,708
Sci Works Science Center and Environmental Park of Forsyth County	$143,569	~~$143,569~~ 136,390
Sylvan Heights Waterfowl Park and Eco-Center	$49,000	~~$49,000~~ 46,550
Western North Carolina Nature Center	$110,621	~~$110,621~~ 105,090
Wilmington Children's Museum	$72,408	~~$72,408~~ 68,788
Total	$3,411,713	~~$3,411,713~~ 3,241,127"

PART XIV. DEPARTMENT OF COMMERCE

ONE NORTH CAROLINA FUND

SECTION 14.1. Section 14.1 of S.L. 2009-451 reads as rewritten:

"**SECTION 14.1.** Of the funds appropriated in this act to the One North Carolina Fund for the ~~2009-2010~~2010-2011 fiscal year, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the ~~2009-2010~~2010-2011 fiscal year."

NER BLOCK GRANTS

SECTION 14.2.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2011, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT		
01. State Administration	$	1,000,000
02. Scattered Site Housing		16,500,000
03. Economic Development		7,210,000
04. Small Business/Entrepreneurship		3,000,000
05. NC Catalyst		8,240,000
06. State Technical Assistance		450,000
07. Infrastructure		8,000,000
08. Capacity Building		600,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2010 Program Year	$	45,000,000

SECTION 14.2.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 14.2.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 14.2.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; up to sixteen million five hundred thousand dollars ($16,500,000) may be used for Scattered Site Housing; up to seven million two hundred ten thousand dollars ($7,210,000) may be used for Economic Development; up to three million dollars ($3,000,000) may be used for Small Business/Entrepreneurship; not less than eight million two hundred forty thousand dollars ($8,240,000) shall be used for NC Catalyst; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to eight million dollars ($8,000,000) may be used for Infrastructure; six hundred thousand dollars ($600,000) may be used for Capacity Building. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 14.2.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 14.2.(f) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

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

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

SECTION 14.2.(g) By September 1, 2010, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year.

STATE AGENCIES AND INSTITUTIONS/GREATER ENERGY EFFICIENCY REPORTING AND COMPLIANCE

SECTION 14.3. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of the Department; State agencies and State institutions of higher learning.**

(a) The Department of Commerce through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility ~~use.~~use, and that addresses any findings or recommendations resulting from the energy audit required by subsection (b1) of this section. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan annually and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office an annual written report of utility consumption and costs.

...

(b2) The Department of Administration shall submit a report of the energy audit required by subsection (b1) of this section to the affected State agency or State institution of higher learning and to the State Energy Office. The State Energy Office shall review each audit and, in consultation with the affected State agency or State institution of higher learning, incorporate

the audit findings and recommendations into the management plan required by subsection (a) of this section.

...

(j) The State Energy Office shall submit a report by September 1 of each year to the Joint Legislative Commission on Governmental Operations describing the comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning required by subsection (a) of this section. The report shall also contain the following:

(1) A comprehensive overview of how State agencies and State institutions of higher learning are managing energy, water, and other utility use and achieving efficiency gains.

(2) Any new measures that could be taken by State agencies and State institutions of higher learning to achieve greater efficiency gains, including any changes in general law that might be needed.

(3) A summary of the State agency and State institutions of higher learning management plans required by subsection (a) of this section and the energy audits required by subsection (b1) of this section.

(4) A list of the State agencies and institutions of higher learning that did and did not submit management plans required by subsection (a) of this section and a list of the State agencies and State institutions of higher learning that received an energy audit.

(5) Any recommendations on how management plans can be better managed and implemented."

LOCAL WORKFORCE DEVELOPMENT BOARDS/CONSUMER CHOICE REQUIREMENTS

SECTION 14.4. G.S. 143B-438.11(a) is amended by adding the following new subdivision to read:

"**§ 143B-438.11. Local Workforce Development Boards.**

(a) Duties. – Local Workforce Development Boards shall have the following powers and duties:

...

(8) To provide training services in a manner that maximizes consumer choice in the selection of an eligible provider of training services. Each local workforce development board shall ensure that consumer choice is properly maintained in the one-stop centers and shall not discriminate against any eligible provider. Each local workforce development board, through the one-stop centers, shall make available: (i) the State list of eligible providers of training services with a description of the programs through which the providers may offer the training services and the information identifying eligible providers of on-the-job training and customized training; and (ii) the performance information and performance cost information relating to eligible providers of training services and eligible providers of on-the-job training and customized training."

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 14.5. Section 14.4 of S.L. 2009-451 reads as rewritten:

"**SECTION 14.4.(a)** Funds appropriated to the Department of Commerce for the ~~2009-2010~~2010-2011 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of ~~June 30, 2009,~~June 30, 2010, shall not revert to the General Fund on ~~June 30, 2009,~~June 30, 2010, but shall remain available to the Department to be expended by

the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

"~~**SECTION 14.4.(b)** Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for securing adequate channel maintenance of the Oregon Inlet and for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.~~

"**SECTION 14.4.(c)** This section becomes effective ~~June 30, 2009.~~June 30, 2010."

CONSOLIDATE PASSENGER AIRCRAFT

SECTION 14.6.(a) The Executive Aircraft Division of the Department of Commerce is transferred to the Division of Aviation of the Department of Transportation. This transfer shall have all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 14.6.(b) G.S. 143B-437.011 is repealed.

SECTION 14.6.(c) Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-102.20. Use of aircraft managed by the Department of Transportation.**

The use of aircraft for economic development purposes shall take precedence over all other uses of the aircraft managed by the Department of Transportation. The Department of Transportation shall annually review the rates charged for the use of aircraft and shall adjust the rates, as necessary, to account for upgraded aircraft and inflationary increases in operating costs, including jet fuel prices. If an aircraft is not being used for economic development purposes, the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is traveling on State business. If an aircraft is used to attend athletic events or for any other purpose related to collegiate athletics, the rate charged shall be equal to the direct cost of operating the aircraft as established by the aircraft's manufacturer, adjusted for inflation."

FEE TO ADVERTISE IN WELCOME CENTERS

SECTION 14.7.(a) G.S. 143B-421.3 reads as rewritten:

"**§ 143B-421.3. Consultation required for welcome and visitor ~~centers.~~centers; advertising fees.**

(a) Consultation. – The Department of Commerce and the Department of Transportation shall consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center or visitor center buildings.

(b) Advertising. – An annual fee is imposed on a person who places or displays advertising materials in a welcome center building. The fee imposed by this subsection does not apply to governmental or public sector entities or to advertising materials for an event or amusement that will be held 30 or fewer calendar days from the date the advertising material is placed or displayed in the welcome center building. The annual fee shall be as follows:

(1) For advertising materials where the width is not more than four inches and the length is not more than nine inches: one hundred dollars ($100.00) per year per welcome center building.

(2) For advertising materials where the width is more than four inches or the length is more than nine inches: two hundred dollars ($200.00) per year per welcome center building."

SECTION 14.7.(b) This section becomes effective the later of July 1, 2010, or the date upon which this act becomes law, and applies to advertising materials placed or displayed in welcome center buildings on or after that date.

AMEND JDIG REPORTING REQUIREMENTS

SECTION 14.8. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

...

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The Committee shall submit the report electronically to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division. The report shall include the following:

...

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each grant awarded during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year. The Committee shall submit the report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than ~~March 1~~April 1 of each year."

INDUSTRIAL DEVELOPMENT FUND/REPORTING REQUIREMENTS

SECTION 14.9. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

...

(c) Reports. – The Department of Commerce shall report ~~annually to the General Assembly~~ to the Joint Legislative Commission on Governmental Operations on September 1 of each year concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report ~~annually to the General Assembly~~to the Joint Legislative Commission on Governmental Operations on September 1 of each year concerning the payments made from the Utility Account and the impact of the payments on job creation in the

State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

...."

WINE AND GRAPE GROWERS COUNCIL/REPORTING REQUIREMENT

SECTION 14.10. G.S. 143B-437.90 is amended by adding a new subdivision to read:

"**§ 143B-437.90. North Carolina Wine and Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Wine and Grape Growers Council of the Department of Commerce. The North Carolina Wine and Grape Growers Council shall have the following powers and duties:

...

(14) By September 1 of each year, to report to the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the activities of the Council, the status of the wine and grape industry in North Carolina and the United States, progress on the development and implementation of the State Viticulture Plan, and any contracts or agreements entered into by the Council for research, education, or marketing."

LAB-TO-MARKET FUNDS/COMMERCIALIZATION

SECTION 14.11. Of the funds appropriated to the Department of Commerce Lab-to-Market/Commercialization, the sum of ten million dollars ($10,000,000) shall be used to support the Armed Forces Institute for Regenerative Medicine.

PROMOTE NORTH CAROLINA DISTILLED SPIRITS

SECTION 14.12.(a) G.S. 18B-800 is amended by adding a new subsection to read:

"(e) Each ABC store shall display spirits which are distilled in North Carolina in an area dedicated solely to North Carolina products."

SECTION 14.12.(b) Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1105.2. Spirituous liquor tasting at distilleries.**

The holder of any distillery permit authorized by G.S. 18B-1105 may conduct a consumer tasting event at the distillery subject to the following conditions:

(1) Any person pouring wine at a wine tasting shall be an employee of the distillery and at least 21 years of age.

(2) The person pouring the spirituous liquor shall be responsible for checking the identification of patrons being served at the tasting.

(3) Each consumer is limited to tasting samples which total no more than 1.5 ounces of spirituous liquor in any calendar day.

(4) The consumer shall not be charged for any spirituous liquor tasting sample.

(5) The spirituous liquor used in the consumer tasting event shall be distilled at the distillery where the event is being held by the permit holder conducting the event.

(6) A consumer tasting event shall not be allowed when the sale of spirituous liquor is otherwise prohibited.

(7) Tasting samples are not to be offered to, or allowed to be consumed by, any person under the legal age for consuming spirituous liquor.

(8) A consumer tasting event may not be advertised by the permit holder in any type of media, including, but not limited to, print, radio, television, Internet, and signage.

The distillery permit holder shall be solely liable for any violations of this Chapter occurring in connection with the tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of spirituous liquor and that the tastings are not used by industry members for unlawful inducements to retail permit holders."

SECTION 14.12.(c) This section becomes effective October 1, 2010.

EMPLOYMENT SECURITY COMMISSION FUNDS

SECTION 14.13. Section 14.17 of S.L. 2009-451 reads as rewritten:

"**SECTION 14.17.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the ~~2009-2010~~2010-2011 fiscal year shall not exceed two million five hundred thousand dollars ($2,500,000).

"**SECTION 14.17.(b)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars ($20,000,000) for the ~~2009-2010~~2010-2011 fiscal year to be used for the following purposes:

(1) Nineteen million five hundred thousand dollars ($19,500,000) for the operation and support of local Employment Security Commission offices.

(2) Two hundred thousand dollars ($200,000) ~~for the State Occupational Information Coordinating Committee to develop and operate an interagency~~to operate the system ~~to track~~that tracks former participants in State education and training programs.

(3) Three hundred thousand dollars ($300,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

"**SECTION 14.17.(c)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed ~~one million dollars ($1,000,000)~~five hundred thousand dollars ($500,000) for the ~~2009-2010~~2010-2011 fiscal year to fund State initiatives not currently funded through federal grants.

"**SECTION 14.17.(d)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed ~~one million five hundred thousand dollars ($1,500,000)~~one million two hundred thousand dollars ($1,200,000) for the ~~2009-2010~~2010-2011 fiscal year to fund a system upgrade to the Common Follow-Up Management Information System.

"~~**SECTION 14.17.(e)** The Employment Security Commission of North Carolina may use funds in the Employment Security Commission Reserve Fund to contract with nonprofit organizations to provide dislocated workers with assistance in obtaining health care benefits, receiving vocational training, and securing employment.~~

"**SECTION 14.17.(f)** There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of one million dollars ($1,000,000) for the 2010-2011 fiscal year to fund the 'Tar Heel Works Program' which

provides enhanced skills training opportunities to recipients of unemployment insurance benefits.

"**SECTION 14.17.(g)** Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act and pursuant to Title II of P.L. 111-5, the Assistance for Unemployed Workers and Struggling Families Act, the Employment Security Commission of North Carolina may expend the sum of two hundred five million sixty-three thousand five hundred fifty-two dollars ($205,063,552) as follows: (i) one hundred fifty million dollars ($150,000,000) shall be used to design and build the integrated unemployment insurance benefit and tax accounting system; and (ii) the remaining funds shall be used for the operation of the unemployment insurance program."

SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 14.14. Section 14.26 of S.L. 2009-451 reads as rewritten:

"**SECTION 14.26.(a)** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after ~~July 1, 2009.~~July 1, 2010.

SECTION 14.26.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the ~~2009-2010~~2010-2011 fiscal year is two hundred thousand dollars ($200,000).

SECTION 14.26.(c) This section becomes effective ~~July 1, 2009.~~July 1, 2010."

REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS ALLOCATIONS

SECTION 14.15.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

SECTION 14.15.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and

(2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of two hundred thirty thousand three hundred twenty-five dollars and thirty-three cents ($230,325.33) in the 2010-2011 fiscal year, which sum represents: (i) the total interest earnings in the prior fiscal year on the estimated balance of the seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five

hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of two hundred thirty thousand three hundred twenty-five dollars and thirty-three cents ($230,325.33) in the 2010-2011 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

SECTION 14.15.(c) No more than one hundred twenty thousand dollars ($120,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

SECTION 14.15.(d) The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State.

E-NC AUTHORITY/REPORTING REQUIREMENT

SECTION 14.16. G.S. 143B-437.47 reads as rewritten:

"**§ 143B-437.47. (This part has a delayed repeal date. See notes.) Powers, duties, and goals of the Authority.**

...

(e) Reports. – ~~The~~ By September 1 of each year, the Authority shall submit ~~quarterly reports~~a report to the Governor, the Joint Legislative Oversight Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The ~~reports~~ report shall summarize the Authority's activities during the ~~quarter~~ prior State fiscal year and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission."

DEFENSE AND SECURITY TECHNOLOGY ACCELERATOR/REPORTING REQUIREMENT

SECTION 14.17. By September 1, 2010, and September 1, 2011, the Defense and Security Technology Accelerator shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

COUNCIL OF GOVERNMENT FUNDS

SECTION 14.18. Section 14.21.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 14.21.(a)** Of the funds appropriated in this act to the Department of Commerce, the sum of four hundred twenty-five thousand dollars ($425,000) for the 2009-2010 fiscal year and the sum of ~~four hundred twenty-five thousand dollars ($425,000)~~four hundred three thousand seven hundred fifty dollars ($403,750) for the 2010-2011 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to twenty-five thousand dollars ($25,000) for the 2009-2010 and the 2010-2011 fiscal years."

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 14.19. Section 14.27.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 14.27.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million six hundred two thousand four hundred thirty-six dollars ($4,602,436) for the 2009-2010 fiscal year and the sum of ~~four million five hundred twenty-seven thousand four hundred thirty-six dollars ($4,527,436)~~ three million nine hundred eighty-one thousand eight hundred sixty-four dollars ($3,981,864) for the 2010-2011 fiscal year shall be allocated as follows:

	2009-2010	2010-2011
Center Administration, Technical Assistance, & Oversight	$1,555,000	~~$1,523,000~~ $1,446,850
Research and Demonstration Grants	$351,000	~~$344,000~~ $326,800
Institute for Rural Entrepreneurship	$136,000	~~$134,000~~ $127,300
Community Development Grants	$987,436	~~$987,436~~ $938,064
Microenterprise Loan Program	$185,000	~~$182,000~~ $172,900
Water/Sewer/Business Development Matching Grants	$840,000	~~$821,000~~ $779,950
Statewide Water/Sewer Database	$ 95,000	~~$93,000~~ $88,350
Agricultural Advancement Consortium	$110,000	~~$107,000~~ $101,650"

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 14.20. Section 14.28 of S.L. 2009-451 reads as rewritten:

"**SECTION 14.28.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million three hundred five thousand dollars ($19,305,000) for the 2009-2010 fiscal year and the sum of ~~nineteen million three hundred five thousand dollars ($19,305,000)~~eighteen million three hundred thirty-nine thousand seven hundred fifty dollars ($18,339,750) for the 2010-2011 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least ~~fifteen million dollars ($15,000,000)~~fourteen million two hundred fifty thousand dollars ($14,250,000) of the funds appropriated in this act for ~~each year of the biennium~~ the 2010-2011 fiscal year must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

"**SECTION 14.28.(b)** The Rural Center may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

"**SECTION 14.28.(c)** ~~During each year of the 2009-2011 biennium,~~For the 2010-2011 fiscal year, the Rural Center may use up to ~~three hundred eighty-five thousand dollars ($385,000)~~ three hundred sixty-five thousand seven hundred fifty dollars ($365,750) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

"**SECTION 14.28.(d)** Of the funds appropriated in subsection (a) of this section to the Rural Center for the 2009-2010 fiscal year, the sum of one million five hundred forty-four thousand four hundred dollars ($1,544,400) shall be transferred to the Department of Environment and Natural Resources to be used to provide the State match to draw down maximum federal funds for the Clean Water State Revolving Loan Fund.

"**SECTION 14.28.(e)** By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year."

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 14.21. Section 14.30.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 14.30.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of three hundred forty-three thousand dollars ($343,000) for the 2009-2010 fiscal year and the sum of ~~three hundred thirty-six thousand dollars ($336,000)~~ three hundred nineteen thousand two hundred dollars ($319,200) for the 2010-2011 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers)."

PART XV. JUDICIAL DEPARTMENT

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 15.1. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Check Fund on June 30, 2010, for the purchase or repair of office or information technology equipment during the 2010-2011 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

DIRECT THE OFFICE OF STATE BUDGET AND MANAGEMENT TO RELEASE FUNDS

SECTION 15.2. In the event that the Office of Indigent Defense Services has more than the sum of one million dollars ($1,000,000) in unpaid fee applications received but unpaid at the end of the 2010-2011 fiscal year, the Office of State Budget and Management shall release sufficient funds from the Office of Indigent Defense Services' 2011-2012 fiscal year appropriation in the first month's allotment to allow the Office to pay outstanding obligations at the beginning of the new fiscal year.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 15.3. Section 15.12 of S.L. 2009-451 reads as rewritten:

"**SECTION 15.12.** The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million five hundred one thousand one hundred fifty dollars ($2,501,150) in appropriated funds during the 2009-2010 fiscal year and up to the sum of two million four hundred thirty-three thousand seven hundred dollars ($2,433,700) in appropriated funds during the 2010-2011 fiscal year for the expansion of existing public defender offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services, or for the creation of new public defender offices within existing public defender districts currently providing those services, by creating up to 20 new attorney positions and 10 new support staff ~~positions.~~positions during the 2009-2010 fiscal year. In addition, the Office of Indigent Defense Services may use up to the sum of one million dollars

($1,000,000) in appropriated funds to create up to 12 new attorney positions and six new support positions during the 2010-2011 fiscal year. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion."

CORRECT DEATH PENALTY LITIGATION FUNDING AMOUNT

SECTION 15.4. Section 15.3 of S.L. 2009-451 reads as rewritten:

"**SECTION 15.3.** Of the funds appropriated in this act to the Office of Indigent Defense Services for the 2009-2011 fiscal biennium, the Office may use up to the sum of three hundred seventy-six thousand one hundred twenty-five dollars ($376,125) for the 2009-2010 fiscal year and up to the sum of ~~three hundred seventy-six thousand one hundred twenty-five dollars ($376,125)~~ four hundred fifty-two thousand six hundred four dollars ($452,604) for the 2010-2011 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1 of each year in the biennium to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the activities funded by this section."

INCREASE CERTAIN COURT FEES

SECTION 15.5.(a) G.S. 7A-304(a) reads as rewritten:

"**§ 7A-304. Costs in criminal actions.**

(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~ninety-five dollars and fifty cents ($95.50)~~one hundred dollars and fifty cents ($100.50) in the district court, including cases before a magistrate, and the sum of one hundred two dollars and fifty cents ($102.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146, and the sum of ~~twenty-five dollars ($25.00)~~fifty dollars ($50.00) is payable by a defendant who fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error

or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive the fee for failure to appear. These fees shall be remitted to the State Treasurer.

...."

SECTION 15.5.(b) G.S. 7A-305 reads as rewritten:

"**§ 7A-305. Costs in civil actions.**

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ~~ninety-three dollars ($93.00)~~one hundred fifty dollars ($150.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of ~~seventy-three dollars ($73.00)~~one hundred dollars ($100.00) in the district court except that if the case is assigned to a magistrate the sum shall be fifty-five dollars ($55.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(a5) For the support of the General Court of Justice, a fee of forty dollars ($40.00) shall be assessed against a party filing a motion for summary judgment pursuant to G.S. 1A-1, Rule 56. Sums collected under this subsection shall be remitted to the State Treasurer.

...."

SECTION 15.5.(c) G.S. 7A-307(b1) reads as rewritten:

"(b1) The clerk shall assess the following miscellaneous fees:

(1)	Filing and indexing a will with no probate	
	– first page	$ 1.00
	– each additional page or fraction thereof	.25
(2)	Issuing letters to fiduciaries, per letter over five letters issued	1.00
(3)	Inventory of safe deposits of a decedent, per box, per day	15.00
(4)	Taking a deposition	10.00
(5)	Docketing and indexing a will probated in another county in the State	
	- first page	6.00
	- each additional page or fraction thereof	.25
(6)	Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same	8.00
(7)	Assignment of title	10.00"

CHILD SUPPORT FEE MODIFICATION

SECTION 15.6. G.S. 110-134 reads as rewritten:

"**§ 110-134. Filing of affidavits, agreements, and orders; fees.**

All affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an

order under either of these provisions shall be ~~four dollars ($4.00).~~in an amount equal to that provided in G.S. 7A-308(a)(18)."

EXPERT FEES

SECTION 15.7. G.S. 7A-314(d) reads as rewritten:

"(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in accordance with the rules established by the Administrative Office of the Courts. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

PROVIDE CERTAIN COUNTERCLAIM FEES IN DOMESTIC VIOLENCE ACTIONS

SECTION 15.8. G.S. 7A-305(a1) reads as rewritten:

"(a1) Costs apply to any and all additional and subsequent actions filed by amendment or counterclaim to the original action brought under Chapter 50B of the General Statutes, unless such additional and subsequent amendment or counterclaim to the action is ~~also brought under~~limited to requests for relief authorized by Chapter 50B of the General Statutes."

MODIFY FEES FOR RESUMPTION OF MAIDEN OR FORMER NAME

SECTION 15.9.(a) G.S. 50-12 reads as rewritten:

"**§ 50-12. Resumption of maiden or premarriage surname.**

(a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon application to the clerk of court of the county in which she resides or where the divorce was granted setting forth her intention to do so, change her name to any of the following:

(1) Her maiden name; or

(2) The surname of a prior deceased husband; or

(3) The surname of a prior living husband if she has children who have that husband's surname.

(a1) A man whose marriage is dissolved by decree of absolute divorce may, upon application to the clerk of court of the county in which he resides or where the divorce was granted setting forth his intention to do so, change the surname he took upon marriage to his premarriage surname.

(b) The application and fee required by subsection (e) of this section shall be ~~addressed~~ presented to the clerk of the court of the county in which such divorced person resides or where the divorce was granted, and shall set forth the full name of the former spouse of the applicant, the name of the county and state in which the divorce was granted, and the term or session of court at which such divorce was granted, and shall be signed by the woman in her full maiden name, or by the man in his full premarriage surname. The clerks of court of the several counties of the State shall record and index such applications in such manner as shall be required by the Administrative Office of the Courts.

(c) If an applicant, since the divorce, has adopted one of the surnames listed in subsection (a) or (a1) of this section, the applicant's use and adoption of that name is validated.

(d) In the complaint, or counterclaim for divorce filed by any person in this State, the person may petition the court to adopt any surname as provided by this section, and the court is authorized to incorporate in the divorce decree an order authorizing the person to adopt that surname.

(e) For support of the General Court of Justice, a fee in the amount of ten dollars ($10.00) shall be assessed against each person requesting the resumption of maiden or

premarriage surname in accordance with this section. Sums collected under this section shall be remitted to the State Treasurer."

INCREASE FEE FOR CERTAIN CASES ASSIGNED TO A MAGISTRATE

SECTION 15.10. G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(2) For support of the General Court of Justice, the sum of ninety-three dollars ($93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars ($1,000) shall be paid upon its assignment, and the sum of seventy-three dollars ($73.00) in the district court except that if the case is assigned to a magistrate the sum shall be sixty-five dollars ($65.00) for cases initiated under Article 3 of Chapter 42 of the General Statutes or fifty-five dollars ~~($55.00).~~($55.00) for all other cases assigned to a magistrate. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

INCREASE ATTORNEY APPOINTMENT FEE

SECTION 15.11. G.S. 7A-455.1 reads as rewritten:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) In every criminal case in which counsel is appointed at the trial level, the judge shall order the defendant to pay to the clerk of court an appointment fee of ~~fifty dollars ($50.00).~~ sixty dollars ($60.00). No fee shall be due unless the person is convicted.

(b) The mandatory ~~fifty-dollar ($50.00)~~ sixty-dollar ($60.00) fee may not be remitted or revoked by the court and shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation.

(c) Repealed by Session Laws 2005-250 s. 3, effective August 4, 2005.

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each attorney appointment, regardless of the number of cases to which the attorney was assigned. An additional appointment fee shall not be assessed if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of ~~forty-five dollars ($45.00)~~ fifty-five dollars ($55.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

PART XVI. DEPARTMENT OF JUSTICE

REPORTING BY MEDICAID FRAUD CRIMINAL INVESTIGATION TEAM

SECTION 16.1. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-2.5A. Report by the Medicaid Fraud Criminal Investigation Team required annually.**

By September 1 of each year, the Medicaid Fraud Criminal Investigation Team of the Department of Justice shall file a written report about its activities with the Chairs of the Appropriations Subcommittees on Justice and Public Safety and Health and Human Services of the Senate and House of Representatives and with the Fiscal Research Division of the Legislative Services Office. This report shall include the following information about the Team's activities during the previous fiscal year:

(1) The number of cases of potential Medicaid fraud reported.

(2) The number of cases of potential Medicaid fraud investigated.

(3) The number of cases in which Medicaid fraud is actually found.

(4) The total amount of funds recovered in each case in which funds were recovered.

(5) An explanation of how recovered funds were allocated, including information about any amounts allocated to (i) the federal government; (ii) the State Medical Assistance Program; (iii) the Civil Penalty and Forfeiture Fund; (iv) the Department of Justice."

PART XVII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

PROVIDE FEE SCHEDULE REQUIREMENTS FOR LAW ENFORCEMENT SUPPORT SERVICES

SECTION 17.1.(a) The General Assembly finds that a centralized evidence and DNA storage facility will provide local law enforcement agencies and clerks of court with a lower cost storage alternative, reducing or eliminating the need for local entities to provide their own storage and streamlining the evidence storage process.

SECTION 17.1.(b) G.S. 143B-475.2 is repealed.

SECTION 17.1.(c) Part 7 of Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-508.1. Fees for services provided by the Division.**

Fees shall be established and collected by the Department for all program services provided by the Law Enforcement Support Services Division, except for Department of Defense property being transferred pursuant to the National Defense Authorization Act of 1997. The fees collected are departmental receipts and are applied to the Division's costs in providing services to these entities. The fees apply to the following:

(1) A law enforcement agency that receives any services from the Division.

(2) An agency for which the Department stores evidence."

SECTION 17.1.(d) The Department of Crime Control and Public Safety, Law Enforcement Support Services Division (LESS), shall, in consultation with the Fiscal Research Division of the General Assembly, develop a fee schedule for the services provided by LESS. In developing this fee schedule, the Department shall consider the following:

(1) Fees charged in other states for similar services.

(2) Utilization rates for each of the three main program areas of LESS for the last five years.

(3) Actual workload requirements for each of the three main program areas of LESS, including the average time to complete a single transaction for each of the programs. For example, the Division shall determine, on average, how many person hours it takes to log in a piece of evidence for storage.

(4) Projected evidence storage needs for the next five years.

(5) Projected space costs and the feasibility of purchasing a permanent storage facility rather than continuing to lease space.

SECTION 17.1.(e) The fee schedule required to be developed pursuant to this section shall be reported to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Fiscal Research Division of the General Assembly not later than October 1, 2010.

SECTION 17.1.(f) The fees required by this section shall become effective July 1, 2011, and apply to program services provided on or after that date.

PART XVIII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 18.1. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2010-2011 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2010-2011 fiscal year, the amount of funds anticipated for the 2010-2011 fiscal year, and the allocation of funds by program and purpose.

REPEAL TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 18.2. Section 18.4 of S.L. 2009-451 is repealed.

PART XIX. DEPARTMENT OF CORRECTION

FEDERAL GRANT MATCHING FUNDS

SECTION 19.1. Section 19.9 of S.L. 2009-451 reads as rewritten:

"**SECTION 19.9.** Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2009-2010 fiscal year and up to the sum of one million two hundred thousand dollars ($1,200,000) during the 2010-2011 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

PLAN FOR A PILOT PROGRAM ON PRIVATIZATION OF PROBATION SERVICES

SECTION 19.2. The Department of Correction, Division of Community Corrections, shall develop a plan for implementing a pilot program on the privatization of probation services. The plan shall include a determination of what resources and policy changes are necessary to conduct a pilot program for fee-based supervision of low-risk or community-level offenders by private entities.

No pilot program shall be implemented without the prior approval of the General Assembly. The Division shall report its plan to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Fiscal Research Division by March 1, 2011.

INCREASE FEES FOR PROBATION, PAROLE, AND POST-RELEASE SUPERVISION

SECTION 19.3.(a) G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of ~~thirty dollars ($30.00)~~forty dollars ($40.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 19.3.(b) G.S. 15A-1368.4(f) reads as rewritten:

"(f) Required Supervision Fee. – The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of ~~thirty dollars ($30.00)~~forty dollars ($40.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

SECTION 19.3.(c) G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~thirty dollars ($30.00)~~forty dollars ($40.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

SECTION 19.3.(d) This section becomes effective July 1, 2010, and applies to persons placed on supervised probation, parole, or post-release prior to that date and to all persons placed on supervised probation, parole, or post-release on or after that date.

INCREASE FEE FOR COMMUNITY SERVICE PROGRAM

SECTION 19.4. G.S. 143B-262.4(b) reads as rewritten:

"(b) A fee of ~~two hundred twenty-five dollars ($225.00)~~three hundred dollars ($300.00) shall be paid by all persons who participate in the program or receive services from the program staff. Only one fee may be assessed for each sentencing transaction, even if the person is assigned to the program on more than one occasion, or while on deferred prosecution, or while serving a sentence for the offense. A sentencing transaction shall include all offenses considered and adjudicated during the same term of court. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted, regardless of whether the person is participating in the program as a condition of probation

imposed by the court or pursuant to the exercise of authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. If the person is participating in the program as a condition of parole, the fee shall be paid to the clerk of the county in which the person is released on parole. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full before the person may participate in the community service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.

(3) A person performing community service as a condition of parole may be given an extension of time to pay the fee by the Post-Release Supervision and Parole Commission. No person shall be required to pay the fee before beginning the community service unless the Commission orders the person to do so in writing.

(4) A person performing community service as ordered by a probation officer pursuant to authority delegated by G.S. 15A-1343.2 may be given an extension of time to pay the fee by the probation officer exercising the delegated authority."

PART XX. DEPARTMENT OF ADMINISTRATION

FREEZE STATE MOTOR FLEET VEHICLE ACQUISITION PROGRAM

SECTION 20.1. The Department of Administration, Motor Fleet Management, shall not acquire any vehicles during the 2010-2011 fiscal year and shall minimize any impact on Motor Fleet operations through enhanced operational efficiencies. By July 1, 2011, Motor Fleet Management shall develop and implement a plan to ensure that thirty-three percent (33%) of new vehicles purchased in subsequent fiscal years have a fuel economy for the new vehicle's model year that is in the top fifteen percent (15%) of its class of comparable automobiles.

PART XXI. OFFICE OF THE STATE AUDITOR

BATTLESHIP COMMISSION PAY FOR AUDIT

SECTION 21.1. G.S. 143B-74.1 reads as rewritten:

"**§ 143B-74.1. U.S.S. North Carolina Battleship Commission – funds.**

The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial. The operations of the Commission shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Commission shall reimburse the State Auditor the cost of any audit. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those

occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina."

STATE PORTS AUTHORITY PAY FOR AUDIT

SECTION 21.2. G.S. 143B-464 reads as rewritten:

"**§ 143B-464. Audit.**

The operations of the State Ports Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The State Ports Authority shall reimburse the State Auditor the cost of any audit."

PART XXII. DEPARTMENT OF CULTURAL RESOURCES

MODIFY TERMS OF THE 2007-2008 GRANT-IN-AID FOR FREEDOM MONUMENT

SECTION 22.1. Funds appropriated by the 2007 General Assembly as a grant-in-aid for North Carolina Freedom Monument Project, Inc., to fabricate and construct a monument that have not been used for this purpose may be used by North Carolina Freedom Monument Project, Inc., for planning and development of preconstruction stages of the monument.

PART XXIII. HOUSING FINANCE AGENCY

ALLOW CREATION OF HOUSING FINANCE CORPORATIONS TO RECEIVE FEDERAL "HARDEST HIT HOUSING MARKETS" FUNDING

SECTION 23.1.(a) Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Housing Finance Corporations.

"**§ 55-18-01. General provisions.**

A corporation may be formed under this Article for the purpose of (i) applying for and receiving federal funding from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund, administered under the Emergency Economic Stabilization Act of 2008, P.L. 110-343, as amended, and (ii) administering the federal funding in a manner consistent with the program. A corporation formed under this Article shall be subject to the provisions of this Chapter that are not in conflict with the provisions of this Article.

"**§ 55-18-02. Incorporation.**

A corporation may be incorporated under this Article only by a minimum of 13 incorporators, a majority of whom must also be members of the board of directors of the North Carolina Housing Finance Agency. The articles of incorporation may provide that only the State may own the capital stack of the corporation.

"**§ 55-18-03. Powers.**

A corporation formed under this Article shall have the following corporate powers in addition to those generally provided under this Chapter:

(1) Apply for and receive funds from the federal government from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund.

(2) Contract with the North Carolina Housing Finance Agency to carry out the program requirements of the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund.

"**§ 55-18-04. Name.**

A corporation formed under this Article shall include in its name the words "Housing Finance Corporation" but shall not use language that would confuse the corporation with the State instrumentality known as the North Carolina Housing Finance Agency. The Secretary of State shall have the power to determine whether a corporation's name causes confusion.

"**§ 55-18-05. Relationship to State.**

A corporation formed under this Article is not an agency of the State.

"**§ 55-18-06. Other requirements.**

A corporation formed under this Article shall structure and conduct itself in such a way as to meet the definition of "financial institution" under the Emergency Economic Stabilization Act of 2008, P.L. 110-343, as amended."

SECTION 23.1.(b) Chapter 55A of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Housing Finance Corporations.

"**§ 55A-18-01. General provisions.**

A corporation may be formed under this Article for the purpose of (i) applying for and receiving federal funding from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund, administered under the Emergency Economic Stabilization Act of 2008, P.L. 110-343, as amended, and (ii) administering the federal funding in a manner consistent with the program. A corporation formed under this Article shall be subject to the provisions of this Chapter that are not in conflict with the provisions of this Article.

"**§ 55A-18-02. Incorporation.**

A corporation may be incorporated under this Article only by a minimum of 13 incorporators, a majority of whom must also be members of the board of directors of the North Carolina Housing Finance Agency.

"**§ 55A-18-03. Powers.**

A corporation formed under this Article shall have the following corporate powers in addition to those generally provided under this Chapter:

(1) Apply for and receive funds from the federal government from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund.

(2) Contract with the North Carolina Housing Finance Agency to carry out the program requirements of the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund.

"**§ 55A-18-04. Name.**

A corporation formed under this Article shall include in its name the words "Housing Finance Corporation" but shall not use language that would confuse the corporation with the state instrumentality known as the North Carolina Housing Finance Agency. The Secretary of State shall have the power to determine whether a corporation's name causes confusion.

"**§ 55A-18-05. Relationship to State.**

A corporation formed under this Article is not an agency of the State.

"**§ 55A-18-06. Other requirements.**

A corporation formed under this article shall structure and conduct itself in such a way as to meet the definition of "financial institution" under the Emergency Economic Stabilization Act of 2008, P.L. 110-343, as amended."

SECTION 23.1.(c) G.S. 122A-5 is amended by adding a new subdivision to read:

"**§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

...

(28) To contract with housing finance corporations organized under Article 18 of Chapter 55 or under Article 18 of Chapter 55A of the General Statutes to carry out programs related to the funding awarded to the housing finance corporations from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, or similar fund, administered under the Emergency Economic Stabilization Act of 2008, P.L. 110-343, as amended."

PART XXIV. DEPARTMENT OF INSURANCE

REFORM INSURANCE RATE-MAKING IN NORTH CAROLINA

SECTION 24.1.(a) Effective April 1, 2011, the North Carolina Rate Bureau and the ratemaking authority of the Commissioner of Insurance are abolished. Article 36 of Chapter 58 of the General Statutes and G.S. 58-2-52, 58-36-35, 58-37-65, 58-45-50, 58-46-30, 58-48-40(c)(7), 58-48-42, and 58-62-51(c) are repealed.

SECTION 24.1.(b) Task Force Established; Purpose. – There is established the North Carolina Blue Ribbon Task Force on Insurance Rate-Making Reform. The Task Force shall develop for presentation to the 2011 General Assembly a comprehensive plan to overhaul the manner by which insurance rates are established in North Carolina to ensure greater transparency, accountability, public participation, and fairness in the insurance rate-setting process. The Rate Bureau and the Department of Insurance shall assist the Task Force, at its direction, in the development of the plan. The Task Force may also request assistance from any other source or authority it deems necessary in the development of the plan.

SECTION 24.1.(c) Task Force Membership. – Appointments to the Task Force shall be as follows:

(1) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Three members of the Senate appointed by the President Pro Tempore of the Senate.

Appointments to the Task Force shall be made no later than August 1, 2010.

SECTION 24.1.(d) Duties of the Task Force. –

(1) To replace the Rate Bureau and the Commissioner of Insurance's rate-making powers set forth in Chapter 58 of the General Statutes with a new insurance rate-making system modeled on the statutory scheme for setting of public utility rates set forth in Chapter 62 of the General Statutes, specifically including the following components:

a. An Insurance Rate Commission made up of seven Commissioners appointed by the Governor and confirmed by the General Assembly, and subject to the same standards of judicial conduct as that provided for judges in Article 30 of Chapter 7A of the General Statutes. The Commission shall be empowered to ensure that rates for insurance are just, reasonable, and are not excessive, inadequate, or unfairly discriminatory.

b. A Public Staff independent of the Commission and charged with representing the interests of insurance policyholders in rate-making proceedings before the Commission.

(2) To recommend all changes to the General Statutes necessary to effectuate the duties set out in this subsection and accomplish the purposes set forth in subsection (a) of this section.

(3) To provide estimates of the costs of implementation of its proposals under this subsection and a plan for effecting the necessary economies from the

dissolution of the Rate Bureau and the removal of rate-making hearing functions from the Department of Insurance in order to minimize the expense of the reforms proposed by the Task Force.

SECTION 24.1.(e) Chair; Meetings. – The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before September 15, 2010. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

SECTION 24.1.(f) Expenses of Members. – Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 24.1.(g) Cooperation by Government Agencies. – The Task Force may call upon any department, agency, institution, or officer of the State or of any political subdivision of the State for facilities, data, or other assistance.

SECTION 24.1.(h) Report. – The Task Force shall report its findings and recommendations for implementation of rate-making reform, including all necessary recommended legislation, by February 1, 2011, to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, the House of Representatives Committee on Insurance, the Senate Committee on Commerce, and the Legislative Drafting Division. The Task Force shall terminate upon filing its final report.

SECTION 24.1.(i) Funding. – The Legislative Services Officer shall allocate funds to carry out the duties of the Task Force.

DEPARTMENT OF INSURANCE HEALTH REFORM AUTHORITY AND POSITIONS

SECTION 24.2.(a) G.S. 58-2-40 is amended by adding a new subdivision to read:

"(10) Administer and enforce the provisions of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and the provisions of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) to the extent that the provisions apply to persons subject to the Commissioner's jurisdiction and to the extent that the provisions are not under the exclusive jurisdiction of any federal agency."

SECTION 24.2.(b) The Department shall apply for federal funds that are available through the Patient Protection and Affordable Insurance Care Act, Public Law 111-148, or the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, to support the following 13 positions within the Department to implement this section:

(1) Attorney III.
(2) Health Actuary.
(3) Examiner III.
(4) Insurance Regulatory Analysts I, II (two positions), and III.
(5) Office Assistant, and Program Assistant.
(6) Insurance Investigator.
(7) Insurance Complaint Analyst (two positions).
(8) Complaint Analyst Supervisor.

In the event that federal funds cannot be obtained by the Department for the purposes of this section, the Department shall, in consultation with the Joint Legislative Commission on Governmental Operations, utilize funds from the Insurance Regulatory Fund to support these positions.

PART XXV. OFFICE OF ADMINISTRATIVE HEARINGS

INCREASE FEES FOR FILING A CONTESTED CASE

SECTION 25.1. G.S. 150B-23.2 reads as rewritten:

"**§ 150B-23.2. Fee for filing a contested case hearing.**

(a) Filing Fee. – In every contested case where the value of the amount in controversy equals or exceeds fifty thousand dollars ($50,000) commenced in the Office of Administrative Hearings by a person ~~aggrieved,~~aggrieved or heard in the Office of Administrative Hearings pursuant to agency application under G.S. 150B-40(e), the petitioner shall pay a filing fee, and the administrative law judge shall have the authority to assess that filing fee against the losing party, in the amount of ~~one hundred twenty-five dollars ($125.00),~~five hundred dollars ($500.00) unless the Office of Administrative Hearings establishes a lesser filing fee by rule. The value of the amount in controversy, for purposes of determining the filing fee, shall be determined solely by the Office of Administrative Hearings.

(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case (except in suits in forma pauperis).

(c) Forms of Payment. – The Office of Administrative Hearings may by rule provide for the acceptable forms for payment and transmission of the filing fee.

(d) ~~Wavier~~ Waiver or Refund. – The Office of Administrative Hearings shall by rule provide for the fee to be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110 and in a contested case involving a mandated federal cause of action. The Office of Administrative Hearings shall by rule provide for the fee to be refunded in a contested case in which the losing party is the State."

CONTINUE TRANSFER FROM DHHS TO OAH FOR MEDICAID APPEALS

SECTION 25.2. From funds available to the Department of Health and Human Services for the 2010-2011 fiscal year, the sum of two million dollars ($2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

PART XXVI. DEPARTMENT OF REVENUE

MODIFICATION OF METHOD BY WHICH LOCAL GOVERNMENTS REIMBURSE THE STATE FOR PROGRAMS THAT SUPPORT LOCAL GOVERNMENTS

SECTION 26.1.(a) G.S. 105-501(b) reads as rewritten:

"(b) Deductions. – ~~In determining the net proceeds of the tax to be distributed, the Secretary must deduct from the collections to be allocated an amount equal to one twelfth of the costs during the preceding fiscal year of:~~

~~(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.~~

~~(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.~~

~~(2) The Property Tax Commission.~~

~~(3) The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.~~

~~(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.~~

The costs incurred by the State to provide the functions listed in this subsection that support local governments are deductible from the collections to be allocated each month for distribution.

(1) The Department's cost of the following for the preceding month must be deducted and credited to the Department:

a. Performing the duties imposed by Article 15 of this Chapter.

b. The Property Tax Commission.

(2) One-twelfth of the costs of the following for the preceding fiscal year must be deducted and credited to the General Fund:

a. The School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.

b. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

c. Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter."

SECTION 26.1.(b) For fiscal year 2010-2011, the amount deducted under G.S. 105-501 from the net proceeds of the one-half percent (1/2%) sales and use tax levied under Article 42 of Chapter 105 of the General Statutes is increased by an amount equal to the 2009-2010 costs of the Department of Revenue and the Property Tax Commission in performing the duties imposed on the Department and the Commission under Article 15 of Chapter 105 of the General Statutes. The deduction required under this subsection may be made on a quarterly or other periodic basis, as determined by the Secretary of Revenue. The amount deducted under this section must be credited to the General Fund.

SECTION 26.1.(c) This section becomes effective July 1, 2010.

PART XXVII. STATE BOARD OF ELECTIONS

RAISE CANDIDATE FILING FEES

SECTION 27.1.(a) G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
Lieutenant Governor	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
All State executive offices	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought

All District Attorneys of the General Court of Justice	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
United States Senator	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
Members of the United States House of Representatives	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
State Senator	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
Member of the State House of Representatives	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
All county offices not compensated by fees	~~One percent (1%)~~ One and one-half percent (1.5%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	~~One percent (1%)~~ One and one-half percent (1.5%)of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 27.1.(b) G.S. 163-324(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of ~~one percent (1%)~~ one and one-half percent (1.5%) of the annual salary of the office sought."

SECTION 27.1.(c) G.S. 163-291(3) reads as rewritten:

"(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than ~~one percent (1%)~~ one and one-half percent (1.5%) of the annual salary of the office sought unless ~~one percent (1%)~~ one and one-half percent (1.5%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed."

SECTION 27.1.(d) G.S. 163-294.2(e) reads as rewritten:

"(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than ~~one percent (1%)~~ one and one-half percent (1.5%) of the annual salary of the office sought unless ~~one percent (1%)~~ one and one-half percent (1.5%) of the annual salary of the office sought is less

than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed."

SECTION 27.1.(e) This section is effective with respect to elections held on or after January 1, 2011.

PART XXVIII. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 28.1.(a) Section 25.1 of S.L. 2009-451 is repealed.

SECTION 28.1.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2011-2012	$ 1,793.1 million
For Fiscal Year 2012-2013	$ 1,880.6 million
For Fiscal Year 2013-2014	$ 1,920.5 million
For Fiscal Year 2014-2015	$ 1,958.9 million

SECTION 28.1.(c) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2011-2012	$ 989.2 million
For Fiscal Year 2012-2013	$ 1,046.4 million
For Fiscal Year 2013-2014	$ 1,078.3 million
For Fiscal Year 2014-2015	$ 1,120.4 million

DRIVER EDUCATION PROGRAM FUND REVERSION

SECTION 28.2. G.S. 20-88.1 reads as rewritten:

"**§ 20-88.1. Driver education.**

...

(a1) For each fiscal year, the State Superintendent of Public Instruction shall calculate a per student allocation for the driver education program by dividing the total funds allocated for the program by the estimated number of qualified students throughout the State, as described in subsection (a) of this section. The Superintendent shall distribute funds to local school administrative units by giving each local school administrative unit an amount equal to the per student allocation multiplied by the estimated number of qualified students within that local school administrative unit's district, including students enrolled in both public and private schools. If, at the end of the fiscal year, fewer than the expected number of students have participated in the driver education program in a local school administrative unit, then the local school administrative unit shall revert the per student allocation for each student that was estimated to be eligible to participate but did not actually participate in the driver education program.

...

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the Highway Fund. At the end of each fiscal year, the Department of Public Instruction shall collect and revert any unused funds allocated for this program back to the Highway Fund.

..."

PART XXIX. SALARIES AND BENEFITS

FURLOUGHS AUTHORIZED/PUBLIC SCHOOLS

SECTION 29.1.(a) The General Assembly finds that:

(1) North Carolina's citizens and businesses are suffering from the effects of a significant State financial crisis.

(2) The financial crisis has resulted in large reductions in revenues projected to be available to fund the State's budget for the 2010-2011 fiscal year.

(3) Each local school administrative unit is required to reduce its budget and should attempt to protect employees when possible.

(4) The implementation of furloughs may be necessary to balance local school administrative unit budgets for the 2010-2011 fiscal year.

SECTION 29.1.(b) In accordance with Section 7.13 of this act, local boards of education may implement furloughs of State-funded public school employees to offset the LEA funding flexibility adjustment.

SECTION 29.1.(c) The following definitions apply in this section:

(1) Furlough. – A temporary period of leave from employment without pay that (i) is ordered by a local board of education and (ii) is not in connection with a demotion or other disciplinary action.

(2) Public school employee. – Any person employed by a local school administrative unit. The term includes public officers.

SECTION 29.1.(d) The provisions of Section 26.14E.(b) and (c) of S.L. 2009-451 apply to public school employees furloughed pursuant to the section.

SECTION 29.1.(e) Local school administrative units shall cooperate with the Department of Public Instruction in the implementation of a furlough, if required.

SECTION 29.1.(f) As soon as practicable, and no more than 30 calendar days from the effective date of this section, the State Board of Education shall adopt rules for the implementation of this section in accordance with G.S. 150B-21.1A, except that notwithstanding G.S. 150B-21.1A(d), those emergency rules may remain in effect until the expiration of this section. These rules shall be applied by local boards of education in designating the times public school employees may be subject to furlough. These rules shall provide, at a minimum, that:

(1) Employees who work only on instructional days shall not be subject to furlough.

(2) Employees who earn an annual base rate of thirty thousand dollars ($30,000) or less shall not be subject to furlough.

(3) A furlough for other employees shall be for the same number of days for all such employees and shall be for a maximum of two days;

(4) No teacher shall be subject to a furlough on an instructional day or a protected work day.

(5) A local board of education shall have a public hearing and shall disclose the local school administrative unit's finances before the local board implements a furlough.

(6) The local school administrative unit shall cut all bonus pay before it imposes a furlough.

(7) A local school administrative unit may spread the salary or wage reduction for furloughed employees over the contract period in order to lessen the impact on the employees.

(8) All savings realized as a result of a furlough shall be used to offset the LEA funding flexibility adjustment.

(9) A county in which a local school administrative unit implements a furlough pursuant to this section shall not supplant existing local current expense funds for schools.

(10) Each local board of education shall report to the State Board of Education on the details of any furlough implemented by the local school administrative unit and certify that the furlough complied with the provisions of this section and the rules adopted by the State Board.

SECTION 29.1.(g) The provisions of Section 26.14E.(e) of S.L. 2009-451 apply to furloughs under this section.

SECTION 29.1.(h) A furlough as implemented by this section does not constitute a demotion pursuant to Part 3 of Article 22 of Chapter 115C of the General Statutes or under any other personnel law or policy.

SECTION 29.1.(i) Notwithstanding G.S. 115C-273, 115C-285(b), 115C-302.1(h), and 115C-316(b), or any other provision of law, public school employees who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event a furlough is enacted by a local school administrative unit.

SECTION 29.1.(j) This section is effective when it becomes law and expires June 30, 2011.

TEACHER SALARY SCHEDULES

SECTION 29.2.(a) The following monthly salary schedules shall apply for the 2010-2011 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 34 steps, with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a master's degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2009-2010 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2010-2011 Monthly Salary Schedule
"A" Teachers

Years of Experience	"A" Teachers	NBPTS Certification
0	$3,043	N/A
1	$3,043	N/A
2	$3,043	N/A
3	$3,085	$3,455
4	$3,129	$3,504
5	$3,264	$3,656
6	$3,404	$3,812
7	$3,538	$3,963
8	$3,667	$4,107
9	$3,771	$4,224
10	$3,819	$4,277
11	$3,868	$4,332
12	$3,918	$4,388
13	$3,967	$4,443
14	$4,018	$4,500
15	$4,069	$4,557
16	$4,122	$4,617
17	$4,176	$4,677
18	$4,231	$4,739
19	$4,286	$4,800
20	$4,345	$4,866
21	$4,403	$4,931
22	$4,461	$4,996
23	$4,523	$5,066
24	$4,584	$5,134

25	$4,650	$5,208
26	$4,714	$5,280
27	$4,779	$5,352
28	$4,845	$5,426
29	$4,913	$5,503
30	$4,984	$5,582
31	$5,055	$5,662
32	$5,153	$5,771
33+	$5,255	$5,886

2010-2011 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$3,347	N/A
1	$3,347	N/A
2	$3,347	N/A
3	$3,394	$3,801
4	$3,442	$3,855
5	$3,590	$4,021
6	$3,744	$4,193
7	$3,892	$4,359
8	$4,034	$4,518
9	$4,148	$4,646
10	$4,201	$4,705
11	$4,255	$4,766
12	$4,310	$4,827
13	$4,364	$4,888
14	$4,420	$4,950
15	$4,476	$5,013
16	$4,534	$5,078
17	$4,594	$5,145
18	$4,654	$5,212
19	$4,715	$5,281
20	$4,780	$5,354
21	$4,843	$5,424
22	$4,907	$5,496
23	$4,975	$5,572
24	$5,042	$5,647
25	$5,115	$5,729
26	$5,185	$5,807
27	$5,257	$5,888
28	$5,330	$5,970
29	$5,404	$6,052
30	$5,482	$6,140
31	$5,561	$6,228
32	$5,668	$6,348
33+	$5,781	$6,475

SECTION 29.2.(b) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service,

and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 29.2.(c) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 29.2.(d) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

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

SECTION 29.2.(e) Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

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

SECTION 29.2.(f) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 29.2.(g) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 29.3.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2010-2011 fiscal year, commencing July 1, 2010. Provided, however, school-based administrators (i) employed during the 2009-2010 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2010-2011 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2010-2011 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)

	0-6	$3,781	-	-	-	-
	7	$3,931	-	-	-	-
	8	$4,074	-	-	-	-
	9	$4,189	-	-	-	-
	10	$4,243	$4,243	-	-	-
	11	$4,298	$4,298	-	-	-
	12	$4,353	$4,353	$4,408	-	-
	13	$4,408	$4,408	$4,464	-	-
	14	$4,464	$4,464	$4,521	$4,579	-
	15	$4,521	$4,521	$4,579	$4,640	$4,701
	16	$4,579	$4,579	$4,640	$4,701	$4,762
	17	$4,640	$4,640	$4,701	$4,762	$4,828
	18	$4,701	$4,701	$4,762	$4,828	$4,891
	19	$4,762	$4,762	$4,828	$4,891	$4,956
	20	$4,828	$4,828	$4,891	$4,956	$5,025
	21	$4,891	$4,891	$4,956	$5,025	$5,092
	22	$4,956	$4,956	$5,025	$5,092	$5,166
	23	$5,025	$5,025	$5,092	$5,166	$5,237
	24	$5,092	$5,092	$5,166	$5,237	$5,310
	25	$5,166	$5,166	$5,237	$5,310	$5,383
	26	$5,237	$5,237	$5,310	$5,383	$5,458
	27	$5,310	$5,310	$5,383	$5,458	$5,537
	28	$5,383	$5,383	$5,458	$5,537	$5,617
	29	$5,458	$5,458	$5,537	$5,617	$5,725
	30	$5,537	$5,537	$5,617	$5,725	$5,839
	31	$5,617	$5,617	$5,725	$5,839	$5,956
	32	$5,725	$5,725	$5,839	$5,956	$6,075
	33	$5,839	$5,839	$5,956	$6,075	$6,197
	34	-	$5,956	$6,075	$6,197	$6,321
	35	-	-	$6,197	$6,321	$6,447
	36	-	-	$6,321	$6,447	$6,576
	37	-	-	-	$6,576	$6,708
	38	-	-	-	$6,708	$6,842
	39	-	-	-	-	$6,979

2010-2011 Principal and Assistant Principal Salary Schedules

	Classification			
Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-16	$4,828	-	-	-
17	$4,891	-	-	-
18	$4,956	$5,025	-	-
19	$5,025	$5,092	$5,237	-
20	$5,092	$5,166	$5,310	$5,383
21	$5,166	$5,237	$5,383	$5,458
22	$5,237	$5,310	$5,458	$5,537
23	$5,310	$5,383	$5,537	$5,617
24	$5,383	$5,458	$5,617	$5,725
25	$5,458	$5,537	$5,725	$5,839
26	$5,537	$5,617	$5,839	$5,956
27	$5,617	$5,725	$5,956	$6,075

28	$5,725	$5,839	$6,075	$6,197
29	$5,839	$5,956	$6,197	$6,321
30	$5,956	$6,075	$6,321	$6,447
31	$6,075	$6,197	$6,447	$6,576
32	$6,197	$6,321	$6,576	$6,708
33	$6,321	$6,447	$6,708	$6,842
34	$6,447	$6,576	$6,842	$6,979
35	$6,576	$6,708	$6,979	$7,119
36	$6,708	$6,842	$7,119	$7,261
37	$6,842	$6,979	$7,261	$7,406
38	$6,979	$7,119	$7,406	$7,554
39	$7,119	$7,261	$7,554	$7,705
40	$7,261	$7,406	$7,705	$7,859
41	-	$7,554	$7,859	$8,016
42	-	$7,705	$8,016	$8,176
43	-	-	$8,176	$8,340

SECTION 29.3.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

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

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

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

SECTION 29.3.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step for the 2009-2010 or 2010-2011 fiscal years shall not receive a corresponding increase in salary during the 2009-2011 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 29.3.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level a salary supplement of one hundred

twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 29.3.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 29.3.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

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

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

SECTION 29.3.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 29.3.(h) During the 2010-2011 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

FURLOUGHS AUTHORIZED/UNC

SECTION 29.4.(a) Findings. – The General Assembly finds that:

(1) North Carolina's citizens and businesses are suffering from the effects of a significant State financial crisis.

(2) The financial crisis has resulted in large reductions in revenues projected to be available to fund the State's budget for the 2010-2011 fiscal year.

(3) The University of North Carolina and its constituent institutions are required to reduce their budgets and should attempt to protect university employees when possible.

(4) The implementation of furloughs may be necessary to balance The University of North Carolina's and its constituent institutions' budgets for the 2010-2011 fiscal year.

SECTION 29.4.(b) The President of The University of North Carolina may implement furloughs of university employees or delegate furlough authority to a chancellor of a constituent institution to offset the UNC Management Flexibility Reduction.

SECTION 29.4.(c) Definitions. – The following definitions apply in this section:

(1) Furlough. – A temporary period of leave from employment without pay that (i) is ordered by the President of The University of North Carolina or a chancellor when delegated and (ii) is not in connection with a demotion or other disciplinary action.

(2) University employee. – Any permanent full-time, permanent part-time, or time-limited employee of The University of North Carolina, including employees exempt from the State Personnel Act under G.S. 126-5(c), 126-5(c1), 126-5(c7), and 126-5(c8). The term includes public officers.

SECTION 29.4.(d) Compensation and Benefits. – The provisions of Section 26.14E.(b) and (c) of S.L. 2009-451 apply to university employees furloughed pursuant to the section.

SECTION 29.4.(e) Cooperation with The University of North Carolina – General Administration. – Constituent institutions shall cooperate with UNC General Administration in the implementation of furloughs, if required.

SECTION 29.4.(f) As soon as practicable, and no more than 30 calendar days from the effective date of this section, the Board of Governors of The University of North Carolina shall adopt policies for the implementation of this section to remain in effect until the expiration of this section. These policies shall be applied by the President and the constituent institutions in implementing a furlough of university employees. These policies shall provide, at a minimum, that:

(1) The President may establish a salary threshold below which university employees shall not be subject to furlough. In no event may any full-time university employee, prorated for any part-time employee, earning an annual base rate of thirty thousand dollars ($30,000) or less be subject to furlough.

(2) The scheduling of any furlough period shall be at the discretion of the President or the chancellor of the constituent institution when delegated.

(3) Paid leave shall not be used to offset all or any portion of a furlough.

(4) If a holiday falls during the mandatory furlough period, the university employee must be paid for the holiday.

(5) All savings realized as a result of a furlough shall be used to offset the Management Flexibility Reduction for The University of North Carolina..

SECTION 29.4.(g) Reporting Requirements. – The provisions of Section 26.14E.(e) of S.L. 2009-451 apply to furloughs under this section.

SECTION 29.4.(h) Upon delegation of furlough authority to a chancellor, the constituent institution shall develop a furlough plan to be approved by the President consistent with the policies adopted by the UNC Board of Governors. Access to approved furlough plans shall be provided to all affected employees.

SECTION 29.4.(i) Effective Date. – This section is effective when it becomes law and expires June 30, 2011.

MONITOR COMPLIANCE WITH FREEZE ON MOST SALARY INCREASES

SECTION 29.5.(a) The Office of State Budget and Management and the Office of State Personnel shall monitor jointly the compliance of the following units of government with the provisions of Section 26.1A of S.L. 2009-451, and beginning September 1, 2010, shall submit quarterly reports of their monitoring activities to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division: (i) State agencies, departments, and institutions, including authorities, boards, and commissions; (ii) the judicial branch; and (iii) The University of North Carolina and its constituent institutions.

The quarterly reports required by this section shall include the following information:

(1) For agencies reporting through the BEACON HR/Payroll system, (i) a breakdown by action type (including promotion, reallocation, career progression, salary adjustment, and any similar actions increasing employee pay) of the number and annual amount of those increases and (ii) a breakdown by action reason (including in-range higher level, acting pay,

trainee adjustment, and other similar action reasons) of the number and annual amount of those action types coded as salary adjustment.

(2) For The University of North Carolina and its constituent institutions, a breakdown of the number and annual amount of those increases categorized by the university as promotions, changes in job duties or responsibilities, Distinguished Professorships, retention pay, career progression, and any similar actions increasing employee pay.

(3) A summary of actions taken by the Office of State Budget and Management and the Office of State Personnel with respect to unauthorized salary increases.

SECTION 29.5.(b) Beginning September 1, 2010, and quarterly thereafter, the Legislative Services Officer shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on compliance with Section 26.1A of S.L. 2009-451.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 29.6. Section 6(c) of S.L. 2009-16, as amended by Section 26.20(b) of S.L. 2009-451, reads as rewritten:

"**SECTION 6.(c)** Effective July 1, 2010, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2010-2011 fiscal year are: (i) ~~ten and fifty-one hundredths percent (10.51%)~~ ten and seventy-one hundredths percent (10.71%) – Teachers and State Employees; (ii) ~~fifteen and fifty-one hundredths percent (15.51%)~~ fifteen and seventy-one hundredths percent (15.71%) – State Law Enforcement Officers; (iii) twelve and twenty-six hundredths percent (12.26%) – University Employees' Optional Retirement System; (iv) twelve and twenty-six hundredths percent (12.26%) – Community College Optional Retirement Program; (v) twenty and one hundredths percent (20.01%) – Consolidated Judicial Retirement System; and (vi) four and ninety hundredths percent (4.90%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and ninety hundredths percent (4.90%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

PART XXX. CAPITAL APPROPRIATIONS

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 30.1. There is appropriated from the General Fund for the 2010-2011 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	**2010-2011**
Department of Environment and Natural Resources	
Water Resources Development Projects	$9,130,000
University of North Carolina System	
Appalachian State University	
College of Nursing and Health Sciences Building Advance Planning	2,400,000
East Carolina University	

Life Sciences Building Advance Planning	6,100,000
Elizabeth City State University	
Aviation Complex Planning	533,778
University of North Carolina at Charlotte	
Science Building Advance Planning	4,800,000
University of North Carolina at Wilmington	
Allied Health and Human Sciences Building Advance Planning	1,900,000
Western Carolina University	
Mountain Area Health Education Center Advance Planning	1,300,000
Winston-Salem State University	
Science Building Advance Planning	1,400,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$27,563,778**

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 30.2.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects in accordance with the schedule that follows. These funds will provide a State match for an estimated twenty-seven million four hundred four thousand dollars ($27,404,000) in federal funds.

	Name of Project	**2009-2010**
(1)	Wilmington Harbor Deepening	$900,000
(2)	Wilmington Harbor Maintenance	2,000,000
(3)	Morehead City Harbor Maintenance	100,000
(4)	Dredging Contingency Fund	1,250,000
(5)	AIWW Dredging	1,000,000
(6)	Bogue Banks Shore Protection Study	5,000
(7)	John H. Kerr Dam and Reservoir Sec. 216	50,000
(8)	Neuse River Basin PED	–
(9)	Princeville Flood Damage Reduction	200,000
(10)	Currituck Sound Environmental Restoration Study	50,000
(11)	Belhaven Harbor – Cap – Sec 1135	350,000
(12)	Surf City/North Topsail Beach Protection Study PED	–
(13)	West Onslow Beach (Topsail Beach) PED	50,000
(14)	Silver Lake Harbor Disposal Area Maintenance	800,000
(15)	Manteo Old House Channel – CAP – Sec. 204	25,000
(16)	Concord Streams Restoration – CAP – Sec. 206	–
(17)	North Carolina International Terminal	–
(18)	Planning Assistance to Communities	–
(19)	State-Local Projects	2,000,000
(20)	Aquatic Plant Control, Statewide and Lake Gaston	350,000
TOTALS		**$9,130,000**

SECTION 30.2.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2010-2011 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.

(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2010-2011.

(3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2011-2012 fiscal year.

SECTION 30.2.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.

(2) The estimated cost of each project.

(3) The date that work on each project began or is expected to begin.

(4) The date that work on each project was completed or is expected to be completed.

(5) The actual cost of each project.

The semiannual reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 30.3.(a) The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	**Amount of Non-General Fund Funding Authorized for FY 2010-2011**
Department of Agriculture and Consumer Services	
Upgrade Steam Generation Capability at Food and Drug Facility	$ 18,000
Western NC Agricultural Center – Storage Shed	23,000
Western NC Agricultural Center – Entertainment Stage	35,000
Western NC Agricultural Center – Youth Building Roof Replacement	3,000
Western NC Agricultural Center – RV Site Improvements	20,000
Western NC Agricultural Center – C&D Barn Access Road	125,000
Western NC Agricultural Center – Handicap Platform	8,000
Western NC Agricultural Center – Exhibits/Cashier Office	70,000
Western NC Agricultural Center – Retention Pond Parking	225,000
Constable Lab Standby Generator/Rollins Lab Security	363,245
Southeastern Agricultural Center – Multipurpose Pavilion	1,290,000
Southeastern Agricultural Center – Horse Stalls	700,000
Research Stations Irrigation Renovations	200,000
Piedmont Research Station – Grain Storage Renovation	400,000
Department of Correction	

Southern Medium Programs Building	600,000
Caledonia Programs Building	600,000
Caswell Programs Building	600,000
Southern Minimum Programs Building	600,000
Randolph Programs Building	600,000
Department of Cultural Resources	
USS NC Battleship Repairs, Dredging, Construction Commission Battleship Fund	1,700,000
Department of Environment and Natural Resources	
Forest Resources – Bladen Lakes Ranger Residence	399,000
Department of Justice	
NC Justice Academy Live Fire Shoot House	282,000
Wildlife Resources Commission	
Pisgah Education Center Repairs & Renovation	60,000
Outer Banks Education Center Repairs and Renovation	26,000
Mt. Holly Depot Acquisition	150,000
Statewide Boating Access Areas (BAA) Renovations	3,610,000
Table Rock Hatchery Residence Renovation	150,000
McKinney Lake Equipment Shed	70,000
Fishing Access Areas Construction	180,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**$13,107,245**

SECTION 30.3.(b) From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars ($30,000) for the 2010-2011 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 30.4.(a) Of the funds in the Reserve for Repairs and Renovations for the 2010-2011 fiscal year, fifty-four percent (54%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and forty-six percent (46%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 30.4.(b) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among the university's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

(1) The safety and well-being of the residents of campus housing programs.

(2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.

(3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.

(4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.

(5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports also shall include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 30.4.(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

AMEND 2009 WILDLIFE RESOURCES COMMISSION NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 30.5.(a) Subsection 27.4.(a) of S.L. 2009-451 reads as rewritten:

"**SECTION 27.4.(a)** The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	**Amount of Non-General Fund Funding Authorized for FY 2009-2010**
Department of Crime Control and Public Safety	
Additions and Renovations to Armories	$ 9,303,442
Camp Butner Cantonment – Phase 1 Design	1,367,000
Family Assistance Centers	2,000,000
Gastonia Armory Renovation and Expansion	1,100,000
Tactical Unmanned Aerial Systems Facility	6,746,000

Department of Cultural Resources	
Aycock Birthplace Picnic Shelter	86,100
Maritime Museum – Floating Dock	130,000
Museum of History Chronology Exhibit – Phase 2B (1900-1960)	1,200,000
Department of Environment and Natural Resources	
Zoo – Elephant Exhibit New Restrooms	300,000
Wildlife Resources Commission	
Armstrong Hatchery Lower Raceway Replacement	1,725,000
Centennial Campus Education Center Exhibit Completion	180,000
Chinquapin Equipment Storage Pole Shed	60,000
Chowan Bridge Fishing Pier and Edenton Boating Access	450,000
Emerald Isle New Boating Access Area	600,000
Falls Lake Office Building	550,000
Hampstead Land Acquisition	10,000,000
Land Acquisitions – State Gamelands	~~59,135,000~~20,000,000
Lewelyn Branch New Boating Access Area	150,000
Manns Harbor Bridge Marina Acquisition	5,750,000
Marion Depot Drainage Repairs	200,000
Marion Hatchery and Depot Renovation	4,000,000
McKinney Lake Hatchery Kettles Replacement	1,700,000
Minor Boating Access Area Renovations – Various Locations	150,000
~~New Coldwater Fish Hatchery Construction~~	~~7,900,000~~
Ocean Isle Boating Access Area Renovations	150,000
Outer Banks Education Center Teaching Facility Repairs	245,000
Pechmann Fishing Education Center Pond Restoration	160,000
Pechmann Fishing Education Center Storage Building	220,000
Pisgah Education Center Gift Shop Renovation and Expansion	200,000
Pisgah Education Center Outdoor Exhibit Renovation	450,000
Pisgah Education Center Repairs	155,000
Pisgah Hatchery Water System Renovation	100,000
Rhodes Pond Dam Repairs	500,000
Sneads Ferry Land Acquisition	6,500,000
Statewide Emergency Repair & Renovation	3,500,000
Sunset Harbor Land Acquisition	925,000
Swan Quarter Land Acquisition	1,700,000
Sykes Depot Pond, Office, Storage Construction	350,000
Table Rock Hatchery Office and Workshop Replacement	345,000
TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL PROJECTS AUTHORIZED	**~~$122,782,542~~83,247,542"**

SECTION 30.5.(b) Section 27.4 of S.L. 2009-451 is amended by adding a new subsection to read:

"**SECTION 27.4.(a1)** The Wildlife Resources Commission shall not expend any of the funds authorized to be spent on Statewide Emergency Repair & Renovation by subsection (a) of this section without first obtaining approval from the Office of State Budget and Management."

AMEND COPS AUTHORIZATION LANGUAGE/UNCG

SECTION 30.6.(a) Subdivision (13) of Section 27.8(a) of S.L. 2008-107 reads as rewritten:

"(13) In the maximum aggregate principal amount of thirty-eight million six hundred seventy thousand dollars ($38,670,000) to finance the capital facility costs of completing an academic classroom and office building at the University of North Carolina at Greensboro. Up to a total of four million five hundred thousand dollars ($4,500,000) may be used to acquire real property for an academic building, a University Police building, and a student recreation facility and for the development and construction of a new railroad underpass to connect the current central campus to West Lee Street. No more than a maximum aggregate amount of twenty-one million dollars ($21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009."

SECTION 30.6.(b) Section 27.8(a) of S.L. 2008-107 is amended by adding a new subdivision to read:

"(11a) In the maximum aggregate principal amount of four million dollars ($4,000,000) to finance the capital facility costs of completing infrastructure at the Innovation Center at The Carolina North Campus of The University of North Carolina at Chapel Hill."

PART XXXI. TAX CHANGES

IRC UPDATE

SECTION 31.1.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2009,~~ May 1, 2010, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 31.1.(b) G.S. 105-134.6(d) reads as rewritten:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(7) An addition is required to taxable years 2003, 2004, 2005, and 2006 for the amount of any 2008 or 2009 net operating loss deduction claimed on a federal return under section 172(b)(1)(H) or section 810(b)(4) of the Code.

(8) For taxable years 2011 through 2013, a taxpayer may deduct one-third of the taxpayer's net operating loss absorbed on the taxpayer's 2003, 2004, 2005, and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code."

SECTION 31.1.(c) This section is effective when it becomes law.

CAP TAX RATE ON INCOME FROM FAMILY-OWNED AND OTHER SMALL BUSINESS

SECTION 31.2.(a) G.S. 105-134.2 reads as rewritten:

"**§ 105-134.2. Individual income tax imposed.**

(a) Tax Rate. – A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid ~~annually and shall~~ annually. Except as otherwise provided in this section, the tax shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	NA	7.75%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	6%
$17,000	$80,000	7%
$80,000	NA	7.75%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$12,750	6%
$12,750	$60,000	7%
$60,000	NA	7.75%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	6%
$10,625	$50,000	7%
$50,000	NA	7.75%

(b) Tax Tables. – In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the Secretary. The amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual making a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section.

(c) Small Business Income. – The tax rate imposed on the net business income of a taxpayer who receives income from a small business for a taxable year may not exceed the rate imposed on a corporation under G.S. 105-130.3. A small business is a business whose cumulative gross receipts from all business activity in a taxable year does not exceed one million dollars ($1,000,000). For purposes of this subsection, the term business income does not include income that is considered passive income under the Code."

SECTION 31.2.(b) This section becomes effective for taxable years beginning on or after January 1, 2010.

LOWER SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS

SECTION 31.3.(a) G.S. 105-164.16(b1) reads as rewritten:

"(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars ($100.00) but less than ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return."

SECTION 31.3.(b) G.S. 105-164.16(b2) reads as rewritten:

"(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) a month in State and local sales and use taxes must make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year."

SECTION 31.3.(c) G.S. 105-164.16(b1), as rewritten by subsection (a) of this section, reads as rewritten:

"(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars ($100.00) but less than ~~fifteen thousand dollars ($15,000)~~ twenty thousand dollars ($20,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return."

SECTION 31.3.(d) G.S. 105-164.16(b2), as rewritten by subsection (b) of this section, reads as rewritten:

"(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~fifteen thousand dollars ($15,000)~~ twenty thousand dollars ($20,000) a month in State and local sales and use taxes must make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year."

SECTION 31.3.(e) When the Secretary of Revenue conducts a review of a taxpayer's sales and use tax payment schedule requirements under G.S. 105-164.16(b3), the Secretary must identify the taxpayers who are no longer required to make a monthly prepayment of the next month's sales and use tax liability because of the reduction of the sales tax payment threshold under this section and must notify those taxpayers of the change in the taxpayer's payment requirement.

SECTION 31.3.(f) Subsections (a) and (b) of this section become effective October 1, 2010. Subsections (c) and (d) of this section become effective July 1, 2011. The remainder of this section is effective when it becomes law.

RELIEVE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS

SECTION 31.4.(a) G.S. 55-16-22(c) reads as rewritten:

"(c) Due Date. – An annual report eligible to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. At the option of the filer, an annual report may be filed directly with the Secretary of State in electronic form. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the ~~third~~ fourth month following the close of the corporation's fiscal year."

SECTION 31.4.(b) G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of State.**

(a) Requirement and Content. – Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this ~~State, shall deliver to the Secretary of State for filing an annual report, in~~ State must file an annual report with the Secretary of State on a form prescribed by the Secretary ~~of State, that sets forth all of the following:~~and in the manner required by the Secretary. The annual report must specify the year to which the report applies and must set out the information listed in this subsection. The information must be current as of the date the company completes the report. If the information in the company's most recent annual report has not changed, the company may certify on its annual report that the information has not changed in lieu of restating the information.

The following information must be included on an annual report of a limited liability company:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its managers or, if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.~~

~~(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.~~

(c) Notice and Due Date. – The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report ~~shall be delivered to the Secretary of State~~ of a limited liability company is due by April 15th of ~~each year.~~the year following the calendar year in which the company files its articles of organization with the Secretary of State. Each subsequent annual report is due on April 15.

(d) Incomplete Report. – If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments. – Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

SECTION 31.4.(c) This section is effective when it becomes law. A limited liability company whose articles of organization were filed on or after January 1, 2010, but before April 15, 2010, is not required to file an annual report until April 15, 2011. A limited liability company that was formed during this period and that has filed an annual report that is not required is considered to have filed the annual report due April 15, 2011. A limited liability company that was formed before January 1, 2009, and has filed an annual report in each year after the calendar year in which its articles of organization were filed is considered to have met its annual report filing requirements.

EXTEND SUNSET ON EXPIRING TAX INCENTIVE INCOME TAX CREDITS AND SALES TAX REFUNDS ONE YEAR

SECTION 31.5.(a) G.S. 105-129.75 reads as rewritten:

"**§ 105-129.75. Sunset.**

This Article expires ~~January 1, 2011,~~ January 1, 2012, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

SECTION 31.5.(b) G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2011.~~January 1, 2012."

SECTION 31.5.(c) G.S. 105-164.14(a1) reads as rewritten:

"(a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in excess of two million five hundred thousand dollars ($2,500,000). The "net amount of sales and use tax paid" is the amount paid less the refund allowed under subsection (a) of this section. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the calendar year for which the refund is claimed. The refund allowed by this subsection is in addition to the refund allowed in subsection (a) of this section. This subsection is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2012."

SECTION 31.5.(d) G.S. 105-164.14(l) reads as rewritten:

"(l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed for purchases made on or after ~~January 1, 2011.~~January 1, 2012."

SECTION 31.5.(e) This section is effective when it becomes law.

MODERNIZE SALES TAX ON ACCOMMODATIONS

SECTION 31.6.(a) G.S. 105-164.4(a)(3) reads as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is five and three-quarters percent (5.75%).

...

(3) ~~Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.~~

~~As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients~~

~~and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.~~ A tax at the general rate applies to the sales price of the rental of an accommodation to a transient and to other gross receipts derived from the rental of an accommodation to a transient. The sales price of the rental of an accommodation to a transient is determined as if the rental were a service. An "accommodation" is a hotel room, a motel room, a residence, a cottage, or a similar space for occupancy by an individual. The tax does not apply to a residence or a cottage that is rented for less than 15 days in a calendar year or to an accommodation provided to the same person for a period of 90 or more continuous days.

A person who provides an accommodation to a transient is considered a retailer under this Article. A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

A person who, by written contract, is not the rental agent of the provider of an accommodation but is authorized by the provider to facilitate the rental of the accommodation and to charge a transient for the rental is considered a retailer under this Article for the purpose of determining the sales price of the accommodation. Accordingly, charges designated as facilitation fees or similar fees are considered charges necessary to complete the rental of the accommodation and are included in the sales price. A person who enters into a contract with the provider of an accommodation to a transient to facilitate the rental of an accommodation must report the sales price to the provider of the accommodation and must send the provider the tax due on the sales price. A facilitator that does not send a provider the tax due on the sales price of an accommodation is liable for the amount of tax the provider fails to send. A facilitator is not liable for tax sent to a provider but not remitted by the provider to the Secretary. Tax payments received by a provider from a facilitator are held in trust by the provider for remittance to the Secretary. A provider that receives a tax payment from a facilitator must remit the amount received to the Secretary. A provider is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a provider and a facilitator are considered terms of the contract between the provider and the facilitator."

SECTION 31.6.(b) G.S. 105-164.4B is amended by adding a new subsection to read:

"(e) Accommodations. – The rental of a transient accommodation is sourced to the location of the accommodation."

SECTION 31.6.(c) G.S. 153A-155(c) reads as rewritten:

"(c) Collection. – ~~Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation.~~ A person who is required to remit to the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-164.4(a)(3) is required to remit a room occupancy tax to the taxing county on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the

same manner as that tax. A rental agent or a person who facilitates the rental of an accommodation has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the ~~operator~~ person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the ~~operator's~~person's business records kept in the ordinary course of business and ~~collect~~ calculate tax on the allocated price of the taxable accommodation.

~~The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business.~~ The provider of an accommodation must separately state the room occupancy tax. Room occupancy taxes paid to a provider of an accommodation are paid to the provider as trustee for and on account of the taxing county. ~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.~~

The taxing county shall ~~design, print,~~ design and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. ~~An operator of a business~~ A provider of accommodations who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the ~~operator~~ provider for State sales and use tax."

SECTION 31.6.(d) G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 31.6.(e) G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – ~~Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation.~~ A person who is required to remit to the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-164.4(a)(3) is required to remit a room occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. A rental agent or a person who facilitates the rental of an accommodation has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the ~~operator~~ person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the ~~operator's~~person's business

records kept in the ordinary course of business and ~~collect~~ calculate tax on the allocated price of the taxable accommodation.

~~The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business.~~ The provider of an accommodation must separately state the room occupancy tax. Room occupancy taxes paid to a provider of an accommodation are paid to the provider as trustee for and on account of the taxing city. ~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.~~

The taxing city shall ~~design, print,~~ design and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the ~~operator~~ provider for State sales and use tax."

SECTION 31.6.(f) G.S. 160A-215(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all cities that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mooresville, Murfreesboro, North Topsail Beach, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 31.6.(g) This section becomes effective January 1, 2011, and applies to gross receipts derived from accommodations provided on or after that date.

MODERNIZE ADMISSIONS TAX AND RESTORE AMENITIES EXCLUSION

SECTION 31.7.(a) G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1. ~~Dances, athletic events, shows, exhibitions, and other entertainments.~~Live entertainment and ticket resales.**

(a) Scope. – A privilege tax is imposed on the ~~gross receipts of a person who is engaged in any of the~~ following:

(1) ~~Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.~~The gross admissions receipts of a person who is engaged in providing admission to live entertainment of any kind. Gross admissions receipts under this subdivision do not include charges for amenities. If charges for amenities are not separately stated on the face of an admission ticket, then the charge for admission is considered to be equal to the admission charge for a ticket to the same event that does not include amenities and is for a seat located directly in front of or closest to a seat that includes amenities.

(2) ~~Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.~~The gross admissions receipts of a person who is engaged in the business of reselling on the Internet under G.S. 14-344.1 an admission ticket that is taxable under subdivision (1) of this subsection. If the price of an admission ticket is printed on the face of the ticket, gross receipts under this

subdivision exclude the face price. If the price of an admission ticket is not printed on the face of the ticket, the tax under this subdivision applies to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket.

~~(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.~~

(b) Rate and Payment. – The rate of the privilege tax imposed by this section is three percent ~~(3%) of the gross receipts from the activities described in subsection (a) of this section.~~(3%). The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.

(c) Advance Report. – A person who owns or controls a ~~performance, show, or exhibition~~ live entertainment performance subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the ~~performance, show, or exhibition.~~ performance. The statement must be filed no less than five days before the first ~~performance, show, or exhibition~~ performance in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) ~~or (a)(2)~~ of this section; however, the tax may not exceed twenty-five dollars ~~($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars~~ ($25.00) for each day or part of a day the ~~performance, show, or exhibition~~ live entertainment is ~~given~~ performed at each location. Cities may not levy a license tax on a person taxed under subdivision (a)(2) of this section.

Counties may not levy a license tax on a person taxed under ~~subdivision (a)(1) or (a)(2) of~~ this section. ~~Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city.~~"

SECTION 31.7.(b) G.S. 14-344.1(e) is repealed.

SECTION 31.7.(c) If any provision of this act is declared by a court to violate the Internet Tax Freedom Act, Pub. L. 105-277, §§ 1100-1104, as amended, or is otherwise found to be invalid, then G.S. 14-344.1 is repealed.

SECTION 31.7.(d) G.S. 105-264(c) reads as rewritten:

"(c) Revised Interpretations. – This section does not prevent the Secretary from changing an ~~interpretation~~ interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

(1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.

(2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued."

SECTION 31.7.(e) G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of subsection (a) of this section and subsection (b) of this section become effective August 1, 2010. G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, applies to charges for admission received on or after August 1, 2010. The remainder of this section is effective when it becomes law.

IMPROVE TAX AND DEBT COLLECTION PROCESS

SECTION 31.8.(a) G.S. 147-86.20(1) reads as rewritten:

"**§ 147-86.20. Definitions.**

The following definitions apply in this Article:

(1) Account ~~Receivable.~~receivable. – An asset of the State reflecting a debt that is owed to the State and has not been received by the State agency servicing the debt. The term includes claims, damages, fees, fines, forfeitures, loans, overpayments, taxes, and tuition as well as penalties, interest, and other costs authorized by law. The term does not include court costs or fees assessed in actions before the General Court of Justice or counsel fees and other expenses of representing indigents under Article 36 of Chapter 7A of the General Statutes.

...."

SECTION 31.8.(b) G.S. 147-86.22 reads as rewritten:

"**§ 147-86.22. Statewide accounts receivable program.**

(a) Program. – The State Controller shall implement a statewide accounts receivable program. As part of this program, the State Controller shall do all of the following:

(1) Monitor the State's accounts receivable collection efforts.

(2) Coordinate information, systems, and procedures between State agencies to maximize the collection of past-due accounts receivable.

(3) Adopt policies and procedures for the management and collection of accounts receivable by State agencies.

(4) Establish procedures for writing off accounts ~~receivable and for determining when to end efforts to collect accounts receivable after they have been written off.~~receivable.

(b) Electronic Payment. – Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20.

The State Controller shall establish policies that allow accounts receivable to be payable under certain conditions by electronic payment. These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by electronic payment may be required to pay any fee or charge associated with the use of electronic payment. Fees associated with processing electronic payments may be paid out of the General Fund and Highway Fund if the payment of the fee by the State is economically beneficial to the State and the payment of the fee by the State has been approved by the State Controller and State Treasurer.

The State Controller and State Treasurer shall consult with the Joint Legislative Commission on Governmental Operations before establishing policies that allow accounts receivable to be payable by electronic payment and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under the policies established pursuant to this subsection.

A payment of an account receivable that is made by electronic payment and is not honored by the issuer of the card or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable.

(c) Collection Techniques. – The State Controller, in conjunction with the Office of the Attorney General, shall establish policies and procedures to govern techniques for collection of accounts receivable. These techniques may include use of credit reporting bureaus, judicial remedies authorized by law, and administrative setoff by a reduction of ~~an individual's~~a tax refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a reduction of another payment, other than payroll, due from the State to a person to reduce or eliminate an account receivable that the person owes the State.

~~No later than January 1, 1999, the~~The State Controller shall negotiate a contract with a third party to perform an audit and collection process of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party shall be compensated only from funds recovered as a result of the audit. Savings realized in excess of costs shall be transferred from the agency to the Office of State Budget and Management and placed in a special reserve account for future direction by the General Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does not apply to the purchase of medical services by State agencies or payments used to reimburse or otherwise pay for health care services."

SECTION 31.8.(c) G.S. 147-86.25 reads as rewritten:

"**§ 147-86.25. Setoff debt collection.**

The State Controller shall implement a statewide setoff debt collection program to provide for collection of ~~accounts receivable that have been written off. The statewide program shall supplement the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall provide for written off~~the following accounts receivable ~~to be set off~~by setoff against payments the State owes to debtors, other than payments of ~~individual income~~ tax refunds and ~~payroll.~~payroll:

(1) Accounts receivable submitted to the Department of Revenue by a claimant agency under the Setoff Debt Collection Act, Chapter 105A of the General Statutes.

(2) An overdue tax debt, as defined in G.S. 105-243.1.

~~A program shall provide that, before final setoff can occur, the State agency servicing the debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff through an administrative hearing and judicial review. A proposed setoff by a State agency that is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in accordance with the procedures the State agency must follow under that Chapter. A proposed setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes.~~"

SECTION 31.8.(d) G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

...

(3) Debtor. – ~~An individual~~ A person who owes a debt.

...

(8) Refund. – ~~An individual's North Carolina income~~ A debtor's North Carolina tax refund.

(9) State agency. – Any of the following:

a. A unit of the executive, legislative, or judicial branch of State government.

b. A local agency, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.

c. A community college."

SECTION 31.8.(e) G.S. 105A-3(c) reads as rewritten:

"(c) Identifying Information. – All claimant agencies shall whenever possible obtain the full name, social security ~~number,~~number or federal identification number, address, and any other identifying information required by the Department from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this Chapter."

SECTION 31.8.(f) G.S. 105A-14(a) reads as rewritten:

"(a) Simultaneously with the transmittal of the net proceeds collected to a claimant agency, the Department must provide the agency with an accounting of the setoffs for which payment is being made. The accounting must whenever ~~possible,~~possible include the full names of the debtors, the debtors' social security ~~numbers,~~numbers or federal identification numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected per setoff."

SECTION 31.8.(g) G.S. 105-259(b)(18) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(18) To furnish to the Office of the State Controller ~~the name, address, and account and identification numbers of a taxpayer upon request to enable~~information needed by the State Controller to implement the setoff debt collection program established under G.S. 147-86.25, verify statewide vendor ~~files~~ files, or track debtors of the State.

...."

SECTION 31.8.(h) G.S. 105-242(b) reads as rewritten:

"(b) ~~Garnishment and Attachment.~~Attachment and Garnishment. – Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. ~~A~~G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by any amount the taxpayer owes the garnishee. ~~G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.~~

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the amount of the debt. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the taxpayer and is subject to attachment and garnishment and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment."

SECTION 31.8.(i) G.S. 105-242.1 reads as rewritten:

"**§ 105-242.1. Procedure for attachment and garnishment.**

(a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment and garnishment. Before the Department attaches and garnishes intangible property in payment of a tax, the Department must send the garnishee a notice of garnishment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20 ~~or by registered or certified mail.~~or, with the agreement of the garnishee, by electronic means. The notice must contain all of the following ~~information:~~information, unless the notice is an electronic notice subject to subsection (a1) of this section:

(1) The taxpayer's ~~name, address, and social security number or federal identification number.~~name.

(2) The ~~type of tax the taxpayer owes and the tax periods for which the tax is owed.~~taxpayer's social security number or federal identification number.

(3) The amount of tax, interest, and penalties the taxpayer owes.

(4) An explanation of the liability of a garnishee for tax owed by a taxpayer.

(5) An explanation of the garnishee's responsibility concerning the notice.

(a1) Electronic Notice. – Before the Department sends an electronic notice of garnishment to a garnishee, the Department and the garnishee must have an agreement that establishes the protocol for transmitting the notice and provides the information required under subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

(b) Action. – ~~Within 30 days after receiving a notice of garnishment, a~~A garnishee must comply with ~~the~~ a notice of garnishment or file a written response to the ~~notice.~~notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment. ~~Upon~~

Upon receipt of ~~the~~ a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

(c) Release. – ~~When the Department releases a garnishee from liability, the Department must send the garnishee a letter of release. The letter must identify the taxpayer to whom the release applies and contain the identifying information about the taxpayer that is required under subsection (a) on a notice of garnishment.~~A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. A notice of garnishment sent to all other garnishees is released when the Department sends the garnishee a notice of release. A notice of release must state the name and social security number or federal identification number of the taxpayer to whom the release applies.

(d) Financial Institution. – As used in this section, the term 'financial institution' has the same meaning as in G.S. 53B-2."

SECTION 31.8.(j) G.S. 53B-4(2) reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to any of the following:

...

(2) Authorization under ~~G.S. 105-251~~G.S. 105-242 or G.S. 105-258."

SECTION 31.8.(k) Subsection (h) of this section becomes effective January 1, 2011. The remainder of this section is effective when it becomes law.

REDUCE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES

SECTION 31.9.(a) Section 2 of S.L. 2009-422 reads as rewritten:

"**SECTION 2.** This act is effective retroactively for taxable years beginning on or after ~~January 1, 2010.~~January 1, 2007."

SECTION 31.9.(b) A taxpayer that paid franchise tax in taxable years 2007, 2008, or 2009 and that included billings in excess of costs in its capital base may apply to the Department of Revenue for a refund of any excess tax paid to the extent the refund is the result of the change in the law enacted by this section. A request for a refund must be made on or before January 1, 2011. A request for refund received after that date is barred.

SECTION 31.9.(c) This section is effective when it becomes law.

FAIR TAX PENALTIES

SECTION 31.10.(a) G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, subject to a minimum of five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:

1. The date of the notice of proposed assessment of the ~~tax.~~tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.

2. The date the proposed assessment becomes collectible under G.S. 105-241.22, if the taxpayer files a timely request for a Departmental review of the proposed assessment.

c. When a taxpayer files a consolidated return under G.S. 105-130.6 at the request of the Secretary and the tax due is paid within 45 days after the later of the following:

1. The date the consolidated return is filed, if the taxpayer does not file a timely request for a Departmental review of the tax.

2. The date the Departmental review of the tax ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review."

SECTION 31.10.(b) G.S. 105-236(a)(5) is amended by adding a new sub-subdivision to read:

"(5) Negligence. –

...

f. Consolidated return. – The amount of tax shown as due on a consolidated return requested by the Secretary under G.S. 105-130.6 is not considered a deficiency and is not subject to this subdivision."

SECTION 31.10.(c) This section is effective when it becomes law and applies to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the

effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

PART XXXII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 32.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 32.2.(a) The Senate Appropriations Committee Report On The Continuation, Expansion and Capital Budgets for Senate Bill 897, dated May 16, 2010, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, as appropriate, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 32.2.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2010-2011 budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted recommended adjustments to the budget to the General Assembly in April 2010 in the documents "The North Carolina State Budget, Recommended Operating Budget with Performance Management Information 2010-2011" for the 2010-2011 fiscal year for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report.,

SECTION 32.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

MOST TEXT APPLIES ONLY TO THE 2010-2011 FISCAL YEAR

SECTION 32.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2010-2011 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2010-2011 fiscal year.

EFFECT OF HEADINGS

SECTION 32.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 32.5.(a) Except where expressly repealed or amended by this act, the provisions of S.L. 2009-451 and S.L. 2009-575 remain in effect.

SECTION 32.5.(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 2010-2011 fiscal year in S.L. 2009-451 and S.L. 2009-575 that applied to appropriations to

particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

SEVERABILITY CLAUSE

SECTION 32.6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 32.7. Except as otherwise provided, this act becomes effective July 1, 2010.

SENATE APPROPRIATIONS COMMITTEE

REPORT
ON THE
CONTINUATION, EXPANSION
AND
CAPITAL BUDGETS

Senate Bill 897

Proposed Committee Substitute

May 18th, 2010

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General Fund Availability Statement

		FY 2010-2011
1	Unappropriated Balance Remaining from Previous Year	3,702,182
2	Adjustment from Estimated to Actual 2009-10 Beginning Unreserved Balance	270,080
3	**Beginning Unreserved Fund Balance**	**3,972,262**
4		
5	**Revenues Based on Existing Tax Structure**	**18,199,339,016**
6		
7	**Non-tax Revenues**	
8	Investment Income	57,500,000
9	Judicial Fees	239,100,000
10	Disproportionate Share	100,000,000
11	Insurance	67,000,000
12	Other Non-Tax Revenues	182,700,000
13	Highway Trust Fund/Use Tax Reimbursement Transfer	72,800,000
14	Highway Fund Transfer	17,600,000
15	**Subtotal Non-tax Revenues**	**736,700,000**
16		
17	**Total General Fund Availability**	**18,940,011,278**
18		
19	**Adjustments to Availability: Senate Bill 897**	
0	IRC Conformity	(1,200,000)
-1	Cap Tax Rate on Family-Owned and Other Small Business Income	(39,700,000)
22	Lower Sales Tax Compliance Burden on Small Retailers	(7,000,000)
23	Relieve Annual Report Compliance Burden on Small Business	(400,000)
24	Extend Sunset on Expiring Tax Incentive Income Tax Credits and Sales Tax	
25	Refunds One Year	(3,500,000)
26	Modernize Sales Tax On Accommodations	(700,000)
27	Modernize Admissions Tax and Restore Amenities Exclusion	3,000,000
28	Improve Tax and Debt Collection Process	(1,500,000)
29	Reduce Franchise Tax Burden On Construction Companies	1,700,000
30	Department of Revenue Corporate Settlement Initiative	110,000,000
31	Loss of Estate Tax Revenues for FY 2010-11	(85,000,000)
32	Transfer from Disproportionate Share Reserve	35,000,000
33	Adjust Highway Fund Transfer - Commerce Executive Aircraft Transfer	(500,000)
34	Increase Justice and Public Safety Fees	22,214,722
35	Transfer From Severance Reserve Expenditure Account	30,000,000
36	Commerce Business Recruitment Initiatives (Pending Legislation)	(10,000,000)
37	Transfer from Tobacco Trust Fund	2,500,000
38		
39	**Subtotal Adjustments to Availabilty: Senate Bill 897**	**54,914,722**
40		
1	**Revised General Fund Availability**	**18,994,926,000**
2	**Less: General Fund Appropriations**	**18,989,677,375**
43		
44	**Unappropriated Balance Remaining**	**5,248,625**

SUMMARY:

GENERAL FUND APPROPRIATIONS

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Education:						
Community Colleges	1,012,467,778	65,244,859	(14,500,000)	50,744,859	-7.00	1,063,212,637
Public Education	7,360,833,223	(187,669,707)	(31,590,226)	(219,259,933)	-36.00	7,141,573,290
University System	2,656,552,008	(3,344,409)	13,254,517	9,910,108		2,666,462,116
Total Education	**11,029,853,009**	**(125,769,257)**	**(32,835,709)**	**(158,604,966)**	**-43.00**	**10,871,248,043**
Health and Human Services:						
Central Management and Support	74,172,339	(4,462,834)	(461,000)	(4,923,834)	-24.00	69,248,505
Aging Division	37,282,029	0	0	0	0.00	37,282,029
Blind and Deaf / Hard of Hearing Services	8,649,731	(557,484)	(75,428)	(632,912)	-3.00	8,016,819
Child Development	269,183,962	(21,334,255)	(24,756,300)	(46,090,555)	-2.00	223,093,407
Education Services	36,844,718	(5,612,680)	0	(5,612,680)	-67.00	31,232,038
Health Service Regulation	17,914,125	(342,592)	(1,718,754)	(2,061,346)	-2.00	15,852,779
Medical Assistance	2,720,196,757	212,255,147	(561,531,417)	(349,276,270)	0.00	2,370,920,487
Mental Health	664,695,955	9,987,828	11,607,991	21,595,819	-1.00	686,291,774
NC Health Choice	81,964,241	6,444,925	0	6,444,925	0.00	88,409,166
Public Health	160,515,329	(5,441,724)	(650,000)	(6,091,724)	-27.00	154,423,605
Social Services	208,589,483	(13,189,407)	(2,455,677)	(15,645,084)	-48.00	192,944,399
Vocational Rehabilitation	41,020,173	(516,798)	(2,585,674)	(3,102,472)	-8.00	37,917,701
Total Health and Human Services	**4,321,028,842**	**177,230,126**	**(582,626,259)**	**(405,396,133)**	**-182.00**	**3,915,632,709**
Justice and Public Safety:						
Correction	1,326,492,230	(49,709,580)	(4,372,000)	(54,081,580)	760.00	1,272,410,650
Crime Control & Public Safety	33,718,963	183,826	(1,500,000)	(1,316,174)	-7.00	32,402,789
Judicial Department	463,753,479	(12,518,245)	(3,300,000)	(15,818,245)	-58.75	447,935,234
Judicial - Indigent Defense	120,132,010	1,697,164	(5,892,031)	(4,194,867)	11.50	115,937,143
Justice	88,652,538	(1,790,307)	(1,200,000)	(2,990,307)	16.00	85,662,231
Juvenile Justice & Delinquency Prevention	147,183,945	(4,737,080)	0	(4,737,080)	-31.50	142,446,865
Total Justice and Public Safety	**2,179,933,165**	**(66,874,222)**	**(16,264,031)**	**(83,138,253)**	**690.25**	**2,096,794,912**

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Natural And Economic Resources:						
Agriculture and Consumer Services	60,559,608	(1,938,749)	0	(1,938,749)	-27.00	58,620,859
Commerce	40,915,209	(3,447,413)	37,400,000	33,952,587	-20.00	74,867,796
Commerce - State Aid	15,388,725	(719,436)	5,700,000	4,980,564	0.00	20,369,289
Environment and Natural Resources	190,399,356	(8,932,429)	10,160,000	1,227,571	-59.25	191,626,927
DENR - Clean Water Mgmt. Trust Fund	50,000,000	0	0	0	0.00	50,000,000
Labor	17,400,863	(1,411,321)	0	(1,411,321)	-8.00	15,989,542
NC Biotechnology Center	14,501,900	(725,095)	0	(725,095)	0.00	13,776,805
Rural Economic Development Center	23,832,436	(1,191,622)	4,125,000	2,933,378	0.00	26,765,814
Total Natural and Economic Resources	**412,998,097**	**(18,366,065)**	**57,385,000**	**39,018,935**	**-114.25**	**452,017,032**
General Government:						
Administration	67,446,884	(1,763,676)	(394,234)	(2,157,910)	-9.00	65,288,974
Auditor	13,255,123	(777,194)	0	(777,194)	-5.00	12,477,929
Cultural Resources	73,249,990	(2,093,712)	(1,811,345)	(3,905,057)	-15.19	69,344,933
Cultural Resources - Roanoke Island	1,990,632	(115,926)	0	(115,926)	0.00	1,874,706
General Assembly	56,584,484	(3,295,241)	0	(3,295,241)	0.00	53,289,243
Governor	6,067,739	(353,359)	0	(353,359)	-3.00	5,714,380
Housing Finance Agency	14,608,417	(730,421)	(120,311)	(850,732)	0.00	13,757,685
Insurance	32,242,706	0	0	0	0.00	32,242,706
Insurance - Worker's Compensation Fund	1,561,846	0	0	0	0.00	1,561,846
Lieutenant Governor	931,703	(54,235)	0	(54,235)	-1.50	877,468
Office of Administrative Hearings	4,111,476	(278,356)	0	(278,356)	-1.00	3,833,120
Revenue	87,790,970	(2,980,759)	1,457,118	(1,523,641)	-42.00	86,267,329
Secretary of State	11,451,488	(666,886)	0	(666,886)	-8.00	10,784,602
State Board of Elections	6,221,208	266,722	107,129	373,851	1.00	6,595,059
State Budget and Management	6,407,809	(373,164)	0	(373,164)	-3.00	6,034,645
State Budget and Management -- Special	4,161,125	(4,650)	0	(4,650)	0.00	4,156,475
State Controller	23,188,207	8,700,000	(624,677)	8,075,323	26.50	31,263,530
Treasurer - Operations	17,565,400	0	0	0	0.00	17,565,400
Treasurer - Retirement / Benefits	10,804,671	0	0	0	0.00	10,804,671
Total General Government	**439,641,878**	**(4,520,857)**	**(1,386,320)**	**(5,907,177)**	**-60.19**	**433,734,701**

Summary of General Fund Appropriations Fiscal Year 2010-2011 2009 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2010-11	Adjustments	Adjustments	Changes	Changes	2010-11
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	707,573,496	(15,845,385)	0	(15,845,385)	0.00	691,728,111
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	**709,189,876**	**(15,845,385)**	**0**	**(15,845,385)**	**0.00**	**693,344,491**
Statewide Reserves:						
Contingency and Emergency Fund	5,000,000	0	0	0	0.00	5,000,000
State Health Plan (S.L. 2009-16)	276,179,709	0	0	0	0.00	276,179,709
State Retirement System Contributions	160,000,000	20,000,000	0	20,000,000	0.00	180,000,000
Judicial Retirement System Contributions	1,300,000	0	0	0	0.00	1,300,000
Information Technology Funds	7,840,000	0	0	0	0.00	7,840,000
Statewide Administrative Support Reduction	(6,600,000)	0	0	0	0.00	(6,600,000)
Convert Contract Employees to State Employees	(4,000,000)	0	0	0	0.00	(4,000,000)
University Cancer Research Fund	0	600,000	0	600,000	0.00	600,000
Reserve for Capital	0	18,222,000		18,222,000	0.00	18,222,000
Job Development Investment Grants (JDIG)	27,400,000	0	(6,600,000)	(6,600,000)	0.00	20,800,000
Subtotal Statewide Reserves	**467,119,709**	**38,822,000**	**(6,600,000)**	**32,222,000**	**0.00**	**499,341,709**
Total Reserves and Debt Service	**1,176,309,585**	**22,976,615**	**(6,600,000)**	**16,376,615**	**0.00**	**1,192,686,200**
Total General Fund for Operations	**19,559,764,576**	**(15,323,660)**	**(582,327,319)**	**(597,650,979)**	**290.81**	**18,962,113,597**
Capital Improvements						
Water Resources Development Projects	0	0	9,130,000	9,130,000	0.00	9,130,000
Capital Improvements	0	0	18,433,778	18,433,778	0.00	18,433,778
Total Capital Improvements	**0**	**0**	**27,563,778**	**27,563,778**	**0.00**	**27,563,778**
Total General Fund Budget	**19,559,764,576**	**(15,323,660)**	**(554,763,541)**	**(570,087,201)**	**290.81**	**18,989,677,375**

EDUCATION
Section F

Senate Subcommittee on Education

Public Education

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$7,360,833,223

Budget Changes

A. Technical Adjustments

1 Average Daily Membership ($4,980,046) R

Revises projected increase in ADM for FY 2010-11 to reflect 3,127 fewer students than originally projected. Dollar amount of adjustment includes revisions to all position, dollar, and categorical allotments.

Total funded ADM for FY 2010-11 is 1,475,668, an increase of 10,754 over FY 2009-10. There was a temporary ADM reduction in FY 2009-10 precipitated by a change in the Kindergarten eligibility age.

2 Average Teacher Salary ($44,950,676) R

Revises budgeted funding for certified personnel salaries based on actual salary data from December 2009. Adjustment does not reduce any salary paid to certified personnel.

3 Education Lottery Receipts ($36,638,646) R

Adjusts the receipts budgeted for the Classroom Teachers allotment to reflect half of the projected $73 million growth in Education Lottery revenues over the $368 million budgeted amount.

4 Exceptional Children Headcount ($6,000,000) R

Adjusts funding previously budgeted for the Children With Disabilities allotment to reflect actual student headcount and does not reduce funding per student. The continuation budget includes anticipated growth based on the projected headcount of children with disabilities. This adjustment revises budgeted funding for both preschool and school-age children with special needs to reflect the April 1, 2010 headcount.

	FY 10-11	
5 Small County Supplemental Funding Reduces funding to adjust for the expiration of Currituck County's funding eligibility in FY 2009-10 as well as a surplus of funding needed to fully fund the other eligible counties. The remaining $43.5 million is sufficient to fully fund the 28 eligible counties.	($3,000,000)	R
6 Learn and Earn Early College High Schools Adjusts funding to reflect the delayed opening of one Learn and Earn School scheduled to open in FY 2009-10. S.L. 2009-451 provided funding to open twelve Learn and Earn schools that had been given planning funding in FY 2008-09. Only ten of the twelve planning schools were ready to open in FY 2009-10, but one of them will be ready to open in FY 2010-11. Currently 66 Learn and Earn "Bricks and Mortar" schools are operating in North Carolina.	($310,000)	R
B. Other Public School Funding Adjustments		
7 ADM Contingency Reserve Reduces the Contingency Reserve by 50%. The Reserve is maintained to provide additional support to school systems that experience greater than projected student headcount growth. $2.6 million will remain to support the Reserve.	($2,618,501)	R
8 More at Four Reduces program funding by 15% from its $165.5 million combined appropriation of General Fund and Lottery proceeds. The Joint Task Force on Early Childhood Education and Care estimates that $5 million in program savings can be achieved by the capping of administrative costs, as proposed in section 7.x of the Budget Bill. An additional $16.2 million in Federal receipts is anticipated to support More at Four in FY 2010-11.	($10,000,000) ($16,176,036)	R NR
9 Instructional Supplies Reduces the Instructional Supplies allotment by 6%. $89.2 million will remain for this purpose.	($5,000,000)	R

	FY 10-11	
10 Central Office Administration Reduces the dollar allotment to LEAs for the salaries and benefits of central office staff by 9.1%. This staff includes, but is not limited to, superintendents, associate and assistant superintendents, finance officers, athletic trainers, and transportation directors. $99.8 million will remain to support these local staff.	($10,000,000)	R
11 Noninstructional Support Personnel Reduces recurring funding for this allotment, which supports clerical assistants, custodians, and substitute teachers, amongst other items. $15 million in State funds will remain available for this allotment in addition to $373 million in federal Education Stabilization Funding provided to LEAs that may also be used for the same purposes.	($7,100,000)	R
12 Mentoring Eliminates all State funding for LEA mentoring programs on a nonrecurring basis in FY 2010-11 only.	($9,214,190)	NR
13 Limited English Proficiency Reduces funding for this allotment by 5.0%. $76.5 million will remain available for this allotment.	($4,000,000)	R
14 Transportation Reduces funding for the allotment, which supports the salaries of transportation personnel as well as the maintenance of yellow buses, by approximately 2.3%. $403 million will remain available for this allotment.	($10,035,622)	R
15 Assistant Principals Reduces funding for the allotment by 4.8%. Adjusts the basis of funding a ten-month Assistant Principal (AP) position from 1 AP for every 800 students to 1 AP for every 830.5 students. $88.3 million will remain available for this allotment.	($4,500,000)	R
16 Instructional Support Reduces this allotment by 1.4%. This allotment supports guidance counselors, librarians, media specialists, school nurses, social workers and other certified personnel. $353 million will remain available for this allotment.	($5,000,000)	R

17 At-Risk Student Services ($1,200,000) R

Reduces this allotment by 0.5%. Part of this allotment provides funding to hire a School Resource Officer (SRO) based on a specified salary and benefits amount that is greater than the actual average salary and benefits provided to SROs. This reduction adjusts the allotment to reflect actual expenditures. $234.7 million will remain available for this allotment.

18 Disadvantaged Student Supplemental Funding ($1,975,008) R

Reduces the allotment by 2.5% by eliminating a hold harmless clause that benefits the 16 LEAs initially eligible for this funding in FY 2005-06. Every LEA now qualifies for DSSF funding. $76.8 million will remain available for this allotment.

19 Child and Family Support Teams ($2,500,000) R

Reduces this allotment by 21.3%. This allotment provides funding for a dedicated social worker and school nurse in 100 schools. $9.2 million will remain available for this allotment.

20 School Bus Replacement

Eliminates funding for the purchase of new replacement school buses in FY 2010-11. $44 million will remain available to support the extended financing payments required for buses purchased in FYs 2007-10, and an additional $1 million will be available for emergency bus replacement purchases. ($11,900,000

21 North Carolina Virtual Public Schools ($5,574,784) R

Eliminates the direct appropriation for the North Carolina Virtual Public Schools (NCVPS). Instead of being funded through a direct appropriation, NCVPS will be funded via a new funding formula. The new funding formula reduces LEA allotments based on projected LEA enrollment in NCVPS courses, in order to recognize the extent to which "enrollment in e-learning courses affects funding required for other allotments that are based on ADM," as directed by S.L. 2006-66, Section 7.16. NCVPS courses will continue to be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

	FY 10-11	
22 Appropriations to Non-Public School Organizations Reduces appropriations to all non-public school organizations (Communities in Schools, NC Science Olympiad, Tarheel ChalleNGe Academy, Teach for America, and Teacher Cadet) by 5%.	($202,130)	R
23 Dropout Prevention Grants Discontinues funding for Dropout Prevention Grants.	($13,000,000)	R
24 Connectivity Reduces funding for the School Connectivity Initiative (SCI) as it is deployed in all LEAs and is in the operations and maintenance phase. This adjustment also includes a $3 million nonrecurring reduction of the cash balance. The recurring cut of $1 million represents a reduction to recurring appropriations of approximately 4.5%, and leaves recurring appropriations at $21 million per year. The nonrecurring cut of $3 million reduces initiative funding projected to be unexpended in FY 2009-10.	($1,000,000) ($3,000,000)	R NR
25 Education Value Added Assessment System (EVAAS) Provides $250,000 to expand funding for EVAAS licenses that had previously been funded out of reversions and $750,000 to purchase EVAAS Teacher Analysis.	$1,000,000	R
26 Student Diagnostic and Intervention Initiative Provides nonrecurring funding to extend the Student Diagnostic Pilot program an additional year in the existing 40 pilot schools. Additional funding will expand the pilot program to additional school sites while also supporting the training needed for teachers to properly implement the program.	$15,000,000	NR
27 JOBS Commission Schools Provides funding to support the creation of certain school sites recommended by the Joint Legislative Joining Our Businesses and Schools (JOBS) Study Commission.	$200,000	R

C. Department of Public Instruction

28 DPI Operating Funds ($2,375,850) R

Reduces agency operating funds by the same amount that the Department of Public Instruction has held in reserve and that has remain unexpended for FY 2009-10.

29 North Carolina Center for the Advancement of Teaching ($1,000,000) R

Reduces funding for the North Carolina Center for the Advancement of Teaching (NCCAT) by approximately 17%, bringing annual recurring funding for the program to $4,913,229.

30 NC WISE ($2,000,000) R
($5,000,000) NR

Reduces the annual appropriation for the North Carolina Window on Student Education (NC WISE), as this project is deployed and is in operations and maintenance phase. As such, its annual budgetary needs are $2 million less than previously budgeted. This item also includes a $5 million nonrecurring reduction of the cash balance. The remaining balance will support the hardware and reporting projects associated with NC WISE.

31 Department of Public Instruction IT Program Management Office ($2,828,444, ..
-26.00

Eliminates 26 positions and one contractor in order to find efficiencies and reduce redundancy in the Department of Public Instruction IT Program Management Office (IT PMO). The reduction includes departmental NC WISE positions, Offices of the Chief Information Officer, Chief Technology Officer, Technology Business Services, and Project Management. NC WISE has been deployed, reducing the need for personnel.

32 Department of Public Instruction Academic Services ($1,080,000) R
-10.00

Eliminates 10 positions in the Academic Services and Instructional Support department. The District and School Transformation area shall be excluded from this reduction.

33 Legacy Fund Balance ($1,300,000) NR

Eliminates the cash balance for this project. Funds were appropriated on a nonrecurring basis in three consecutive years to enable DPI to bring information technology applications into compliance with the statewide architecture requirements. This project has now been completed. The total appropriation for this purpose was $6 million.

Budget Changes	**($187,669,707)**	**R**
	($31,590,226)	**NR**
Total Position Changes	-36.00	
Revised Total Budget	**$7,141,573,290**	

Community Colleges

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$1,012,467,778

Budget Changes

A. Technical Adjustments

34 Fully Fund Enrollment Growth $85,041,632 R

Provides funds to fully fund enrollment growth. According to the 2009-10 spring semester census, enrollment has increased by 15.8% (34,118 full-time equivalents or FTE) above the 2009-10 adjusted budgeted enrollment of 213,472. This increase brings FY 2010-11 budgeted enrollment to 247,590.

This funding is in addition to the $41,126,850 in the continuation budget for FY 2010-11 enrollment growth, for a total of $126,168,482 in enrollment growth funding.

B. State Aid Adjustments

35 Management Flexibility Reduction ($13,500,000) R

Reduces funds in the State Aid budget, bringing the total management flexibility reduction for FY 2010-11 to $27.5 million. The State Board of Community Colleges shall distribute the flexibility reduction, accounting for the unique needs of each college. Each college reduced shall have the flexibility to adjust its budget to implement this reduction, but shall not impact those activities directly involved in retraining displaced workers.

36 Tuition Increase ($23,244,836) R

Increases curriculum tuition from $50 to $55 for residents ($5 increase) and from $241.30 to $247 for nonresidents ($5.70 increase). Tuition for full-time resident students will increase by a maximum of $160 per year, from $1,600 to $1,760.

37 Overrealized Tuition Receipts ($10,000,000) NR

Increases the amount budgeted for tuition receipts to more accurately reflect anticipated receipts. Given recent enrollment growth trends, it is anticipated that enrollment in FY 2010-11 will increase by more than the budgeted amount.

38 One-time Increase in Federal Literacy Receipts ($4,500,000) NR

Increases the amount budgeted for federal literacy receipts, due to a one-time increase, and takes a corresponding one-time reduction in State funding.

39 Restore Small Business Center Funding $402,861 R

Restores the reduction made to the Small Business Center allotment in 2009. This funding will be added to each colleges' base allocation. With this restoration, the total funding available for this program will be $5,756,853.

40 Restore Funding for Prisoner Education $17,649,735 R

Restores partial funding to the prisoner education program. The program received $32.9 million in non-recurring funds in FY 2009-10 while undergoing a continuation review. A total of $20 million will be restored - in addition to the $17.6 million included in this item, an additional $2,350,256 is included in the Department of Correction budget in the Justice and Public Safety section of this report to pay for prisoner tuition at the community colleges.

C. System Office Adjustments

41 Move Position to Receipt Support ($60,747) R

Reduces appropriations by shifting one Education Consultant position entirely to proprietary school receipts. This position oversees the activities that generate these receipts.

42 Reduce State Board Reserve ($160,000) R

Reduces funding for the State Board Reserve by 24% from $660,000 to $500,000.

43 Reduce Advertising Budget ($150,000) R

Reduces funds for advertising by 50%.

44 Reduce System Office Operating Budget ($158,764) R

Reduces the System Office operating budget with specific reductions to be identified by the System Office. Reductions should focus on travel, printing, postage, and registration fees.

45 Eliminate Positions ($575,022) R

-7.00

Eliminates 7 positions in the Community College System Office. The duties of these positions shall be eliminated or absorbed by other System Office employees. The positions are:

-Education Program Director #60088171 (Bionetwork) - $94,250 salary and $22,045 benefits.

-Technology Support Analyst #60088065 (Information Technology) - $54,724 salary and $14,867 benefits.

-Information Technology Manager #60088013 (Information Technology) - $98,976 salary and $22,903 benefits.

-Education Program Director II #60088192 (Workforce Development and Continuing Education) - $102,750 salary and $23,588 benefits.

-Television Production Asst III #60088049 (Distance Learning) - $35,497 salary and $11,375 benefits.

-Business Officer -C #60088111 (Facilities and Administration) - $34,283 salary and $11,155 benefits.

-Office Assistant IV #60088142 (Student Services) - $36,966 salary and $11,642 benefits.

Budget Changes	**$65,244,859**	**R**
	($14,500,000)	**NR**
Total Position Changes	-7.00	
Revised Total Budget	**$1,063,212,637**	

UNC System

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$2,656,552,008

Budget Changes

A. Base Budget Adjustments

46 Management Flexibility Reduction ($50,000,000) R

Mandates a management flexibility reduction for the UNC operating budget with a priority on non-teaching related budget cuts. This reduction is in addition to the $100 million management flexibility reduction authorized for the FY 2010-11 base budget.

47 IT Reserve Eliminated ($755,917) R

Eliminates the remaining balance of a $10 million reserve appropriated in 1999 for Information Technology (IT). UNC General Administration used the reserve to provide grants to campuses for IT software and hardware.

48 Distance Education Reserve Eliminated ($651,483) R

Eliminates the remaining balance of a $1.93 million reserve appropriated in 1996 for distance learning efforts. The expansion of distance learning is now funded by the enrollment growth model and by reserves for UNC Online and 2+2 efforts.

49 UNC-TV Utilities Reduction ($632,140) R

Reduces the $1.8 million UNC-TV utilities budget by 35% due to the station's conversion from analog to digital in June 2009.

50 Aid to UNC Hospitals Reduced ($2,000,000) R

Reduces the $44 million annual appropriation to UNC Hospitals by 4.5%.

	FY 10-11	
51 Legislative Tuition Grant Reduces the appropriation for Legislative Tuition Grants (LTG) for North Carolina resident students attending the State's private colleges and universities. The current appropriation for LTG is $55,233,705.	($1,500,000)	R
52 Enrollment Growth Increases the UNC system enrollment growth funding in the FY 2010-11 base budget due to projected increase of 441 FTE over previous estimates. This funding is in addition to the $53,432,226 for 4,485 FTE included in the FY 2010-11 base budget.	$5,636,814	R
53 Tuition Repeal Repeals the FY 2010-11 legislative tuition rates enacted in the 2009 legislative session and restores the associated appropriation reduction.	$34,776,301	R
54 Need-Based Financial Aid Increases UNC Need-Based Financial Aid to account for 1) funding 4,600 additional students that qualify for assistance and inflationary increases for previously funded students ($22.85 million) and 2) restoring need-based aid that was nonrecurring in FY 2009-10 ($12 million). This General Fund appropriation plus lottery receipts of $26,661,046 equals the additional $34,856,563 needed in FY 2010-11 for UNC need-based aid.	$8,195,517	NR
55 UNC High School Funding Restored Restores base budget cuts made in FY 2009-10 to the two high school programs in the UNC system. The North Carolina School of Science and Math will receive $80,851 for lab and educational supplies and the University of North Carolina School of the Arts will receive $201,165 for cost of living increases in their residential high school.	$282,016	R

FY 10-11

56 ECU Dental School Operations — $6,000,000 R

Funds additional faculty and operating needs of the new School of Dentistry at East Carolina University that will open with 50 students in the Fall of 2011. To date, $5.5 million has been appropriated for the school's operating budget. To ensure accreditation by the American Dental Association's Commission on Accreditation and to complete the instructional and operational budget for a student body of 200, the General Assembly pledges to fund an additional $3.5 million in FY 2011-12 and $1.5 million in FY 2012-13.

57 Energy Production Infrastructure Center (EPIC) — $3,000,000 R

Completes the staffing and operational needs of the Energy Production Infrastructure Center (EPIC) opening at UNC-Charlotte in the Fall of 2011. These funds will enable the hiring of research faculty in electrical power, power system infrastructure, and power plant engineering. These funds are in addition to the $2 million appropriated in 2009.

58 ASU College of Health Sciences and Allied Professions — $500,000 R

Funds the operating and staffing needs of the newly established College of Health Sciences and Allied Professions at Appalachian State University.

59 Distinguished Professor Endowment Fund — $4,000,000 NR

Increases the Distinguished Professor Endowment Fund to reduce the backlog of 66 professorships awaiting State matching funds. The Fund has an annual base budget appropriation of $8 million.

60 Institute for Emerging Issues Fellows Program — $309,000 NR

Funds an expansion of the Fellows program at the Institute for Emerging Issues at North Carolina State University. Faculty and student Fellows will apply their expertise to the State's current public policy issues such as job growth and economic development.

61 CASTLE $500,000 NR

Continues State support for the Center for the Acquisition of Spoken Language through Listening Enrichment (CASTLE) at UNC-Chapel Hill. The funds will be used to 1) train teachers and therapists to work with deaf preschool- age children with cochlear implants and 2) provide oral preschool classes to these children. The program has received nonrecurring appropriations annually since 2005.

62 Coastal Wave Energy Research $2,000,000 R

Funds research, design, and construction of devices to capture the energy of ocean waves. The research will be conducted by a consortium that includes the University of North Carolina Coastal Studies Institute and the Colleges of Engineering at North Carolina State University, North Carolina Agricultural and Technical State University, and the University of North Carolina Charlotte.

63 Veterinary Medicine Clinical Teaching and Research Fund $250,000 NR

Continues state funding for the North Carolina State University College of Veterinary Medicine Clinical Teaching and Research Fund. This fund was created in 2007 to allow advanced diagnostic and treatment options for animals where a) owner financing of such options are limited, b) significant instructional value exists, or c) the diagnostic and treatment options have the potential of adding significantly to the core knowledge in the relevant clinical area.

Budget Changes	**($3,344,409)**	**R**
	$13,254,517	**NR**
Total Position Changes		
Revised Total Budget	**$2,666,462,116**	

HEALTH
&
HUMAN SERVICES
Section G

Health and Human Services

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$4,321,028,842

Budget Changes

(1.0) Division of Child Development

1 Equipment, Travel and Supplies ($261,518) R

Reduces the funding within the operations budget. This reduction holds the Division to its FY2009-10 spending level for operations.

2 Vacant Positions ($72,737) R

-2.00

Eliminates two vacant positions within the Division of Child Development. The positions to be eliminated are Administrative Assistant I budgeted at $31,564 and an Administrative Officer III budgeted at $41,173. These positions have been vacant longer than six months.

3 Child Care Subsidy ($24,756,300) NR

Replaces State funding for child care subsidy with Temporary Assistance for Needy Families Block Grant (TANF) funds for FY2010-11.

4 Electronic Payment System ($6,000,000) R

Reduces funds available within the Division of Child Development in anticipation of saving money related to better management and tracking of child care subsidy expenditures. The new system will reduce expenditures associated with fraudulent and inaccurate payments.

5 Smart Start ($10,000,000) R

Reduces funding for the North Carolina Partnership for Children, Inc. This is a 5.2% reduction and the remaining funding totals $183 million.

6 Health Initiatives ($5,000,000) R

Reduces funding for the Smart Start Health Initiatives, currently funded at approximately $8 million annually. Remaining Health Initiatives funding will be used to leverage federal funds to pay for health-related activities funded through Smart Start.

(2.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

7 School-based Child and Family Teams ($523,638) R

Eliminates funding available for system coordinators within the 15 LME pilot areas. These funds support 18 Care Coordinators.

8 Vacant Position ($84,864) R

Reduces funding for a vacant position within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This position is a Mental Health Program Administrator II and has been vacant for one year. This position is budgeted at $84,864 and the work location is Raleigh.

-1.00

9 State Service Funds ($4,461,202) NR

Replaces State funding with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services with federal Mental Health and Substance Abuse block grant funds for FY2010-11. The total includes $1,731,432 from the Mental Health Block Grant and $2,729,770 from Substance Abuse Block Grant. This is a one-time swap of state with federal funds.

10 Division Management Funds ($7,180,807) NR

Reduces unobligated funding available at the Division's discretion for one-time needs of community providers or LME system needs. The total includes $1,169,355 for mental health, $3,398,534 for developmental disabilities, and $2,612,918 for substance abuse services. These funds have historically been spent to address specific one-time needs; these funds are not allocated to LMEs for service provision.

11 Convert Whitaker School to a PRTF ($1,938,465) R

Reduces State funds for the Whitaker School; the program will become a Psychiatric Residential Treatment Facility in which services are Medicaid reimbursable.

	FY 10-11	
12 Local In-Patient Bed Capacity Increases funds available for the three-way contracts to purchase local hospital bed capacity for crisis response within the community. These funds will support the purchase of an estimated 50 beds, bringing the funding to $32 million.	$12,000,000	R
13 Training in Facilities Increases funds available for training direct care staff and front line leaders in patient care. Training will include medication administration, therapeutic communication, clinical and legal aspects of documentation and cultural awareness.	$534,795	R
14 Community Service Funds Provides funding for community service funds administered through Local Management Entities. An additional $17 million of TANF funds is allocated to fully restore the $40 million non-recurring reduction for FY2010-11.	$23,000,000	NR
15 Leadership Academy Provides funds for a Mental Health Leadership Academy for training for Mental Health managers, finance/budget officers, and other leaders within Local Management Entities.	$250,000	NR
(3.0) Division of Central Management and Support		
16 Key Program Reduces funding available for Key Program rental subsidies. The Key Program provides rental assistance for disabled persons in targeted Low-Income Housing Tax Credit (LIHTC) units. Approximately 187 rental units will not be completed during FY 2010-11, thereby reducing projected requirements for subsidies.	($561,000)	NR
17 Information Technology Services Reduces recurring funding within the Division of Information Resource Management for ITS telecommunication data services ($300,564), computer/data processing ($286,597), and ITS managed local area network services ($350,000). Transitioned CSE programs, effective July 1, 2010, will assume responsibility for ITS charges for telecommunications services. Remaining reductions reflect ITS rate reductions and decreased mainframe use as new applications come online.	($937,161)	R

18 Over-Realized Receipts ($1,362,201) R

Reduces funding with the Controller's Office. This reduction will be offset by budgeting additional receipts regularly received but not currently budgeted.

19 CARE-LINE ($257,004) R

-4.00

Reduces the hours of operation for the Department of Health and Human Services CARE LINE to regular business hours, and transfers after-hour calls to the Martin County Call Center. Approximately 20% of calls are presently received after regular business hours.

20 Equipment, Travel and Supplies ($263,581) R

Reduces funding for equipment, travel, and supplies within the Division of Central Management and Support. This reduction was also taken on a non-recurring basis during FY 2009-10 to meet the projected revenue shortfall.

21 Position Eliminations ($1,228,875) R

-20.0

Eliminates positions within the Division of Central Management.

22 Pesticide Task Force ($39,430) R

Eliminates funding for the Pesticide Task Force activities. These activities are paid for through the federal NC Farmworker health grant.

23 Community Care of NC Grants ($183,833) R

Eliminates State appropriation for demonstration grants--obesity, stroke prevention, and emergency room diversion--to test alternative methods to managing the utilization of health care services. demonstration projects within the CCNC program.

24 Rural Health Loan Repayment Program ($190,749) R

Reduces funding for the Rural Health Loan Repayment Program. This reduction amount represents three contracts for health providers.

25 Special Olympics
Provides funding for a grant-in-aid to Special Olympics. $100,000 NR

(4.0) Division of Public Health

26 Minority Health Interpreter Services
Reduces state appropriations for local health department service contracts that meet the language needs of clients. ($11,000) R

27 Community Focused Eliminating Health Disparities Contracts
Reduce State appropriations for state and local health department contracts by less than 3 percent. ($85,895) R

28 Division of Public Health Contracts
Reduces State appropriations remaining in two contracts-Perinatal Outreach and Family Health Resource Line-that have been eliminated. ($400,601) R

29 Accreditation of Local Health Departments
Suspends for an additional year the Division of Public Health's evaluation and accreditation of Local Health Departments (LHDs). Centers for Communicable Disease and Prevention is scheduled to launch a nationwide effort to accredit local health departments to national standards in 2011. ($650,000) NR

30 Medicaid Funding for WIC Metabolic Foods
Replace State appropriations with Medicaid funding for Medicaid-eligible children requiring a diet of metabolic foods. ($283,477) R

31 Position Eliminations
Eliminates 27 positions in Division of Public Health. ($900,000) R
-27.00

32 Operations Reduction
Reduces State appropriations for equipment, travel, and supplies at Division offices. ($443,530) R

33 Immunization Changes ($15,894,853) R

Eliminates State appropriation for the purchase of vaccines, for which health care providers, including local health departments, can be billing health insurers for reimbursement. North Carolina Health Insurers reimburse for the full series of standard immunizations recommended by Centers for Disease Control and Prevention (CDC) and the American Academy of Family Physicians; and required by the North Carolina Immunization Program.

34 Children's Development Services Agency ($2,600,000) R

Offsets General funds with overrealized receipts from Medicaid. This program has been increasing its third party collections.

35 School Health Nurses $1,000,000 R

Provides funds to hire 20 additional school nurses to bring the total number of school health nurses supported by the Division of Public Health to 265.This is in addition to the 20 school nurses provided for in SFY 2010-11 in S.L. 2009-451, Sec. 10.24.

36 AIDS Drug Assistance Program $14,177,632 R

Provides State funds to continue to serve people in the AIDS Drug Assistance Program who are enrolled as of July 1, 2010. These funds will allow eligible individuals with annual incomes of up to 125% FPL, who are on the waiting list as of July 1, 2010 to be enrolled. To the degree that funds are available, additional people will be enrolled in the program.

(5.0) NC Health Choice

37 Optical Supplies ($114,550) R

Directs the Health Choice Program to contract with Department of Correction for optical supplies.

38 NC Health Choice Transition Staff $59,475 R

Provides State funds for three staff to transition the administration of NC Health Choice from the State Health Plan to the Division of Medical Assistance. The staff includes two time-limited employees for clinical policy and provider enrollment and one permanent employee for program integrity activities.

39 NC Health Choice Enrollment $6,500,000 R

Provides State appropriation to increase enrollment in Health Choice by 2% or 2,750 children for a total of 137,789 children served by the program.

(6.0) Division of Medical Assistance

40 CCNC Savings ($45,000,000) R

Provides savings in overall Medicaid expenditures through the expanded efforts of the Community Care Network of North Carolina (CCNC). DHHS contracts with CCNC to manage utilization of Medicaid services. Savings will be generated by expanding CCNC's care management programs in hospital discharge, mental health; palliative care, and pharmacy. The improved Informatics system will enhance data integration, analytics, and reporting, increasing performance and cost savings.

41 Maternal Outreach Workers (MOW) ($292,974) R

Transitions pregnant women receiving services through Local Health Departments from Maternal Outreach Workers (MOW) to services provided by Maternal Care Coordinators (MCC) and Children Services Coordinators (CSC). MCC and CSC personnel are required to have a Bachelor's Degree.

42 Pharmacy Program Improvements ($5,566,096) R

Generates savings by implementing various pharmacy program improvements, including collecting drug rebates on certain prescription drug claims ($3.6 million); stopping reimbursement for lost prescriptions ($252,000); requiring prior approval on brand drugs when 'medically necessary' is written on the prescription ($938,700); creating a specialty drug network for dispensers of certain high cost drugs ($316,040); requiring prior approval on all requests for the drug Synagis ($376,253); and eliminating the ineffective FORM pharmacy program ($83,103).

43 Prescription Vitamins ($777,138) R

Eliminates Medicaid coverage of prescriptions for vitamins and minerals that are available over-the counter, while continuing to reimburse for multi-vitamin prescriptions for pregnant women.

44 Narcotic Prescriptions ($603,000) R

Reduces General Fund appropriations for Medicaid pharmacy by locking Medicaid enrollees with a narcotic prescription (e.g. Vicodin, Benzodiazipine) into a single pharmacy and single doctor to prevent pharmacy and doctor shopping and narcotics abuse.

45 Mental Health Drug Savings ($10,000,000) R

Generates savings by adding mental health drugs to the Preferred Drug List (PDL), which were previously not part of the PDL savings, and also requires prior authorization but only for off-label prescribing of mental health drugs.

46 Capitated Behavior Health Pilot Programs ($1,560,600) R

Expands the capitated behavioral health pilot program to two additional local management entities (LMEs), effective January 1, 2011. Effort is based on the Piedmont Behavioral Health pilot.

47 Prior Authorization for Children's Outpatient Mental Health Services ($933,547) R

Establishes Prior Authorization for Children's Outpatient Mental Health Services at 16 visits versus the current 26 visits.

48 Independent Assessments on Mental Health Services ($7,730,207) R

Implements independent assessments on various mental health services in the Medicaid program. Prior to the service being delivered, an independent assessment will be conducted to ensure the proper utilization of services.

49 Enhanced Mental Health Changes ($41,000,000) R

Modifies the community support team (CST) service for adults to limit the number of hours from 18 per week to 5, and reduces the rate from $15.60 per unit to $11.80 per unit. Savings also reflect a delay in the implementation of the Peer Support program by six months, effective January 1, 2011.

50 In-Home Personal Care Services ($59,805,207) R

Reforms the In-Home Personal Care Services program to provide care to those individuals at greatest risk of needing institutional care. Reform includes the elimination of in-home PCS services for adults and the creation of a new program for adults with the most intense needs - those needing assistance with three or more activities of daily living (ADLs).

51 Dental Program Improvements ($16,982) R

Generates savings by implementing policy improvements in the dental program for children, including implementing limits on imaging for children under the age of 6 years of age; limiting three film radiographs to children aged 13 and older; and limiting the reimbursement for primary teeth composites.

52 Health Insurance Premium Payment Program (HIPP) ($3,000,000) R

Expands the HIPP Program, in which Medicaid pays for employer-based health insurance costs on behalf of Medicaid-eligible individuals when it is less expensive than Medicaid coverage.

53 Reimbursement of 'Never Events' ($5,000,000) R

Eliminates Medicaid reimbursement of 'never events' in hospital inpatient settings. 'Never events' are certain types of medical issues that develop or are acquired while a person is in a hospital, but should have been prevented. The policy change brings Medicaid in line with Medicare reimbursement.

54 Coverage of Certain Types of Surgery ($125,148) R

Eliminates coverage of certain types of surgery, including breast reduction and mastoplexy (breast lift) surgery ($23,420); panniculectomy surgery ($12,328); and surgery for severe obesity ($89,400).

55 Medical Assistance Co-Payments ($4,530,404) R

Increases current copayment amounts to a maximum of $3.40, and expands collection of copayments to local health departments and outpatient behavioral health services. In addition, implements a $6.80 copayment for nonemergency hospital emergency room (ER) visits.

56 Program Integrity Savings ($36,188,013) R

Generates savings through new Program Integrity initiatives, including Medicaid SWAT teams for on-site investigations, strengthening Medicaid fraud laws, innovative technology to detect fraud and abuse, and prepayment reviews for questionable providers.

57 Attorney General's Office (AGO) Medicaid Investigative Unit Staff Savings ($1,000,000) R

Generates savings by doubling the Medicaid Investigative Unit staff at the AGO to expand the prosecution of Medicaid fraud and abuse. Additional staff will ensure increased prosecution and additional Medicaid funds recovered from fraudulent providers.

58 Contract Reductions ($180,250) R

Reduces payment for duplicative or unnecessary administrative functions performed under the Medicaid contract with HP, including eliminating the processing of duplicative claims and processing prior approval (PA) on claims that do not require PA.

59 ARRA Federal Enhanced Matching Funds Extension ($482,111,583) NR

Reduces General Fund appropriations anticipating that Congress will pass a law extending by six months the enhanced federal matching funds provided under the American Recovery and Reinvestment Act (ARRA) through June 2011.

60 ARRA Medicare Part D Clawback Savings ($79,419,834) NR

Reduces General Fund appropriations based on savings from enhanced federal matching funds provided by the American Recovery and Reinvestment Act (ARRA). The enhanced federal funds offset State funding for Medicaid paid to cover a portion of prescription drug costs paid by Medicare Part D for dually-eligible (Medicaid/Medicare) individuals. Savings also anticipate that Congress will pass legislation extending the enhanced rate for six months, through June 2011.

61 Medicaid Rebase $430,564,713 R

Increases General Fund appropriations to the FY 2010-11 Medicaid budget to account for 5.6% growth in eligibles above current levels ($5,054,765); consumption ($121,867,913); inflation for cost-settled providers ($5,568,149); new services and mix of services ($16,094,752); anticipated cost of flu ($7,985,000); reductions not achieved in the previous fiscal year ($225,537,633); and increased appropriations due to the change in the Federal Medical Assistance Percentage (FMAP) ($48,456,502).

62 Adult Care Home Funds $5,000,000 R

Increases funding for adult care homes based on acuity levels for the personal care services provided in adult care homes. Funding will assist in the development of a 1915(c) Medicaid Assisted Living waiver for individuals that reside in adult care homes that meet skilled nursing level of care and currently receive State County Special Assistance (SA).

(7.0) Division of Health Service Regulation

63 Home Base Licensure and Certification Staff/Lexington Office ($92,038) R
$22,797 NR
-2.00

Closes Lexington office and home-bases licensure and certification staff, eliminating operating costs and two administrative positions.

64 Medicaid Funding for Home Care Licensure and Certification ($104,739) R

Generates savings by collecting federal Medicaid receipts to support licensure and certification activities for home care agencies. Since home care agencies are Medicaid providers, this will allow DHSR to collect federal Medicaid receipts.

65 Fee for Adult Care Home Medication Aide Testing ($110,575) R

Establishes a $25 fee for the testing and materials provided to adult care home medication aides to help defray the costs of administering the tests.

66 Fees for Adult Care Home Administrator Testing and Certificates ($35,240) R

Establishes a $50 adult care home administrator test fee and a $30 adult care home administrator certificate renewal fee. Certificate renewals occur every two years.

67 Nursing Home Licensure and Certification Funds ($1,741,551) NR

Replaces General Fund appropriations with federal receipts in the Nursing Home Licensure and Certification Section on a nonrecurring basis. The receipts come from civil monetary penalties assessed against nursing homes.

(8.0) Division of Social Services

68 Equipment, Travel and Supplies ($492,000) R

Reduces funding for equipment, travel, and supplies within the Division of Social Services. This reduction was also taken on a non-recurring basis during FY 2009-10 to meet the projected revenue shortfall.

69 Adult Care Home Case Management ($150,000) R

Reduces over-budgeted funds for adult care home case management services, per historical reversions.

70 Position Eliminations ($959,632) R

Eliminates positions within the Division of Social Services.

-15.0

71 Economic Services Contract ($192,166) R

Eliminates funding for contracted installation and support for Supplemental Nutrition Assistance Program (SNAP) Electronic Benefit Transfer (EBT) infrastructure at Farmers Markets. Federal funds are available to support this initiative, and there has been limited vendor activity to date.

72 Child Support Enforcement Consolidation ($1,282,777) R

Streamlines functions within the Child Support Section and reduces operating funds to coincide with the elimination of sixteen State-operated Child Support Enforcement offices. Effective July 1, 2010, S.L. 2009-451 transitions financial and administrative responsibilities for local child support enforcement to twenty-eight counties presently served by the State offices. Under this proposal, approximately twenty filled and thirteen vacant positions within the central Child Support Section are eliminated.

-33.00

73 Child Advocacy Centers ($375,000) R

Replaces recurring grants-in-aid for the twenty-two accredited Child Advocacy Centers statewide. This reduction is offset by a non-recurring allocation of Social Services Block Grant receipts for services provided by the Child Advocacy Centers during FY 2010-11.

74 NC REACH Post-Secondary Scholarship Program ($160,507) R
($1,584,125) NR

Reduces funding for NC REACH scholarships per projected growth in awards during FY 2010-11. This non-recurring reduction leaves $1,584,125 available to support scholarships in FY 2010-11. In addition, funding for contractual case management services is reduced commensurate with actual FY 2009-10 obligations.

75 Child and Family Teams ($420,804) R

Eliminates funding for twelve child and family team facilitator positions located in the following counties: Anson, Bertie, Duplin, Greene, Halifax, Hoke, Hyde, Martin, McDowell, Nash, Pamlico, and Vance. These funds support facilitator positions established for pilot programs in the above counties. The remaining eighty-eight counties have utilized other resources to hire facilitators.

76 Child Welfare Contracts ($1,238,821) R

Eliminates funding for 1) Multiple Response ($229,086) and Adoption Programs ($459,156); 2) Grants-in-Aid ($413,044) for child placement services; and 3) Methamphetamine Training ($137,535). This reduction eliminates funding for non-mandated services, conferences, and trainings. Additionally, because placement agencies receive standardized rates for children in foster care (standardization effective January 2009), supplementary grants-in-aid are no longer necessary. Lastly, prior Methamphetamine training and support to all county DSS' have led to the creation of community protocols, reducing the need for ongoing training.

77 Electing Counties' Work First State Funds ($2,378,213) R

Replaces funding for Electing Counties' Work First programs with Temporary Assistance for Needy Families (TANF) funds. This reduction does not reduce budgeted funds for Electing Counties' Work First County Block Grants or Work First Family Assistance.

78 State-County Special Assistance ($3,388,044) R

Reduces funding in accordance with projected FY 2010-11 assistance levels. Counties' requirements are likewise reduced, due to equal financial participation for State-County Special Assistance. Projected savings are the result of the Special Assistance rate reduction that took effect October 1, 2009.

79 FMAP Extension - Foster Care & Adoption Assistance ($1,421,552) NR

Reduces funding for foster care and adoption assistance payments per extension of the ARRA enhanced federal financial participation (FMAP) rate - base 6.2 percentage point increase from January 2010 through June 2010.

80 Temporary Assistance for Needy Families (TANF) Funds

Additional TANF funds, totaling $16,176,036, are allocated to the Department of Public Instruction for the More at Four Pre-kindergarten program to replace an equivalent reduction in State funds.

81 Over-Realized Receipts ($450,000

Budgets prior year earned revenue on a non-recurring basis to offset an equivalent reduction in General Fund appropriations.

82 State Funding Authorizations for Counties ($2,390,896) R

Continues a reduction in State funding authorizations for counties for Foster Care/Adoption Title IV-E, Child Protective Services-State, and Child Protective Services Title IV-E. These reductions were implemented during FY 2009-10 to cover the projected revenue shortfall.

83 Food Banks $1,000,000 NR

Provides a non-recurring grant-in-aid to be equally distributed to the six regional food banks within North Carolina.

84 Child Welfare Education Collaborative $239,453 R

Continues support of the Child Welfare Education Collaborative educational assistance program for social work students who commit to working in child protective services in county departments of social services.

(9.0) Office of Education Services

85 Position Eliminations ($2,127,065) R

Eliminates positions within the Office of Education Services.

-50.00

86 Food Service Staffing ($282,991) R

Eliminates ten filled food service staff positions within the residential schools for the blind and deaf. The Department of Public Instruction's Child Nutrition Section, using USDA standards, audited the three residential schools' food service operations and determined that food service operations were over-staffed. Under USDA standards, meals per labor hour should average between 15 and 20. Present ratios at the residential schools are approximately 1.7 meals per labor hour.

-10.00

87 Temporary Staffing ($58,500) R

Reduces funding for temporary wages within the Office of Education Services.

88 Residential School Administrative Staffing ($605,386) R

Consolidates functions among residential school administrative positions, requiring the directors of the residential schools to assume full oversight of academic and business operations.

-7.00

Eliminates two filled and one vacant position within the North Carolina School for the Deaf:
School Principal, #60039101 - $101,516
School Assistant Principal, #60039082 - $88,786
School Assistant Principal, #60039080 - $88,804

Eliminates two filled positions within the Eastern North Carolina School for the Deaf:
School Principal, #60039225 - $108,563
School Assistant Principal, #60039138 - $85,317

Eliminates two filled positions within the Governor Morehead School for the Blind:
School Principal, #60039380 - $71,636
School Assistant Principal, #60039392 - $60,764

89 Beginnings, Inc. Contract ($46,459) R

Reduces funding for training of early intervention and public school professionals. This is a 4.8% reduction in total funding for contractual services provided by Beginnings, Inc, leaving $919,730 in recurring funding.

90 Office of Education Services ($2,492,279) R

Eliminates the Office of Education Services Central Office, Resource Support, Governor Morehead School Outreach, Deaf/Blind, and Exceptional Children Support programs.

The oversight of the North Carolina School for the Deaf, Eastern North Carolina School for the Deaf, Governor Morehead School for the Blind, Governor Morehead Preschool, Early Intervention Services - Preschool, and Family Resource Center programs is transferred to the Department of Public Instruction, Exceptional Children Division by Type I transfer.

(11.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing

91 Special Assistance for the Blind Consolidation ($287,807) R

Merges the Special Assistance for the Blind sub-program presently administered by the Division of Services for the Blind with the State-County Special Assistance program within the Division of Aging and Adult Services. -1.0

92 Over-Realized Receipts ($176,256) R
($150,428) NR

Budgets receipts within the Division of Services for the Blind as follows: 1) Social Security Administration receipts ($150,428) per successful vocational rehabilitation client employment outcomes on a non-recurring basis; and 2) Other vending receipts ($155,829) for independent living services.

In addition, $20,417 in Telecommunications Relay Trust Fund receipts are budgeted within the Division of Services for the Deaf and Hard of Hearing for general administration. These additional receipts were identified during FY 2009-10 through updates to DHHS cost allocation plans.

These cumulative receipts offset equivalent reductions in General Fund appropriations.

	FY 10-11	
93 Position Eliminations Eliminates positions within the Divisions of Services for the Blind, Deaf and Hard of Hearing.	($93,421) -2.00	R
94 Accessible Electronic Information for Blind and Disabled Persons Funds contracted electronic information services, which allow visually-impaired persons to access print media through telephone systems.	$75,000	NR
(12.0) Division of Vocational Rehabilitation		
95 Position Eliminations Eliminates positions within the Division of Vocational Rehabilitation Services.	($516,798) -8.00	R
96 Aid & Public Assistance - Vocational Rehabilitation Basic Support Reduces funding for vocational rehabilitation (VR) services. This reduction reflects maintenance of effort requirements for the VR Basic Support Grant, and leaves $22,957,317 in appropriations for case services. DHHS implemented a non-recurring reduction of $5,513,648 during FY 2009-10 to manage the projected revenue shortfall. DVRS will budget federal funds matched in prior years to partially offset this non-recurring reduction in FY 2010-11 appropriations.	($2,585,674)	NR
Budget Changes	**$177,230,126** **($582,626,259)**	R NR
Total Position Changes	-182.00	
Revised Total Budget	**$3,915,632,709**	

NATURAL & ECONOMIC RESOURCES

Section H

Agriculture and Consumer Services

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$60,559,608

Budget Changes

Department-wide

1 Vacant Positions ($440,218) R

Eliminates 9.0 vacant positions across the Department. Eliminated positions include: -9.00

#60012677 Research Technician
#60011868 Technology Support Analyst
#60011886 Processing Assistant III
#60011902 Processing Assistant III
#60011965 Food Inspector
#65006175 Quality Assurance Manager
#60012160 Vet Lab Assistant I
#60012115 Livestock Compliance Officer
#60095971 Processing Assistant III

2 IT Budget Reductions ($84,036) R

Reduces the Department's non-salary IT budget by 3%. This reduction is based on the average difference between budgeted and actual expenditures for the past four fiscal years.

3 Travel Budget Reductions ($70,995) R

Reduces the budget for payments to the Motor Fleet Management (MFM) Division by 7.5%. This decrease reflects the recent rate reduction implemented by MFM.

4 Equipment Budget Reductions ($223,520) R

Reduces the equipment budget in the Department by $223,520. This represents approximately a 4.5% reduction to the Departments equipment budget.

Ag Statistics

5 Operating Expense Reduction ($32,500) R

Reduces the budget for supplies and equipment within the Ag Statistics Division.

Emergency Programs

6 Contracts Funds ($15,000) R

Reduces funds for contracts within the Emergency Programs Division by $15,000, approximately 12% of total funds for miscellaneous contractual services.

Food and Drug Protection

7 NC Egg Law Program ($151,481) R

-3.00

Reduces the Egg Law Program by eliminating 3.0 positions and associated operating. One position will remain and will focus on investigations and consumer complaints. Other inspectors within the Food and Drug Protection Division will assume Egg Law inspection duties where possible. The eliminated positions include:

#60011637 Egg Law Inspector
#60011638 Egg Law Inspector
#60011639 Egg Law Inspector

8 Grade "A" Milk Program $710,687 R

7.00

Consolidates the Grade "A" Milk Program in the Division of Environmental Health in the Department of Environment and Natural Resources with the Dairy Program. The transfer includes 7.0 positions and $710,687 in General Fund appropriations.

9 Over Realized Receipts ($250,000) R

Requires the Animal Feed & Pet Food Branch within the Food & Drug Protection Division to budget over realized receipts. The Branch has over realized receipts by at least $250,000 each year since FY 2006-07.

Food Distribution

10 Fuel Budget to Federal Receipts ($50,000) R

Fund shifts a portion of the diesel fuel budget within the Food Distribution division to Federal receipts. Federal receipts fund approximately 45% of the Division's operations.

General Administration

11 FFA Foundation, Inc ($2,376) R

Reduces the recurring pass-through appropriation for the FFA Foundation, Inc by 5%, leaving $45,144 recurring.

Plant Industry

12 Phytosanitary Fees ($20,000) R

Increases phytosanitary fees within the Plant Industry Division. Subchapter 48A of North Carolina Administrative Code, Export Certification Inspection Fee; directly ties the Division's fee structure for phytosanitary inspections to the federal phytosanitary fee structure. This fee increase brings the Department's fee structure in line with USDA.

Public Affairs

13 Ag Review Publication ($25,000) R

Reduces funding for publication of the Ag Review by $25,000 and directs the Department to publish the Ag Review fewer times annually. The Ag Review is currently published 11 times a year. This represents a 15% reduction to the portion of the Public Affairs budget that is spent to produce the Ag Review.

14 Ag in the Classroom ($1,188) R

Reduces the recurring pass-through appropriation for Ag in the Classroom by 5%, leaving $22,572 recurring.

Structural Pest and Pesticides

15 Pesticide Section to Receipt Support ($726,324) R

Eliminates General Fund support for the Pesticide Section by requiring the Section to budget over realized receipts and increasing fees. This change requires that 15.0 positions be transferred to receipt support. -15.00

16 Structural Pest Section Fees ($100,000) R

Increases fees for certified applicator and license exams, structural licenses, structural certified applicator cards, and registered technician cards.

Veterinary Services

17 Rose Hill Vet Lab ($431,798) R

Eliminates the Rose Hill Vet Lab. The Rose Hill Lab is the least active and oldest of the Division's five veterinary labs. Elimination of this lab will streamline laboratory processes and eliminate an underperforming facility. This will eliminate 7.0 positions, including: -7.00

#60012203 Veterinarian
#60012204 Veterinarian
#60012205 Processing Assistant III
#60012206 Processing Assistant III
#60012208 Vet Lab Assistant I
#60012209 Medical Lab Technologist I
#60012214 Medical Lab Assistant II

18 Online Reporting of Lab Results ($25,000) R

Directs the Veterinary Services Division to increase the use of online reporting of vet lab results. The Division shall default to online reporting of vet results but will provide printed results upon request. This $25,000 reduction reduces the postage and printing budget for the Veterinary Services Division by approximately 25%.

Budget Changes	**($1,938,749)**	R
Total Position Changes	-27.00	
Revised Total Budget	**$58,620,859**	

Labor

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$17,400,863

Budget Changes

Department-wide

19 Salary Reserve ($280,280) R

Reduces salary reserve across the Department by $280,280. Salary Reserve is the difference between the budgeted amount for a position and the actual salary paid.

20 Travel Budget Reductions ($32,778) R

Reduces the budget for payments to the Motor Fleet Management (MFM) Division by 7.5%. This decrease reflects the recent rate reduction implemented by MFM.

21 Operating Expense Reduction ($38,295) R

Reduces the operating budget across the Department by $38,295.

Commissioner's Office

22 Administrative Position to Fee Support ($52,784) R

Fund shifts an administrative position within the Commissioner's Office to fees generated by the Elevator and Amusement Device and Boiler Inspection Bureaus. -1.00

Occupational Safety & Health

23 Operating Expenses to Federal Receipts ($341,184) R

Replaces General Fund appropriations for the Occupational Safety & Health Division with federal receipts. In FY 2008-09, federal receipts accounted for approximately 35.5% of the budget for Occupational Safety & Health.

Standards and Inspections

24	**Apprenticeship Program** Reduces General Fund appropriation for the Apprenticeship program by 50% and fund shifts 7.0 positions to receipts. If sufficient receipts are not received to support the positions, these positions shall be eliminated.	($666,000) -7.00	R
	Budget Changes	**($1,411,321)**	**R**
	Total Position Changes	-8.00	
	Revised Total Budget	**$15,989,542**	

Environment & Natural Resources

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$190,399,356

Budget Changes

(1.0) Department-wide

25 IT Budget Reductions ($1,046,094) R

Reduces the Department's non-salary IT budget by 7.3%. This reduction is based on the average difference between budgeted and actual expenditures for the past four fiscal years.

26 Travel Budget Reductions ($120,432) R

Reduces the budget for payments to the Motor Fleet Management (MFM) Division by 7.5%. This decrease reflects the recent rate reduction implemented by MFM.

27 Division of Environmental Assistance and Outreach ($600,000) R

-8.00

Consolidates four divisions - the Office of Environmental Education, the Division of Pollution Prevention and Environmental Assistance, the Customer Service Center, and the Small Business Ombudsman - into one division, the Division of Environmental Assistance and Outreach. This consolidation eliminates 8.0 positions, operating expenses associated with these positions, and operating funds for the adult and elementary education programs formerly within the Office of Environmental Education. Eliminated positions include:

#60035069 - Administrative Secretary II
#60035079 - Information and Communication Specialist II
#60035068 - Accounting Technician
#60035979 - Artist IIlustrator II
#60035073 - Environmental Program Supervisor II
#60035066 - Environmental Program Manager I
#60036088 - Educational Development Consultant
#60036091 - Educational Development Consultant

(2.0) Administration

28 Office of Conservation and Community Affairs ($157,411) R

Eliminates the Office of Conservation and Community Affairs by eliminating 1.0 Program Development Coordinators (position #60036193) and 1.0 Educational Development Consultant (position #60036213). The remaining positions, 2.0 Program Development Coordinator (positions #60036191 and #60036192), and operating funds shall be transferred to the Natural Resources Planning and Conservation Division. -2.00

(3.0) Coastal Management

29 Position to Receipt Support ($48,788) R

Fund shifts 0.5 of a district manager position to CAMA receipts. -0.50

(3.0) Environmental Assistance and Outreach

30 Sustainable Communities Task Force

Provides funding for the Sustainable Communities Task Force to make North Carolina competitive to leverage federal Sustainable Communities Program funds. Housing and Urban Development has $150,000,000 available in grant funding for this program this fiscal year. These funds will be used to provide grants to regional sustainable development partnerships. $500,000 NR

31 Operating Expenses ($250,000) R

Fund shifts operating expenses to the Solid Waste Management Trust Fund.

(3.0) Environmental Health

32 Administrative Positions ($173,395) R

Eliminates the Deputy Director position (#60034382) for a savings of $116,616 and an Information and Communication Specialist III position (#60034417) for a savings of $56,779. These positions are no longer needed as a result of the transfer to the Division of Public Health. -2.00

33 Shellfish Sanitation ($124,635) R

-2.00

Eliminates 1.0 vacant shellfish sanitation position (#60034496) for a savings of $77,713; this position has been vacant since February 10, 2010. In addition, fund shifts 1/2 of 2.0 shellfish sanitation positions (#60034517 and #60034516) to receipt support for a savings of $43,990. Reduces operating budget for scientific supplies by $2,932. In order to streamline shellfish oversight, this program will be transferred to the Division of Marine Fisheries.

34 Childhood Lead Poisoning Prevention Program ($141,730) R

-1.00

Consolidates the Childhood Lead Poisoning Prevention program with the Adult Blood Lead Surveillance section in the Division of Public Health in DHHS. This reduction eliminates 1.0 vacant position ($71,562, #60034294) and funding for reimbursements to counties ($70,168).

35 Public Health Pest Management ($158,096) R

Reduces grants-in-aid for mosquito pest management by 50% ($143,096) and tick programs by 33% ($15,000). Public Health Pest Management will be consolidated with the Epidemiology Communicable Disease Section in the Division of Public Health in DHHS.

36 WaDE Program ($131,088) R

-2.00

Eliminates the appropriation for the WaDE program and its 2.0 associated positions (#60034370 and #60034306). The program was established to identify and eliminate discharges from straight pipes and failing septic systems in 23 western counties. In recent years, much of the responsibility for this program has shifted to local health departments.

37 Food and Lodging Program ($200,000) R

Reduces aid to counties for food and lodging programs by 33%. Each county's share will be reduced from $6,000 to $4,000. This Program will be transferred to the Division of Public Health within the Department of Health and Human Services.

38 Bedding Program ($17,008) R

Fund shifts a portion of rent for the Division to receipts collected from bedding inspections. This program will be transferred to the Division of Public Health within the Department of Health and Human Services.

39 Grade "A" Milk Program ($710,687) R

Consolidates the Grade "A" Milk Program in the Division of Environmental Health with the Dairy Program in the Department of Agriculture and Consumer Services. This transfer includes 7.0 positions and $710,687 in General Fund appropriations. -7.00

40 Water Supply Section ($55,540) R

Eliminates 1.0 vacant Business Officer position (#60034259) in the Water Supply Section. This position has been vacant since July 10, 2009. The Water Supply section will be transferred to the Division of Water Resources. -1.00

(3.0) Land Resources

41 Dam Safety Fee

Provides for a one-time assessment on utilities to pay for 1.0 two-year time-limited Environmental Engineer position to manage and conduct dam safety inspections. This position will be wholly receipt supported by this assessment. The $1,100 per dam equivalent fee is expected to generate approximately $170,120.

42 Sediment and Erosion Control ($101,357) R

Eliminates aid to local governments for the establishment of sediment and erosion control programs.

(3.0) Waste Management

43 Hazardous Waste Fees ($80,000) R

Increases the hazardous waste generator fee from $125 to $170 per year for those who generate between 100 kilograms and 1,000 kilograms of waste per month.

44 Operating Budget & Positions to Receipts ($165,405) R

Fund shifts operating expenses and 2.1 positions to Mercury Pollution Prevention Fund receipts. -2.10

(3.0) Water Quality

45 Positions to Federal Support ($442,875) R

Shifts 8.0 General Fund Water Quality positions to federal grant support. -8.00

46 Well Drillers Program ($379,181) R

Eliminates the Well Drillers program. Ending this program eliminates 7.0 filled positions: -7.00

60035208 Hydrogeological Drilling Supervisor
60035209 Hydrogeological Drilling Technician II
60035210 Hydrogeological Drilling Technician II
60035211 Hydrogeological Drilling Technician II
60035212 Hydrogeological Drilling Technician I
60035213 Hydrogeological Drilling Technician I
60035214 Hydrogeological Drilling Technician I

(3.0) Water Resources

47 River Basin Commissions ($35,000) R

Reduces funding for the river basin commissions. $5,000 will remain to support the work of these commissions.

48 Vacant Position and Operating Budget ($252,134) R

Eliminates 1.0 vacant Environmental Supervisor III position ($104,750) and reduces the Division's operating budget for streamflow gages ($73,692) and well drilling and repair ($73,692). -1.00

(4.0) Aquariums

49 Staffing for Aquarium Special Activities and Events ($714,297) R

Eliminates the General Fund appropriation that supports special activities and events ($410,000). Funds for special events and activities will be replaced by increased rental fees at the three Aquariums. 3.0 positions will be fund shifted to these increased receipts. General Fund appropriations used for daily operations is reduced by $304,297, or approximately 3%.

-3.00

(4.0) Forest Resources

50 Aircraft Operations ($875,000) R

($2,250,000) NR

Reduces personnel and operating expenses for aircraft operations by $875,000. This reduction is consistent with the recommendations in the Program Evaluation Division's Study of State Aircraft. This reduction eliminates 8.0 pilot positions and 4.0 mechanic positions. The sale of the 18 eliminated aircraft is expect to result in $2.25 million in one-time funds.

-12.00

51 Aircraft Hangars ($26,060) R

Directs the Division to consolidate the location of aircraft and terminate the leases of five unnecessary hangars. This reduction is consistent with the recommendations of the Program Evaluation Division's Study of State Aircraft.

52 Liability Insurance ($14,900) R

Reduces funding for liability insurance in the Division of Forest Resources by 4.6%, leaving over $280,000 for this purpose.

53 Principal Payments for Equipment ($1,104,118) R

Reduces funding for principal payments for new equipment. On average over the last four fiscal years, over a million dollars in funds have not been expended from this line item.

54 Turnbull Creek Educational State Forests ($110,073) R

Closes the Turnbull Creek Educational State Forest in Bladen County and eliminates one associated ranger position.

-1.00

	FY 10-11	
55 Rendezvous Educational State Forests Closes the Rendezvous Educational State Forest in Wilkes County and eliminates one associated ranger position.	($156,568) -1.00	R
56 Young Offenders Forest Conservation Program (BRIDGE) Restores funding for the BRIDGE program, which was subject to Continuation Review in FY 2009-10.	$1,043,840 10.00	R
(4.0) Marine Fisheries		
57 Helicopter Operations Eliminates the Division's 3 helicopters and associated operating expenses in accordance with recommendations from the Program Evaluation Division's Study of State aircraft. The aircraft will be sold, generating one time revenue of $190,000.	($25,218) ($190,000)	R NR
58 Communication Equipment Reduces funding for communication equipment in the Division of Marine Fisheries by approximately 29.5%, or $32,322.	($32,322)	R
59 Positions to Receipt Support Fund shifts 3.0 positions to receipt support (#60032528 - Public Information Asst IV, #60032665 - Info & Communication Spec I, and #60032536 - Info & Communication Spec).	($132,836) -3.00	R
(4.0) Museum of Natural Sciences		
60 Public Programs Reduces funding for Academic Services within the Public Programs budget of the Museum of Natural Sciences.	($34,807)	R
61 Operating Expenses Reduces various operating expenses within the Museum of Natural Science by approximately 7%.	($138,688)	R

62 Temporary Wages ($45,000) R

Reduces funds for temporary wages within the Museum of Natural Sciences by approximately 10%, leaving approximately $450,000 for this purpose.

(4.0) Natural Resources Planning and Conservation

63 Conservation Information and Incentives Program ($312,213) R

Replaces General Fund support for the Conservation Information and Incentives program with receipts from the Natural Heritage Trust Fund. This change shifts 5.5 positions to receipts. -5.50

64 Position to Receipts ($10,686) R

Fund shifts a portion of an appropriated position (0.15) to receipts from the Natural Heritage Trust Fund. -0.15

(4.0) Parks and Recreation

65 Adopt-a-Trail Program ($108,000) R

Eliminates State funding for the Adopt-a-Trail program. This leaves federal funds to support the program.

(4.0) Soil and Water Conservation

66 Agriculture Cost Share Financial Assistance Program ($212,153) R

Reduces funding for the financial assistance portion of the Agriculture Cost Share Program by 5%, leaving approximately $4 million in matching funds for implementing agricultural best management practices.

67 Conservation Reserve Enhancement Program ($289,640) R

Reduces funding for the Conservation Reserve Enhancement Program (CREP) by 50%, leaving $289,640 for this program.

68 Community Conservation Assistance Program ($6,903) R

Reduces funding for the Community Conservation Assistance Program (CCAP) by approximately 5%, leaving $131,155 for this program.

(4.0) Zoological Park

69 Vehicle Replacement Funds ($500,000) NR

Reduces funding for the replacement of vehicles and trams for one year.

70 Tort Claims ($40,000) R

Reduces funds available for tort claims by 80%, leaving $10,000 for this purpose.

(5.0) Reserves and Transfers

71 Grassroots Science Museums ($170,586) R

Reduces the recurring pass-through appropriation for the Grassroots Science Museums by 5%, leaving $3,241,127 in funding.

72 Partnership for the Sounds ($25,345) R

Reduces the recurring pass-through appropriation for the Partnership for the Sounds by 5%, leaving $481,560 in funding.

73 Clean Water State Revolving Fund $6,398,128 NR

Provides funding to meet the 20% State match requirement for drawing down the maximum available federal funds for the Clean Water (Wastewater Treatment Plant) State Revolving Fund. In addition to the amount appropriated, $935,271 in interest earned on the Clean Water State Revolving Fund will be used to reach the full match amount of $7,333,399.

74 Drinking Water State Revolving Fund $6,201,872 NR

Provides fund to meet the 20% State match requirement for drawing down the maximum available federal funds for the Drinking Water State Revolving Fund.

Budget Changes	**($8,932,429)**	R
	$10,160,000	NR
Total Position Changes	-59.25	
Revised Total Budget	**$191,626,927**	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$50,000,000**

Budget Changes

Clean Water Management Trust Fund

75 No Change

Receives appropriation per S.L. 2009-451.

Budget Changes

Total Position Changes

Revised Total Budget	**$50,000,000**

Commerce

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$40,915,209

Budget Changes

Department-wide

76 Vacant Positions ($479,221) R

Eliminates 8.0 vacant positions in the Department, including 3.0 positions from the State Energy Office, 1.0 position from the Wine and Grape Grower's Council, 1.0 administrative position in the Secretary's Office, 1.0 vacant position in Policy, Research, and Planning, and 2.0 vacant administrative positions in Business & Industry. -8.00

The positions are:

60014891 Energy Conservation Representative II
60014888 Energy Conservation Representative Supervisor
60014882 Energy Conservation Representative II
60077154 Administrative Assistant
60080971 Administrative Assistant
60080963 Program Assistant IV
65005907 Marketing Specialist
60081030 Economist

77 IT Budget Reduction ($755,242) R

Reduces the Department of Commerce's non-salary IT budget by 7.9%. This reduction is based on the average difference between budgeted and actual expenditures for the past four fiscal years.

78 Travel Budget Reductions ($36,284) R

Reduces the budget for payments to the Motor Fleet Management (MFM) Division by 7.5%. This decrease reflects the recent rate reduction implemented by MFM.

Business and Industry

79 Business Recruitment and Product Marketing

Provides funding to attract businesses to locate operations in North Carolina and to increase the sale of North Carolina exports, including agricultural commodities.

$875,000 NR

Commerce Finance

80 One NC Fund

Provides additional funding for the One NC Fund to enhance the competitive position of North Carolina when recruiting national and international business and industry projects. Three percent of these funds shall be used for small business expansion.

$15,000,000 NR

81 One NC Small Business Fund

Funds the One NC Small Business Fund program, which provides matching grants to businesses that qualify for federal SBIR/STTR Incentives funds.

$1,500,000 NR

82 Job Maintenance and Capital Development (JMAC) Fund

Appropriates $5.5 million for JMAC.

$5,500,000 NR

83 Energy Research Grants

Appropriates $1.5 million to Commerce for matching funds for US Department of Energy grants to support energy research and green jobs. $500,000 of these funds shall be provided to the Research Triangle Institute to provide matching funds to leverage a $15 million federal grant for energy and green jobs.

$1,500,000 NR

84 In-Source NC Network

Provides funding to develop university-based buyer-supplier networks within emerging and established industry clusters inside the State. These buyer-supplier networks would be modeled on an existing network developed and operated through the NCSU College of Textiles.

$150,000 NR

85 Lab-to-Market Funds/Commercialization — $12,000,000 NR

Provides funding for lab-to-market initiatives aimed at improving commercialization of products. $300,000 of this funding shall be used to support the NC ACTION Opportunity Council, which helps smaller universities move forward promising technologies and ideas and get those ideas out into commercial use, creating more jobs sooner.

Executive Aircraft

86 Aircraft to DOT — ($800,000) R; -2.00

Eliminates the Executive Aircraft Division within the Department of Commerce, including 1.0 pilot position, 1.0 mechanic position, and $300,000 in associated position and operating expenses. 3.0 pilots, 1.0 mechanic, $500,000, and Commerce's two aircraft and their associated receipts will be transferred to the Aviation Division within the Department of Transportation (DOT). Commerce will retain $127,315 for expenses related to using DOT's aircraft. This reduction reflects recommendations from the Program Evaluation Division's Study of State Aircraft.

Industrial Commission

87 Over Realized Receipts — ($429,863) R

Requires the Industrial Commission to budget over realized receipts.

Science and Technology

88 Operating Budget Reduction — ($18,000) R

Reduces the Board of Science and Technology's budget by approximately 5%.

Tourism, Film, and Sports Development

89 Brochure Fees — ($500,000) R; -10.00

Directs the Division to implement fees for brochure space in Welcome Centers across the State and take a corresponding General Fund reduction. This reduction fund shifts 10.0 positions to receipt support from the new fees.

	FY 10-11	
90 Tourism Matching Grants Eliminates 100% of funds for small matching grants for local tourism projects.	($129,976)	R
91 Tourism Marketing Funds Provides funding for marketing North Carolina as a tourist destination.	$875,000	NR
Wanchese Seafood Industrial Park		
92 Oregon Inlet Project Eliminates 100% of funding for the Oregon Inlet Project. Funding is no longer being used for this purpose.	($248,327)	R
93 Operating Budget Reduction Reduces the Wanchese Seafood Industrial Park's operating budget by approximately 5%.	($10,000)	R
Wine and Grape Growers Council		
94 Operating Budget Reduction Reduces the Wine and Grape Growers Council's operating budget by 5%.	($40,500)	R
Budget Changes	**($3,447,413)**	R
	$37,400,000	NR
Total Position Changes	-20.00	
Revised Total Budget	**$74,867,796**	

Commerce - State Aid

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$15,388,725

Budget Changes

95	**Land Loss Prevention** Reduces the recurring pass-through appropriation for Land Loss Prevention by 5%, leaving $707,465 recurring.	($37,235)	R
96	**Institute of Minority Economic Development** Reduces the recurring pass-through appropriation for the Institute of Minority Economic Development by 5%, leaving $2,517,405 recurring.	($132,495)	R
97	**Association of Community Development Corporations (CDCs)** Reduces the recurring pass-through appropriation for the Association of CDCs by 5%, leaving $980,685 recurring.	($51,615)	R
98	**Minority Support Center** Reduces the recurring pass-through appropriation for the Minority Support Center by 5%, leaving $3,128,730 recurring.	($164,670)	R
99	**Community Development Initiative** Reduces the recurring pass-through appropriation for the Community Development Initiative by 5%, leaving $4,682,740 recurring.	($246,460)	R
100	**e-NC Authority** Reduces the recurring pass-through appropriation for the e-NC Authority by 5%, leaving $442,035 recurring.	($23,265)	R

	FY 10-11	
101 Councils of Government (COGs) Reduces the recurring pass-through appropriation for the COGs by 5%; leaving $403,750 recurring.	($21,250)	R
102 High Point Furniture Market Reduces the recurring pass-through appropriation for the High Point Furniture Market by 5%, leaving $806,479 recurring.	($42,446)	R
103 Defense and Security Technology Accelerator Reduces the non-recurring pass-through appropriation for the Defense and Security Technology Accelerator by 5%, leaving $950,000 non-recurring.	($50,000)	NR
104 Minority Support Center Provides $750,000 for funds for small business loans for those that have limited access to credit.	$750,000	NR
105 Regional Economic Development Commissions Provides funding to support the seven Regional Economic Development Commissions.	$5,000,000	
Budget Changes	**($719,436)**	**R**
	$5,700,000	**NR**
Total Position Changes		
Revised Total Budget	**$20,369,289**	

N.C. Biotechnology Center

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$14,501,900**	
Budget Changes		
106 Operating Reductions Reduces the recurring pass-through appropriation for the N.C. Biotechnology Center by 5%, leaving $13,776,805 recurring.	($725,095)	R
Budget Changes	**($725,095)**	**R**
Total Position Changes		
Revised Total Budget	**$13,776,805**	

Rural Economic Development Center

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$23,832,436**	
Budget Changes		
107 Operating Reductions Reduces the recurring pass-through appropriation for the Rural Center by 5%, leaving $22,640,814 recurring.	($1,191,622)	R
108 Home Grown Jobs Provides additional funding for the Rural Center's Building Reuse and Restoration Program to strengthen the capacity of rural communities to compete for and attract new and expanding businesses. Funding for small-scale regional community development projects is also included.	$3,125,000	NR
109 Small Business Assistance Fund Provides funding to the Rural Center to continue the Small Business Assistance Fund.	$1,000,000	NR
Budget Changes	**($1,191,622)**	**R**
	$4,125,000	**NR**
Total Position Changes		
Revised Total Budget	**$26,765,814**	

JUSTICE
&
PUBLIC SAFETY
Section I

Senate Subcommittee on Justice and Public Safety

Judicial

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$463,753,479

Budget Changes

1 Establish a Management Flexibility Reserve Establishes a Management Reserve to provide the Administrative Office of the Courts the flexibility to determine where reductions can be made.	($3,300,000) ($3,300,000)	R NR
2 Reduce Technology Services Program Reduces the budget for the Administrative Office of the Courts' Technology Services Program by 8%. The AOC is authorized to delay or cancel technology projects in its discretion to achieve this reduction.	($2,616,294)	R
3 Eliminate Vacant Central Office Positions Eliminates vacant positions in the Central Administration of the Administrative Office of the Courts.	($1,082,420) -18.75	R
4 Reduce DA's Conference Funding Reduces funding for the Conference of District Attorneys by $100,000, approximately 25% of the agency budget. This reduction will eliminate one position and associated costs.	($100,000) -1.00	R
5 Eliminate Vacant DA and Clerk Positions Eliminates vacant positions statewide in Clerks' and District Attorneys' offices.	($1,769,574) -39.00	R
6 Reduce Operating Accounts to FY 2008-09 Levels Reduces various operating budgets throughout the Department to FY 2008-09 actual expenditure levels.	($1,164,843)	R
7 Reduction to Administration Reduces the Administrative Office of the Courts central administration budget by 5%.	($2,383,890)	R

	FY 10-11	
8 Reduce Dispute Settlement Center Pass Through Reduces the pass-through appropriation to the Dispute Settlement Centers by 5%.	($59,974)	R
9 Reduce NC Bar-Civil Justice Funds Reduces the pass-through appropriation to the NC Bar Association for Access to Civil Justice by 5%.	($37,500)	R
10 Reduce Financial Protection Law Center Reduces the pass-through appropriation to the Financial Protection Law Center by 5%.	($3,750)	R
Budget Changes	**($12,518,245)**	**R**
	($3,300,000)	**NR**
Total Position Changes	-58.75	
Revised Total Budget	**$447,935,234**	

Judicial - Indigent Defense

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$120,132,010

Budget Changes

Department-wide

11 Reduce Various Operating Accounts ($264,200) R

Reduces the operating budget in temporary personnel, registration fees, travel, communications, books and publications, and other operating expenses.

Indigent Person Attorney

12 Reduce PAC Continuation Budget ($5,750,000) NR

Reduces the Private Assigned Counsel (PAC) Continuation Budget. The Office of Indigent Defense Services expects to end the fiscal year without carrying forward any unpaid PAC bills.

13 Reduce NC Prisoner Legal Services Program budget ($142,031) NR

Reduces the NC Prisoner Legal Services Program (PLS) budget by 5% nonrecurring, leaving $2.7 million recurring.

14 Reduce Center for Death Penalty Litigation Funding ($23,821) R

Reduces Center for Death Penalty Litigation appropriation by 5%, leaving $452,604.

15 Increase the Attorney Appointment Fee ($250,000) R

Increases the Attorney Appointment Fee by $10 to $60.

Sentencing Services

16 Restore Sentencing Services Program $2,235,185 R

Restores the Sentencing Services Program.

11.50

Budget Changes	**$1,697,164**	**R**
	($5,892,031)	**NR**
Total Position Changes	11.50	
Revised Total Budget	**$115,937,143**	

Justice

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$88,652,538

Budget Changes

A. Department-wide

17 Eliminate Vacant Positions — ($390,991) R
Eliminates vacant positions throughout the agency. -9.00

18 Operating Reductions — ($1,237,000) R; ($1,200,000) NR
Reduces various operating budgets throughout the Department to FY 2008-09 actual expenditure levels.

19 Reduce Salary Reserve — ($175,000) R
Reduces various personal services line items throughout the Department to reflect actual salaries.

B. Legal Services

20 Increase Medicaid Fraud Recovery Receipts — ($168,566) R
Adjusts the budgeted receipts for Medicaid Fraud Recovery to reflect twelve months of collections. This reduction was implemented in the FY 2009-10 budget, but the reduction only accounted for six months of collections.

21 Medicaid Fraud Criminal Investigation Team — $600,000 R
Provides funds to expand the Medicaid Fraud Criminal Investigation Team. The expanded unit will consist of sworn investigators, attorneys, program assistants, financial investigators, and administrative support personnel. This investigative unit is responsible for obtaining convictions of community service providers that commit fraud, recovering restitution and civil penalties for the benefit of the Medicaid Program and the Civil Forfeiture Fund, and deterring fraud. 25.00

22 NC LEAF Funds — ($18,750) R
Reduces the pass-through appropriation for the NC Legal Education Assistance Fund (NC LEAF) by 5%. The FY 2010-11 appropriation for this non-profit will be $356,250.

C. State Bureau of Investigation (SBI)

23 SBI Equipment Reduction ($400,000) R

Reduces the budget for equipment purchases in the State Bureau of Investigation.

Budget Changes	**($1,790,307)**	R
	($1,200,000)	NR
Total Position Changes	16.00	
Revised Total Budget	**$85,662,231**	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$147,183,945

Budget Changes

Administrative Services

24 Reduce Administrative Services Budget ($362,913) R
Reduces the Administrative Services Budget by 5%.

Community Services

25 Eliminate Juvenile Assessment Center Funding ($124,075) R
Eliminates the direct State appropriation for the Juvenile Assessment Center (JAC) in Cumberland County. JAC also receives a Juvenile Crime Prevention Council county allocation and local funding.

26 Reduce Project Challenge Funding ($6,400) R
Reduces the Project Challenge appropriation by 5%, leaving $121,600. Project Challenge continues to receive $1.4 million from county Juvenile Crime Prevention Councils.

Department-wide

27 Eliminate Vacant Positions ($1,158,829) R
Eliminates vacant positions throughout the agency.
-31.50

28 Reduce Continuation Budget Increases ($546,521) R
Reduces Continuation Budget increases to a level at or below the FY 2008-09 Authorized Budget.

Youth Development Centers

29 Reduce YDC Budget ($2,538,342) R
Reduces the YDC Budget by 5% based upon a reduction in commitments. The number of commitments to the Department declined to 365 last year, down 70% since 1999.

Budget Changes	**($4,737,080)**	R
Total Position Changes	-31.50	
Revised Total Budget	**$142,446,865**	

Correction

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$1,326,492,230

Budget Changes

30 Reduce Continuation Budget for Lower Population Reduces continuation budget increases from FY 2009-10 to account for a lower-than-projected inmate population. Although the Division of Prisons remains overcrowded, new admissions have leveled following a surge in 2008 and 2009, resulting in a lower inmate count than previously expected as of June 30, 2010.	($39,189,651)	R
31 Budget Alien Assistance Receipts Reduces General Fund appropriations to the Department of Correction by $872,000 to account for receipts from the federal State Criminal Alien Assistance Program.	($872,000)	NR
32 ITS Billing Reduction Reduces the appropriation to the Department of Correction for communications and other data processing to account for lower rates charged by the Office of Information Technology Services.	($200,000)	R
33 Transfer Four Positions to Receipt Support Transfers four positions in the DOC Controller's Office that handle Inmate Welfare Fund accounting to receipt support from the Welfare Fund, and eliminates the General Fund appropriation for those positions.	($182,500) -4.00	R
34 Reduce Vehicle Replacement Budget Reduces the Vehicle Replacement line item on a non-recurring basis.	($1,500,000)	NR
35 Reduce Fuel Oil Budget Reduces the Fuel Oil line item on a recurring basis.	($500,000)	R
36 Reduce PC Equipment Reduces the Personal Computer Equipment line item on a non-recurring basis.	($300,000)	NR

37 Reduce Equipment Accounts ($800,000) NR
Reduces various equipment accounts on a non-recurring basis.

38 Reduce Supply Accounts ($800,000) NR
Reduces various supply accounts on a non-recurring basis.

39 Eliminate .223 Rifle Training ($54,757) R
Eliminates a component of rifle training and reduces annual costs for ammunition and targets.

40 Reduce Our Children's Place Funds ($5,475) R
Reduces the pass-through appropriation for Our Children's Place by 5%, leaving $104,025.

Alcoholism and Chemical Dependency Programs

41 Eliminate Four Program Positions ($211,060
Eliminates four DACDP positions that work in the In-Prison Out Patient Services at South Piedmont, Western Youth and North Piedmont. -4.00

Community Corrections

42 Reduce Criminal Justice Partnership Program ($1,100,000) NR
Reduces the Criminal Justice Partnership Program by $1.1 million nonrecurring, which leaves $8.3 million for allocations for county programs. This reduction will not affect the core operations of the program.

43 Reduce Contractual Services ($50,000) R
Reduces the Contractual Services budget in the Division of Community Corrections.

44 Eliminate Community Corrections Positions ($142,910) R
Eliminates two Division of Community Corrections positions and their associated costs. These positions are duplicative due to the automation of the parole/post-release violation process. -2.00

45 Reduce Harriet's House Funds ($10,313) R

Reduces the pass-through appropriation to Passage Home for Harriet's House by 5%, leaving $195,938.

46 Reduce Summit House Funding ($55,408) R

Reduces the pass-through appropriation to Summit House by 5%, leaving $1,052,756.

47 Reduce Women At Risk Funding ($13,125) R

Reduces the pass-through appropriation to Women At Risk by 5%, leaving $249,375.

Prisons

48 Reduce Inmate Medical Costs ($20,500,000) R

Reduces the appropriation for medical services for inmates based on implementation of a fee schedule for outpatient and other services provided outside the prison unit. The fee schedule is based on the rates authorized by the Medicaid program.

49 Eliminate Seven DOP Administrative Positions ($359,384) R

Eliminates seven positions in the central office of the Division of Prisons. The Department has discretion to identify the positions to reach the cut level of $359,384. -7.00

50 Consolidate Administrative Positions at Prisons ($149,038) R

Consolidates administrative functions between Brown Creek Correctional Center and Piedmont Correctional Institution and eliminates four duplicative positions. -4.00

51 Modify Close Custody Inmate Transfers ($74,150) R

Reduces the transportation budget based on reducing the frequency of inter-facility transfers of close custody inmates from every week to every other week.

52 Reduce Drug Testing Frequency ($130,000) R

Changes the drug testing policy to 10% instead of 15% frequency and reduces appropriations to pay for analysis.

53 Reduction in Clothing Budgets

Reduces funding for inmate clothing and officer uniforms within the Division of Prisons.

($500,000) NR

54 Operating Reserves for Central Prison Hospital

Establishes an operating reserve and creates positions to staff the Central Prison Hospital and Mental Health Facility. This facility is scheduled for completion in August 2011, and occupancy in October 2011. This reserve will allow positions to be established so staff can be recruited and trained prior to the projected occupancy date.

$6,767,918 R
$774,843 NR
554.00

55 Operating Reserve for Women's Prison Hospital

Establishes an operating reserve and creates positions to staff the hospital and mental health facility at NC Correctional Institution for Women, scheduled for completion in August 2011, and occupancy in October 2011. This fund will allow recruitment and training to be completed prior to occupancy.

$3,000,017 R
$725,157 NR
227.00

56 Prisoner Education Program

Appropriates $2,350,256 to the Department of Correction to pay tuition for inmates in Community College basic skills, GED, and vocational programs. This is a partial restoration of the Prisoner Education Program which was placed on Continuation Review in 2009. The Education Section of the budget includes an appropriation to the Community College System of $17,649,735.

$2,350,256 R

Budget Changes	**($49,709,580)**	R
	($4,372,000)	NR
Total Position Changes	760.00	
Revised Total Budget	**$1,272,410,650**	

Crime Control and Public Safety

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$33,718,963

Budget Changes

A. Department-wide

57 Eliminate Vacant Positions ($516,174) R
Eliminates vacant positions throughout the Department. -12.00

B. Administration

58 Law Enforcement Support Services (LESS) $300,000 R
Partially restores a reduction to the LESS budget. In the 2009 Budget, LESS was directed to establish a fee schedule to become 100% receipt supported. They have been unable to find sufficient fees to sustain their operations. This item provides continued General Fund support to them while a fee schedule is developed. LESS coordinates the distribution of excess federal property for local law enforcement agencies, provides evidence and DNA storage, and administers a program to provide lower-cost vehicles and other equipment to law enforcement. 5.00

C. National Guard

59 National Guard Armory Maintenance $600,000 R
Provides funds for maintenance and operation of plant for the National Guard's 97 armories.

D. Alcohol Law Enforcement (ALE)

60 ALE Equipment Reduction ($200,000) R
Reduces the appropriation for equipment for Alcohol Law Enforcement. ($200,000) NR

E. Victim's Compensation Services

61 Victim's Compensation Fund

Reduces the appropriation for Victim's Compensation to actual expenditure levels for FY 2010-11.

($1,300,000) NR

Budget Changes	**$183,826**	**R**
	($1,500,000)	**NR**
Total Position Changes	-7.00	
Revised Total Budget	**$32,402,789**	

GENERAL GOVERNMENT
Section J

Administration

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$67,446,884

Budget Changes

1111 Office of the Secretary

1 Reduce Various Operating Expenses ($164,089) R

Reduces miscellaneous operating expenses.

Temporary services ($104,089)
Contracted services ($60,000)

1121 Fiscal Management

2 Transfer 1.5 FTE to Receipt Support ($83,250) R

Transfers salaries and benefits for 1.5 FTE to receipt support:

60014102: Accountant (0.50 FTE)
60014119: Accountant (0.25 FTE)
60014118: Accountant (0.50 FTE)
60014107: Accounting Technician (0.13 FTE)
60014119: Accounting Technician (0.12 FTE)

531211 ($231,434)
531511 ($17,705)
531521 ($24,324)
531561 ($24,645)

1122 Human Resources Management

3 Transfer 1.2 FTE to Receipt Support ($71,271) R

Transfers salaries and benefits for 1.2 FTE to receipt support:

60014092: Staff Development Specialist III (0.20 FTE)
60014094: Safety Officer III (0.20 FTE)
60014098: Personnel Technician I (0.20 FTE)
60014096: Personnel Technician II (0.20 FTE)
60014093: Personnel Analyst II (0.20 FTE)
60014097: Personnel Analyst II (0.20 FTE)

531211 ($55,311)
531511 ($4,231)
531521 ($5,813)
531561 ($5,915)

1123 Historically Underutilized Businesses

4 Reduce Rent ($37,740) R

Reduces budgeted rent due to move to DOA-owned space:

532512: ($37,740)

5 Transfer 1.0 FTE to Office of State Personnel ($60,372) R

Transfers salary and benefits for 1.0 FTE to the Office of State Personnel: -1.00

60014896: HUB Compliance Officer - Construction Outreach

531211 ($46,922)
531511 ($3,590)
531521 ($4,932)
531561 ($4,929)

1241 Management Info. Systems

6 Reduce LAN Serv Chg ($56,521) R

Reduces LAN Service Charge:

532822: ($56,521)

1264 Agency for Public Telecommunications

7 Transfer 1.0 FTE to Receipt Support ($67,442) R

Transfers salary and benefits for 1.0 FTE to receipt support:

60014549: TV Producer/Director I-I

531211 ($52,905)
531511 ($4,047)
531521 ($5,560)
531561 ($4,929)

1311 Office of State Personnel

8 Reduce Various Operating Accounts ($365,336) R

Reduces various operating accounts:

532821	Computer/Data Processing Services	($185,395)
532170	Temporary Employees	($50,000)
532700	Travel	($15,000)
533110	Supplies - General Office	($15,000)
534511	Supplies - Office Furniture	($10,000)
535830	Membership & Dues	($15,000)
536905	Employer OJT Incentive	($15,941)
532143	LAN Support Serv.	($10,000)
532144	PC Printer Support Serv.	($20,000)
532812	Telecomm. Data Charge	($12,000)
532822	Managed LAN Services	($7,000)
532930	Registration Fees	($10,000)

9 Eliminate Filled Position ($82,039) R

Eliminates salaries and benefits for 1.0 filled position:

-1.00

60013771: HR Partner

531211 ($65,259)
531511 ($4,992)
531521 ($6,859)
531561 ($4,929)

1411 State Construction Office

10 Eliminate 2.0 Filled and 1.0 Vacant Positions ($297,924) R

Eliminates salaries and benefits of two filled positions and one vacant position. Specific positions for elimination have not yet been identified; the Department has flexibility to consolidate and/or eliminate positions in order to meet this reduction.

-3.00

1412 State Property Office

11 Eliminate 1.0 Vacant Position ($73,423) R

Eliminates salary and benefits for 1.0 vacant position:

-1.00

60014649: Administrative Assistant II

531211	($57,967)
531511	($4,434)
531521	($6,092)
531561	($4,929)

1421 Facilities Management

12 Reduce Operating Expenses ($211,849) R

Reduces operating expenses:

534500 Equipment	($100,000)
532500 Equipment rental	($50,000)
533300 Vehicle Operating Costs	($50,000)
532300 Repairs	($11,849)

13 Shift Recycling Costs to Receipt Support ($29,503) R

Shifts recycling costs to receipt support. Receipts are from other state agencies whose recycling services are provided by DOA in buildings that are not owned by DOA.

14 Reduce Janitorial Services ($855,009) R

Reduces janitorial services from five days a week to two days a week.

15 Eliminate 2.0 Vacant Positions ($89,038) R

Eliminates salaries and benefits for two vacant positions: -2.00

60014806: Building & Environmental Supervisor
60014846: Facilities Maintenance Technician - Building Trades

531211 ($67,011)
531511 ($5,126)
531521 ($7,043)
531561 ($9,858)

16 Eliminate 4.0 Filled Positions ($200,698) R

Eliminates salaries and benefits of four filled positions: -4.00

60014738 Construction & Renovation Design Tech I
60014742 Electronics Technician III
60014769 Administrative Assistant III
60014777 Processing Assistant IV

531211 ($153,167)
531511 ($11,717)
531521 ($16,098)
531561 ($19,716)

17 Increase Various Operating Expenses $252,454 R

Increases the following operating items:

533510: Uniforms	$2,454
532199: Misc. Contractual Services	$250,000

18 Add 8.0 Positions $595,301 R

Adds 8.0 FTE positions: 8.00

531211 Salary	$464,571
531511 Social Security	$35,540
531521 Retirement	$48,826
531561 Hospitalization	$39,432
531631 Worker's Compensation	$6,932

19 Increase Budgeted Utility Costs $561,722 R

Increases budgeted utility costs:

532210 Engr Ser-Electrical	$302,462
532220 Engr Serv-Nat Gas/Propane	$163,979
532230 Engr Ser-Water & Sewer	$23,126
532911 Property Insurance	$72,155

1511 Purchase & Contracts

20 Transfer 2.9 FTE to Receipt Support ($225,268) R

Transfers salaries and benefits of 2.9 FTE to receipt support:

60013901: State Procurement Specialist III (1.0 FTE)
60013860: State Procurement Specialist III (1.0 FTE)
60013899: State Purchase Administrator (0.9 FTE)

531211 ($178,549)
531511 ($13,659)
531521 ($18,766)
531561 ($14,294)

21 Reduce Various Operating Expenses ($12,500

Reduces budget for repairs to building.

1731 NC Council for Women/DV Commission

22 Transfer 1.5 FTE to Receipt Support ($62,196) R

Transfers salaries and benefits of 1.5 FTE to receipt support:

60014074: Community Development Specialist I (0.50 FTE)
60019848: Community Development Specialist I (1.0 FTE)

531211 ($73,813)
531511 ($5,647)
531521 ($7,758)
531561 ($7,394)

23 Eliminate 1.0 Filled Position ($61,219) R

Eliminates salary and benefits for one filled position:

-1.00

60014086 Administrative Officer I

531211 $47,639
531511 $3,644
531521 $5,007
531561 $4,929

1734 Rape Crisis Program

24 Fund Grants at FY 2009-10 Level ($151,119) NR

Funds Rape Crisis grants at FY 2009-10 level.

1741 Human Relations Commission

25 Reduce Rent ($24,455) R

Reduces budgeted rent due to move to DOA-owned space:

532512: ($24,455)

1771 Veterans Affairs

26 Shift 2.0 Positions to Receipt Support ($73,286) R

Shifts salaries and benefits of 2.0 FTEs to receipt support:

60014225: Processing Assistant III
60014232: Processing Assistant III

531211 ($53,680)
531511 ($4,107)
531521 ($5,642)
531561 ($9,858)

27 Reduce Operating Expenses ($51,453) R

Reduces operating expenses:

533100 Travel ($20,000)
532700 Supplies ($10,000)
534500 Equipment ($21,453)

1781 Domestic Violence Program

28 Fund Grants at FY 2009-10 Level

Funds Domestic Violence grants at FY 2009-10 level. ($243,115) NR

1810 State Ethics Commission

29 Operating Budget Adjustment to Rent ($60,000) R

Eliminates funds for office rent as Commission is now housed in State office space.

532512 Rent of Offices ($60,000)

30 Increased Support for the State Ethics Commission $547,600 R

4.00

Appropriates funding for four positions and operating expenses to ensure the State Ethics Commission has resources for design, implementation, training, and technological support for an online/electronic personal and financial disclosure system (Statement of Economic Interest, or SEI), and to meet the gift ban requirement.

531211 Salaries	$218,281
531511 Soc Sec	$16,091
531521 Retirement	$22,368
531516 Med Insurance	$19,716
532140 Oth ITS	$20,400
532144 PC/Printer Support Svs	$1,680
532535 Lease Server Equip	$13,817
532542 Lease Software	$3,691
5327XX Travel	$1,500
532811 Telephone Svs	$1,500
532815 E-Mail and Calendaring	$156
5329XX Registration & Ed Expenses	$300
533XXX Supplies	$2,000
535830 Subscriptions	$6,000
532140 Oth ITS	$115,600
532199 Oth Contractual Svs	$100,000
534511 Office Furniture	$2,000
534521 Office Equipment	$2,000
534713 PC Software	$500

1861 Commission on Indian Affairs

31 Reduce Rent ($29,985) R

Reduces budgeted rent due to move to DOA-owned space:

532512: ($29,985)

Department-Wide

32 Reduce Travel Expenditures ($15,000) R

Reduces travel expenditures across the agency.

33 Adjust ITS Rate ($3,172) R

Reduces line item for ITS based on reduction in ITS rates.

532140: ($3,172)

34 Eliminate 8.0 Vacant Positions ($356,715) R

Eliminates salaries and benefits for eight vacant positions department-wide: -8.00

60013887: State Purchase Administrator
60013965: Summer Intern
60014664: Administrative Assistant III
60013878: Processing Assistant V
60014215: Accounting Technician
65009979: Accountant
60014716: Building & Environmental Technician
60014836: Building & Environmental Technician

531211 ($272,999)
531511 ($20,731)
531521 ($28,482)
531561 ($34,503)

Budget Changes	**($1,763,676)**	**R**
	($394,234)	**NR**
Total Position Changes	-9.00	
Revised Total Budget	**$65,288,974**	

Auditor

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$13,255,123

Budget Changes

1120

35 Reduce Various Operating Accounts ($80,000) R

Reduces various operating accounts:

532942	Other Employee Educational Expense	($12,000)
533110	General Office Supplies	($10,000)
532430	Maint Agreement - Equipment	($6,000)
532441	Maint Agreement - Other Software	($24,000)
532332	Repairs - Other Computer Equip	($8,000)
532811	Telephone Service	($20,000)

1210 Field Audit

36 Eliminate 5.0 Vacant Positions ($440,161

Eliminates salaries and benefits for 5.0 vacant positions: -5.00

60008843: Assistant State Auditor
60096307: Assistant State Auditor
60008948: Assistant State Auditor
60089837: Assistant State Auditor
60008867: Assistant State Auditor

531211	($351,655)
531511	($26,902)
531521	($36,959)
531561	($24,645)

37 Shift 1.0 Position to Receipt Support. ($60,033) R

Shifts salary and benefits of 1.0 FTE to receipt support due to creation of billing for Battleship/State Ports Authority audits.

60008998: Assistant State Auditor

531211	($46,635)
531511	($3,568)
531521	($4,901)
531561	($4,929)

38 Reduce Various Operating Accounts ($197,000) R

Reduces various operating accounts:

532714	Transp-Ground - In-state	($20,400)
532721	Lodging - In-state	($29,600)
532724	Meals - In-state	($22,700)
532725	Meals - Out-of-state	($6,500)
532715	Trans-Ground - Out-of-state	($3,800)
532722	Lodging - Out-of-state	($1,300)
532723	Misc. Travel	($1,900)
532726	Misc. Travel	($250)
534511	Office Furniture	($16,000)
534521	Office Equipment	($9,000)
534530	Other DP Equipment	($10,000)
534533	LAN Equipment	($30,000)
534534	PC/Printer Equipment	($30,000)
534535	Server Equipment	($55,550)

Budget Changes **($777,194)** R

Total Position Changes -5.00

Revised Total Budget **$12,477,929**

Cultural Resources

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$73,249,990

Budget Changes

1110 Office of the Secretary

39 Operating Budget and Personnel Adjustments ($169,749) R
($417,756) NR

Reduces funding for Misc Contractual Services. Additionally, thirty-six positions will remain vacant for four months of FY 2010-11 with a non-recurring reduction of $417,756.

532199 Misc Contractual Services	($169,749)

1120 Administrative Services

40 Personnel and Operating Budget Adjustments ($130,791) R

Eliminates salary and benefits of a vacant Purchasing Agent II position (#60083290), and reduces funding for IT and office furniture. -1.0

531211 Salaries	($21,471)
531511 Social Security	($1,643)
531521 Retirement	($2,257)
531561 Medical Insurance	($4,929)
532490 Maint Agreement	($48,382)
534511 Furniture	($52,110)

1210 Archives & History - Admin

41 Eliminate Personnel Costs and Adjust Expenditure Accounts ($82,261) R

Eliminates salary and benefits, but not FTE, for Administrative Officer position (#60083312), and reduce expenditure accounts.

531211 Salaries	($63,157)
531511 Social Security	($4,832)
531521 Retirement	($6,638)
531561 Medical Insurance	($4,929)
532722 Lodging-out of state	($490)
534511 Furniture	($1,416)
534521 Office Equipment	($800)

1220 Historical Publications

42 Eliminate Filled Positions and Reduce Operating Budget

($261,183) R

-3.69

Eliminates salaries and benefits of three filled positions: Historic Pub Editor III (#60083317) at $53,023; Historic Pub Editor II (#60083319) at $38,174; and Historic Pub Editor I (#60083323) at $31,622; eliminates salary and benefits in budget but not FTE for Historic Pub Editor II position (#60083320) at $43,296; and transfers split-funding of $22,227 (0.69 FTE) for Info & Comm Specialist position (#60083321) including benefits. Also reduces expenses for various expenditure accounts.

531211	Salaries	($188,342)
531460	EPA & SPA Longvty Pay	(3,159)
531511	Social Security	($14,408)
531521	Retirement	($19,795)
531561	Medical Insurance	($19,716)
532199	Misc Contractual Svs	($262)
532333	Repairs	($700)
532490	Maint Agreement	($590)
532714	Transp- Grd-In State	($653)
532800	Communication	($10,948)
533110	Gen Office Supplies	($2,260)
533900	Oth materials & Supplies	($200)
535800	Oth Admin Expenses	($150)

1230 Archives & Records

43 Transfer Personnel to Receipt Support and Adjust Operating Budget

($609,547) R

-7.00

Transfers salaries and benefits of seven positions to receipt-support from the Archives & Records Management (ARM) fee: Processing Asst IV (#60083347) at $28,336; Processing Asst IV (#60083363) at $27,879; Archives & Records Mgr (#60083364) at $62,792; Archives & Records Prof (#60083368) at $32,796; Processing Asst IV (#60083377) at $28,500; Processing Asst IV (#60083378) at $28,503; and Processing Asst IV (#60083392) at $25,778.

531211	Salaries	($234,584)
531511	Social Security	($17,946)
531521	Retirement	($24,655)
531561	Medical Insurance	($34,503)
532490	Maint Agreement	($85,000)
532512	Rent/Lease - Bldgs/Office	($142,765)
533900	Oth Materials & Supplies	($70,095)

1241 State Historic Sites

44 Operating Budget Adjustments ($452,827) R

Reduces division expenditure accounts.

532188 Lawns & Grounds Svs Agreement	($12,459)
532199 Misc Contractual Services	($105,883)
532390 Repairs	($250,000)
532714 Transp-Grd-In State	($69,412)
533900 Oth Materials & Supplies	($15,073)

45 Expand Heritage Tourism $360,711 R

Restores funding for seven Heritage Tourism positions to help rural communities enhance tourism economy. 7.00

1243 State Capitol

46 Transfer Personnel to Receipt Support ($63,132) R

Transfers salary and benefits of Administrative Officer position (#60083604) to receipt-support. -1.00

531211 Salaries	($49,258)
531511 Social Security	($3,768)
531521 Retirement	($5,177)
531561 Medical Insurance	($4,929)

1250 Historic Preservation

47 Personnel Costs and Operating Budget Adjustments ($110,086) R

Transfers salaries and benefits of two filled positions to receipt-support: Architect (#60083621) at $37,473 and Hist Pres/Restoration Specialist II (#60083623) at $44,050, and reduces travel expenses. -2.00

531211 Salaries	($81,523)
531511 Social Security	($6,237)
531521 Retirement	($8,568)
531561 Medical Insurance	($9,858)
532714 Transp-Grd-In State	($3,900)

1260 Office of State Archeology

48 Operating Budget Reductions

($26,444) R

Reduces division expenditure accounts.

532199 Misc Contractual Svs	($490)
532714 Transp- Grd-In State	($13,000)
532721 Lodging-In State	($3,954)
532724 Meals - In State	($9,000)

1290 Western Office

49 Transfer Personnel Expense

($52,947) R

Transfers salary and benefits of Archives & Records Specialist position (#60083647) at $32,796 to receipt-support.

-1.00

531211 Salaries	($40,638)
531511 Social Security	($3,109)
531521 Retirement	($4,271)
531561 Medical Insurance	($4,929)

1320 Museum of Art

50 Eliminate Personnel Expense and Adjust Operating Budget

($257,007) R

Eliminates salaries and benefits of three new positions: Admin Officer III (#65010906) at $41,173; Art Handler (#65010907) at $25,705; and Processing Asst III at $24,092. Also reduces various expenditure accounts.

-3.00

531211 Salaries	($90,970)
531511 Social Security	($6,959)
531521 Retirement	($9,561)
531561 Medical Insurance	($14,787)
532199 Misc Contractual Services	($50,000)
532390 Repairs	($75,000)
534610 Art & Artifacts	($9,730)

1330 Arts Council

51 Reduce Operating Budget

Reduces funding for grant programs to FY 2009-10 expenditure levels. ($432,456) NR

536G32	Vagabond School of Drama	($2,048)
536G48	Lost Colony	($10,498)
536G71	Shakespeare Festival	($10,498)
536990	Grants	($274,000)
536996	Grassroots Arts	($135,412)

1410 State Library Services

52 Eliminate Personnel Costs and Reduce Operating Budget

($165,521) R

Eliminates salaries and benefits of 2.50 vacant positions: W/A Processing Asst IV (#60083860) at $33,676; Library Clerk III (#60083854) at $29,079; and Processing Asst III (#60083866) at $12,905; and transfers Library Technician position (#60083851) at $36,281 to receipt-support. Also reduces various expenditure accounts. -3.50

531211	Salaries	($111,941)
531511	Social Security	($8,563)
531521	Retirement	($11,765)
531561	Medical Insurance	($17,252)
532199	Misc Contractual Services	($1,000)
534630	Librry & Lrning Res Coll	($15,000)

1480 Statewide Programs & Grants

53 Adjust Local Library Grant Funding

Reduces State-Aid to Counties (536960). ($936,133) NR

1500 Museum of History

54 Operating Budget Adjustments

($72,928) R

Reduces division expenditure accounts. ($25,000) NR

532199	Misc Contractual Services	($25,000)
532512	Rent/Lease - Bldgs/Office	($24,978)
534549	Oth Motorized Vehicles	($47,950)

Budget Changes	**($2,093,712)**	**R**
	($1,811,345)	**NR**
Total Position Changes	-15.19	
Revised Total Budget	**$69,344,933**	

Senate Subcommittee on General Government

Cultural Resources - Roanoke Island Commission

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$1,990,632**	
Budget Changes		
1584 Roanoke Island Commission		
55 Operating Budget Reduction Reduces funds transferred to support the Roanoke Island Commission's operating budget.	($115,926)	R
Budget Changes	**($115,926)**	**R**
Total Position Changes		
Revised Total Budget	**$1,874,706**	

General Assembly

GENERAL FUND

Total Budget Approved 2009 Session

FY 10-11
$56,584,484

Budget Changes

1110 Senate

56 Operating Budget Adjustments ($609,201) R

Reduces budgeted days during the interim and budgeted weeks of session for the Senate.

531311 REG(NS) Temp Wages	($375,644)
531461 EPA& SPA-Longvty Pay	($15,062)
531511 Social Sec Contrib	($29,891)
531521 Retirement	($38,698)
532714 Travel/Other Employee	($33,002)
532727002 Travel/Other Employee	($115,492)
533110 Office Supplies	($1,412)

1120 House

57 Reductions to Operating Budget ($1,590,353) R

Reduces budgeted days during the interim and budgeted weeks of session for the House.

531311 REG(NS) Temp Wages	($1,020,501)
531461 EPA& SPA-Longvty Pay	($29,567)
531511 Social Sec Contrib	($80,330)
531521 Retirement	($107,998)
532714 Travel/Other Employee	($79,945)
532727002 Travel/Other Employee	($272,012)

1211 Administration

58 Adjust Expenditure Accounts ($56,992) R

Reduces budgeted days during the interim and budgeted weeks of session in Administration - Financial Services.

531311 REG(NS) Temp Wages	($46,977)
531461 EPA& SPA-Longvty Pay	($1,045)
531511 Social Sec Contrib	($3,673)
531521 Retirement	($5,297)

1212 Bill Drafting

59 Operating Budget Adjustments ($61,018) R

Reduces budgeted weeks of session for Bill Drafting.

531311 REG(NS) Temp Wages	($51,032)
531461 EPA& SPA-Longvty Pay	($609)
531511 Social Sec Contrib	($3,950)
531521 Retirement	($5,427)

1213 General Research

60 Adjust Operating Budget ($10,779) R

Reduces budgeted weeks of session for General Research.

531311 REG(NS) Temp Wages	($9,122)
531511 Social Sec Contrib	($698)
531521 Retirement	($959)

1214 Fiscal Research

61 Reduce Expenditure Accounts ($9,388

Reduces budgeted weeks of session for Fiscal Research.

531311 REG(NS) Temp Wages	($7,945)
531511 Social Sec Contrib	($608)
531521 Retirement	($835)

1215 Building Maintenance

62 Operating Budget Reductions ($38,441) R

Reduces budgeted days during the interim and budgeted weeks of session in Building Maintenance.

531311 REG(NS) Temp Wages	($32,533)
531511 Social Sec Contrib	($2,489)
531521 Retirement	($3,419)

1216 Food Service

63 Reductions to Operating Budget ($18,594) R

Reduces budgeted weeks of session for Food Service.

531311 REG(NS) Temp Wages	($15,737)
531511 Social Sec Contrib	($1,203)
531521 Retirement	($1,654)

1217 Information System

64 Operating Budget Adjustments ($101,802) R

Reduces various expenditure accounts.

532140 Misc Contractual Services	($86,614)
532448 Maintenance Agreement	($1,637)
532449 Maintenance Agreement	($13,551)

1219 Program Evaluation

65 Reduce Expenditure Accounts ($139,417) R

Reduces budgeted weeks of session for Program Evaluation and funding for contractual services.

531311 REG(NS) Temp Wages	($12,498)
531511 Social Sec Contrib	($956)
531521 Retirement	($1,314)
532199 Misc Contractual Services	($124,649)

1230 Institute of Government

66 Operating Budget Adjustments ($11,053) R

Reduces budgeted weeks of session for the Institute of Government.

531311 REG(NS) Temp Wages	($9,354)
531511 Social Sec Contribution	($716)
531521 Retirement	($983)

1900 Contingency Reserves

67 Reduce Contingency Reserves ($648,203) R

Reduces funding for the Legislative Study Commission.

537195 Contingency Reserves ($648,203)

Budget Changes ($3,295,241) R

Total Position Changes

Revised Total Budget $53,289,243

Governor

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11 $6,067,739	
Budget Changes		
1100 Administration		
68 Eliminate Personnel Costs and Reduce Operating Budget	($353,359)	R
Eliminates salaries and benefits of three vacant positions: Administrative Asst (#60008533) - $28,400; Asst Press Secretary (#60008523) - $50,732; and Communications Specialist (#60008481) - $30,800.Also reduces expenditure accounts.	-3.00	
531211 Salaries ($109,132)		
531511 Social Security ($8,349)		
531521 Retirement ($11,470)		
535461 Med Insurance ($14,787)		
532145 Server Support Svs ($17,200)		
532199 Misc Contractual Services ($27,163)		
532140 Oth Information Tech ($5,258)		
535830 Membership Dues and Subscriptions ($160,000)		
Budget Changes	($353,359)	R
Total Position Changes	-3.00	
Revised Total Budget	$5,714,380	

Housing Finance Agency

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$14,608,417**	
Budget Changes		
1100 HFA - Appropriation		
69 Home Protection Program Reduction	($730,421)	R
	($120,311)	NR
Reduces General Fund appropriation in anticipation of federal funding from the US Treasury that will assists states with the hardest hit unemployment rates. The reduction included recurring and non-recurring adjustments, and leaves a recurring balance of $2,269,579 for the program.		
538104 Home Protection Program ($850,732)		
Budget Changes	**($730,421)**	R
	($120,311	
Total Position Changes		
Revised Total Budget	**$13,757,685**	

Senate Subcommittee on General Government

Insurance

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	$32,242,706
Budget Changes	
70 NO LEGISLATIVE ACTION REPORTED	
Budget Changes	
Total Position Changes	
Revised Total Budget	$32,242,706

Senate Subcommittee on General Government

Insurance - Volunteer Safety Workers' Compensation Fund

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$1,561,846**

Budget Changes

71 NO LEGISLATIVE ACTION REPORTED

Budget Changes	
Total Position Changes	
Revised Total Budget	**$1,561,846**

Lieutenant Governor

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$931,703**
Budget Changes	
72 Eliminate 1.5 Vacant Positions	($54,235) R
Eliminates salaries and benefits for 1.5 vacant positions:	
	-1.50
60008618: Assistant Policy Director (1.0 FTE)	
60008622: Information & Comm. Spec. II (0.5 FTE)	
Budget Changes	**($54,235) R**
Total Position Changes	-1.50
Revised Total Budget	**$877,468**

Office of Administrative Hearings

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$4,111,476**	
Budget Changes		
73 Shift 1.0 Position to Receipt Support	($130,963)	R
Shifts salary and benefits for 1.0 position to receipt support:		
60081275: Agency Attorney		
531211 ($106,664)		
531511 ($8,160)		
531521 ($11,210)		
531561 ($4,929)		
74 Eliminate 1.0 Vacant Position	($147,393)	R
Eliminates salary and benefits for 1.0 vacant position:	-1.0	
60088603: Administrative Law Judge		
531211 ($119,107)		
531511 ($10,839)		
531521 ($12,518)		
531561 ($4,929)		
Budget Changes	**($278,356)**	R
Total Position Changes	-1.00	
Revised Total Budget	**$3,833,120**	

Revenue

	GENERAL FUND
Total Budget Approved 2009 Session	**FY 10-11**
	$87,790,970

Budget Changes

1605 Information Technology

75 Provide Funding for Imaging System Licenses — $613,440 R

Provides funding for additional licenses for the Department's imaging system in order to view taxpayer returns.

1629 Property Tax Division

76 Convert Property Tax Division to Receipt Support — ($1,467,305) R

Converts the Property Tax Division to receipt support, including 17.0 positions. This requires an amendment to GS 105-501.

24708 Revenue IT Projects

77 Provide Funding for IRS-Mandated Modernization of 1040 e-File Platform — $47,600 R

Provides funding for the IRS-mandated modernization of the e-File platform. — $1,457,118 NR

Department-Wide

78 Provide Funding for Resolution Initiative II — $846,909 R

Provides funding for the Resolution Initiative II, which is estimated to collect an additional $110 million in revenue for FY 2010-11. The Department has flexibility to apply these funds towards positions and/or operating expenses.

79 Reduce Travel Reimbursement — ($39,000) R

Reduces budgeted travel reimbursement:

5327xx: ($39,000)

80 Reduce ITS Rate ($158,647) R

Reduces budget ITS costs due to reduction in ITS rate:

532140: ($158,647)

81 Reduce Temporary Wages ($632,136) R

Reduces budgeted temporary wages:

531311: ($632,136)

82 Eliminate 8.0 Vacant Positions ($429,831) R

Eliminates salaries and benefits for 8.0 vacant positions:

-8.00

60081419:	Tax Research Assistant Director	(Fund 1607)
60081345:	Technology Support Analyst	(Fund 1605)
60082659:	Processing Assistant IV	(Fund 1685)
60082992:	Processing Assistant IV	(Fund 1685)
60082679:	Data Entry Specialist	(Fund 1660)
60082667:	Data Entry Specialist	(Fund 1685)
60082621:	Information Processing Technician	(Fund 1685)
60081281:	Information & Communication Specialist II	(Fund 1600)

531211 ($330,399)
531511 ($25,276)
531521 ($34,725)
531561 ($39,432)

83 Eliminate 34.0 Vacant Positions ($1,761,789) R

Eliminates salaries and benefits for 34.0 vacant positions: -34.00

60081588 Processing Assistant III
60081617 Processing Assistant III
60082757 Processing Assistant III
60082979 Processing Assistant III
60082675 Data Entry Specialist
60082633 Data Entry Specialist
60082668 Data Entry Specialist
60082953 Processing Assistant IV
60082949 Processing Assistant IV
60081521 Processing Assistant IV
60082561 Processing Assistant IV
60082572 Processing Assistant IV
60081469 Program Assistant V
60081535 Information Processing Technician
60081665 Information Processing Technician
60082951 Information Processing Technician
60081675 Information Processing Technician
60081482 Information Processing Technician
60081559 Information Processing Technician
60081494 Information Processing Technician
60082564 Information Processing Technician
60082846 Administrative Officer II
60082541 Administrative Officer II
60081530 Revenue Officer I
60081534 Revenue Officer I
60081638 Revenue Officer I
60081642 Revenue Officer I
60082048 Revenue Officer I
60081540 Team Leader
60082057 Revenue Officer II
60081634 Revenue Office Manager II
60081768 Supervisory Agent
60081837 Auditor
60083224 Special Agent

531211 ($1,349,190)
531511 ($103,213)
531521 ($141,800)
531561 ($167,586)

Budget Changes	**($2,980,759)**	**R**
	$1,457,118	**NR**
Total Position Changes	-42.00	
Revised Total Budget	**$86,267,329**	

Secretary of State

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$11,451,488

Budget Changes

1110 General Administration

84 Eliminate Personnel Costs and Reduce Operating Budget ($174,041) R

Eliminates salary and benefits of vacant Processing Assistant IV position (#60094554) and transfers Paralegal (#60094563) and Agency Legal Specialist (#60008627) positions to Auction Securities Time Limited receipts. Also, reduces expenditure accounts. -3.00

531211 Salaries	($128,540)
531511 Social Security	($9,833)
531521 Retirement	($13,510)
531561 Med Insurance	($14,787)
534534 Computer/Printers	($7,371)

1120 Publications

85 Eliminate Filled Position ($58,995) R

Eliminates filled position - Division Director - (#60008652). -1.00

531211 Salaries	($45,757)
531511 Social Security	($3,500)
531521 Retirement	($4,809)
531561 Med Insurance	($4,929)

1210 Corporations

86 Eliminate Vacant Position ($35,302) R

Eliminates vacant Processing Assistant IV position (#60008683). -1.00

531211 Salaries	($25,705)
531511 Social Security	($1,966)
531521 Retirement	($2,702)
531561 Med Insurance	($4,929)

1220 Certification & Filing

87 Adjustments to Personnel and Operating Budget ($236,916) R

Eliminates vacant Processing Assistant IV (#60094577) and Notary Investigator (#60008748); reduces expenditure accounts, including rent that is transferred to the Auction Rate Securities Time Limited receipts. -2.00

531211 Salaries	($60,917)
531511 Social Security	($4,660)
531521 Retirement	($6,402)
531561 Med Insurance	($9,858)
532199 Misc Contractual Svs	($50,303)
532512 Office Rent	($104,776)

1230 Securities

88 Transfer Personnel Expense ($61,632) R

Transfers Financial Investigator position (#60008782) to Auction Securities Time Limited receipt. -1.00

531211 Salaries	($47,988)
531511 Social Security	($3,671)
531521 Retirement	($5,044)
531561 Med Insurance	($4,929)

1600 Charitable Fundraising

89 Operating Budget Adjustment ($100,000) R

Budgets over-realized receipts from Business License Fees in the amount of $100,000.

435100 Business License Fees	$100,000

Budget Changes **($666,886)** R

Total Position Changes -8.00

Revised Total Budget **$10,784,602**

State Board of Elections

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$6,221,208

Budget Changes

90 Provide Maintenance of Effort for HAVA Funds — $107,129 NR

Provides Maintenance of Effort funding in order to receive $2,035,430 of Federal HAVA funds.

91 Provide Funding for Good Government Package — $450,000 R

Provides funding for the Good Government package, including:

1.00

Attorney	$100,000
Software development	$350,000

92 Provide Funding for Election Inspectors — $160,000

Provides funding for salaries and benefits of two new Election Inspector positions.

2.00

1100 Administrative Division

93 Reduce Various Operating Accounts — ($114,632) R

Reduces various operating accounts:

532811 Telephone Services	($5,363)
532812 Telecommunications Data Charge	($20,122)
532143 LAN Supply Services	($28,387)
533150 Security & Safety	($12,100)
532100 Legal Services	($5,800)
532700 Travel	($12,860)
53218 Workshop/Conf Food Exp	($30,000)

1200 Campaign Finance Division

94 Eliminate 2.0 Filled Positions ($166,708) R

Eliminates salaries and benefits for 2.0 filled positions:

-2.00

60088208: Special Projects Coordinator
60088198: General Counsel

531211 ($132,744)
531511 ($10,155)
531521 ($13,951)
531561 ($9,858)

95 Reduce Various Operating Accounts ($61,909) R

Reduces various operating accounts:

532811 Telephone Services ($14,909)
532812 Telecommunications Data Charge ($37,000)

Department-Wide

96 Reduce ITS Rate ($29) R

Reduces budgeted ITS costs due to reduction in ITS rate:

532140: ($29)

Budget Changes	**$266,722**	R
	$107,129	NR
Total Position Changes	1.00	
Revised Total Budget	**$6,595,059**	

State Budget & Management

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$6,407,809**

Budget Changes

1310 State Budget, Management

97 Eliminate Personnel Expense and reduce Operating Budget ($373,164) R

Eliminates salaries and benefits of three vacant positions: Deputy State Budget Officer (#60008561) - $123,095; Auditor (#60008882) - $73,885; and Asst St Budget Officer/Gov Evaluation & Review (#60008591) - $50,000.Also reduces expenditure accounts. -3.00

531211 Salaries	($246,980)
531514 Social Security	($18,894)
531516 Retirement	($25,958)
535417 Med Insurance	($14,787)
532145 Server Support Svs	($15,000)
532199 Misc Contract Services	($46545)
532448 Maint Agreement Personal Computer	($5,000)

Budget Changes	**($373,164)**	R
Total Position Changes	-3.00	
Revised Total Budget	**$6,034,645**	

State Budget and Management - Special

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$4,161,125**
Budget Changes	
1022 Special Appropriations	
98 Adjust Grant Funding	($4,650) R
Reduces the General Fund appropriation to the Humanities Council and provides a balance of $88,350 for FY 2010-11.	
Budget Changes	**($4,650) R**
Total Position Changes	
Revised Total Budget	**$4,156,475**

State Controller

GENERAL FUND

Total Budget Approved 2009 Session	FY 10-11
	$23,188,207

Budget Changes

1000 Department-Wide

99 Eliminate Personnel Costs and Adjust Operating Budget ($300,000) R

Eliminates salaries and benefits of four positions based upon average salaries for OSC, and reduces funding for Financial Audit and other expenditure accounts: -4.00

531211 Salaries	($210,896)
531511 Social Security	($16,134)
531521 Retirement	($22,165)
531561 Medical Insurance	($19,716)
532120 Financial Audit Svs	($15,000)
533100 Gen Admin Supplies	($16,089)

100 Close Cash Balance Accounts ($1,124,677) NR

Eliminates remaining cash balances of four funds in Budget Code 24160:Business Infrastructure Study; Financials Planning Fund that provided the Feasibility Report on new financial systems completed in compliance with S.L. 2007-323 (HB 1473);Escheats funds collected by OSC that have been unclaimed by State agencies; and Foreign Nationals funding that supported the purchase of the last statewide license to access software for the program.

2400 Business Infrastructure Study	($137)
2403 Financials Planning Fund	($605,000)
2500 Escheats	($442,460)
2600 Foreign Nationals	($77,080)

101 Criminal Justice law Enforcement Automated Data Services (CJLEADS) $9,000,000 R

$500,000 NR

30.50

Appropriates funding for CJLEADS, which is a statewide information technology project designed to merge state criminal data records into one streamlined, comprehensive system. It will assist law enforcement and the courts by providing necessary information. Funding is provided to complete implementation of the Wake County pilot program, to begin expansion statewide, and for operational support and maintenance.

Budget Changes	**$8,700,000**	**R**
	($624,677)	**NR**
Total Position Changes	26.50	
Revised Total Budget	**$31,263,530**	

Senate Subcommittee on General Government

Treasurer

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	**$17,565,400**
Budget Changes	
102 NO LEGISLATIVE ACTION REPORTED	
Budget Changes	
Total Position Changes	
Revised Total Budget	**$17,565,400**

Treasurer - Retirement for Fire and Rescue

GENERAL FUND

	FY 10-11
Total Budget Approved 2009 Session	$10,804,671
Budget Changes	
103 NO LEGISLATIVE ACTION REPORTED	
Budget Changes	
Total Position Changes	
Revised Total Budget	$10,804,671

TRANSPORTATION
Section K

Senate Subcommittee on Transportation

Highway Fund

HIGHWAY FUND

Total Budget Approved 2009 Session	FY 10-11
	$1,739,650,000

Budget Changes

Administration

1 IT Payment Card Industry Data Security Standard Compliance

Provides funds to upgrade DOT's computer applications and supporting infrastructure that process payment cards to become compliant with new standards imposed by MasterCard. One Business and Technology Specialist position ($95,344) is funded and will serve as the compliance officer for the program.

$254,406	R	
$350,000	NR	
1.00		

2 IT - Enterprise IP Telephone System

Provides funds to replace the existing DMV Interactive Voice Response hardware and applications and includes annual operating funds required for related IT expenses. The current telephone system is no longer supported and is critical to the Division's ability to respond effectively to citizens' needs and deliver a high level of customer service via its call center.

$544,289	R
$515,000	NR

Aviation Division

3 Transfer of Department of Commerce Executive Aircraft Division

Transfers 3.0 pilots and 1.0 mechanic as well as the Department of Commerce's two aircraft to DOT's Aviation Division. This reduction reflects recommendations from the Program Evaluation Division Study of State Aircraft. The total amount transferred is $989,658, including $500,000 in General Fund appropriations and $489,658 in receipts. The DOT Aviation budget will have additional receipts of $127,315 from billing the Department of Commerce for use of the DOT aircraft.

$500,000	R
4.00	

Division of Motor Vehicles

4 Medical Certification Compliance

$264,951 R
$7,550 NR
5.00

Provides funds to allow DMV to become compliant with new federal requirements for medical certification as part of the Commercial Driver License (CDL) process. Medical certificates for all CDL holders must be reviewed by January 30, 2012 and every two years afterward to ensure they meet the medical requirements of the Federal Motor Carrier Safety Administration. In order to comply with these new federal requirements, funds are provided for additional personnel and for operating support.

Positions include four Processing Assistant V positions ($27,544 each) and one Administrative Assistant 1 ($29,502) for a total of five positions costing $139,678 in salaries and $52,673 in benefits. Additional recurring costs of $72,600 for mailing and $7,550 in nonrecurring costs for computers and office equipment are incurred.

5 DMV Security Measures

$344,722 NR

Provides funds to enhance building security at the Charlotte and Raleigh Registration and Renewals, Titles, and Plate offices. Security cameras, panic buttons, and door swipe card access systems are needed to secure State funds and equipment and limit access into secure areas.

Ferry Division

6 Maintain Current Level of Service

$11,349,869 R

Provides operating funds to maintain the current level of services for FY 2010-11.

Maintenance

7 Maintenance Funds

($7,709,150) R

Decreases funds for maintenance of the State's highway infrastructure.

Rail Division

8 Grants to Short Line Railroads

$2,000,000 NR

Provides funds to the Rail Division for grants to short line railroad companies for rehabilitation projects that strengthen North Carolina's short line rail infrastructure.

9 Pembroke Northeast Bypass Connector — $4,325,000 NR

Provides funds for construction of the Pembroke Northeast Bypass project, which will provide improved multi-modal access to southeast North Carolina, linking the state's military bases and State ports.

Reserves

10 Retirement System Contribution — $906,000 R

Increases employer contributions to the retirement system to maintain the system's actuarially sound status.

Statutory Adjustments

11 Leaking Underground Storage Tank (LUST) Fund — ($40,000) R

Adjusts budget for the LUST fund by -1.5% based on projections for the motor fuels inspection fee in accordance with G.S. 119-18.

12 Secondary Road Improvement Program Funds — $3,840,718

Adjusts funding in FY 2010-11 for the secondary road improvement program based on revised projections for motor fuels tax revenue in accordance with G.S. 136-44.2A.

13 Aid to Municipalities — ($785,319) R

Adjusts funding for aid to municipalities by -0.9 percent based on revised projections for motor fuels tax revenue in accordance with G.S. 136-41.1

Transfers

14 DPI - Driver Education Program — $32,021,964 R

Partially restores funding to the Driver Education program. Funding was eliminated in FY2010-11 pending a Continuation Review.

15 CCPS - VIPER matching funds

Provides funds to the Highway Patrol for matching funds for the Public Safety Interoperability Communications grant from the US Department of Commerce. The grant will assist in the further development of the Voice Interoperability Project for Emergency Responders (VIPER) network.

$4,700,000 NR

16 Reduce Transfer to General Fund - Dept of State Treasurer

Reduces the transfer to the General Fund by $500,000 to account for the transfer of the Department of Commerce Executive Aircraft Division.

($500,000) R

Budget Changes	**$40,647,728**	**R**
	$12,242,272	**NR**
Total Position Changes	10.00	
Revised Total Budget	**$1,792,540,000**	

Highway Trust Fund

	HIGHWAY TRUST FUND
	FY 10-11
Total Budget Approved 2009 Session	**$920,990,000**

Budget Changes		
Highway Trust Fund		
17 Administration Increases appropriation for administration for FY 2010-11 consistent with new revenue estimates and G.S. 136-176(b).	$371,520	R
18 Aid to Municipalities Increases appropriation for Aid to Municipalities for FY 2010-11 consistent with new revenue estimates and G.S. 136-176(b)(3).	$524,109	R
19 Intrastate System Increases appropriation for the Intrastate System for FY 2010-11 consistent with new revenue estimates and G.S. 136-176(b)(1).	$4,995,162	R
20 Secondary Road Construction Reduces appropriation for the Secondary Road construction program for FY 2010-11 consistent with new revenue estimates and G.S. 136-176(b)(4).	($170,627)	R
21 Urban Loops Increases appropriation for the Urban Loops for FY 2010-11 consistent with new revenue estimates and G.S. 136-176(b)(2).	$2,019,836	R
Budget Changes	**$7,740,000**	R
Total Position Changes		
Revised Total Budget	**$928,730,000**	

RESERVES/ DEBT SERVICE/ ADJUSTMENTS Section L

Statewide Reserves

GENERAL FUND

	FY 10-11	
Total Budget Approved 2009 Session	**$1,176,309,585**	
Budget Changes		
A. Employee Benefits		
1 State Retirement System Contributions Increases the State's contribution to the Teachers' and State Employees'Retirement System for Fiscal Year 2010-11.	$20,000,000	R
B. Other Reserves		
2 Reserve for Capital	$18,222,000	R
3 Job Development Incentive Grants Reserve Reduces the continuation budget based on projected payment schedule.	($6,600,000)	NR
4 University Cancer Research Fund Adjusts the continuation budget for the University Cancer Research Fund to account for a decline in revenues from the tax on tobacco products other than cigarettes. This adjustment maintains the legislative commitment of $50 million a year invested in this fund. With this adjustment, the General Fund appropiation will be $16,020,000.	$600,000	R
C. Debt Service		
5 Adjust Debt Service Payments Modifies budgeted debt service payments to correspond to projected payment schedules.	($15,845,385)	R
Budget Changes	**$22,976,615**	R
	($6,600,000)	NR
Total Position Changes		
Revised Total Budget	**$1,192,686,200**	

CAPITAL
Section M

Capital

	GENERAL FUND	

A. Department of Environment and Natural Resources

1 Water Resources Development Projects

Provides funds to allow the State to match $27.4 million in federal funding for Water Resources Development Projects and provides the State match to local grant projects. Projects are specified in a special provision.

$9,130,000 NR

B. UNC System Board of Governors

2 Appalachian State University - Nursing Building Planning

Provides advance capital planning funds for the proposed College of Nursing and Health Sciences Building. The facility will contribute to the UNC Tomorrow committee's goal of improving health and wellness. The building will be no more than 150,000 square feet. In FY 08-09, the General Assembly appropriated $4.2 million for planning, which was reverted by the Governor to manage the budget shortfall. The total project cost is $58.2 million.

$2,400,000 NR

3 East Carolina - Life Sciences and Biotechnology Building Planning

Provides advance capital planning funds for the Life Sciences and Biotechnology Building at East Carolina University and demolishes Christenbury Gymnasium. The building will be no more than 200,000 square feet. The total cost to complete the project is $151.6 million.

$6,100,000 NR

4 Elizabeth City State University - Aviation Complex Planning

Provides capital planning funds to complete planning for the proposed Aviation Complex. The facility will contribute to the UNC Tomorrow committee's goal of economic transformation. The building size will be no more than 75,000 square feet. The General Assembly appropriated $500,000 to this project in FY 2006-07. The General Assembly appropriated $1,500,000 to this project in FY 2008-09 which was reverted by the Governor to manage the budget shortfall.

$533,778 NR

5 University of North Carolina - Charlotte - Science Building Planning

Provides advance capital planning funds for the Science Building. The facility will contribute to the UNC Tomorrow committee's goal of improving global readiness and science education. The building size will be no more than 236,210 square feet. The total project cost is $120,000,000. In FY 08-09, the General Assembly appropriated $2.4 million for planning, which was sequestered by the Governor to manage the budget shortfall.

$4,800,000 NR

	FY 10-11	
6 UNC-Wilmington - Allied Health and Human Science Building Planning Provides advance capital planning funds for the Allied Health and Human Science Building. The facility will contribute to the UNC Tomorrow committee's goal of improving health and wellness. The building size will be no more than 105,000 square feet. The total cost is $46,313,000. In FY 08-09, the General Assembly appropriated $4.3 million for planning, which was reverted by the Governor to manage budget shortfall.	$1,900,000	NR
7 WSSU - Science and General Office Building Planning Provides advance capital planning funds for the Science and General Office Building at Winston-Salem State University. The facility will contribute to the UNC Tomorrow committee's goal of improving global readiness. The building size will be no more than 69,000 square feet. The total cost of the building is $33,638,543. In FY 08-09, the General Assembly appropriated $3.0 million for planning, which was sequestered by the Governor to manage budget shortfall.	$1,400,000	NR
8 Western Carolina University - MAHEC Planning Provides advance capital planning funds for the Mountain Area Health Education Center (MAHEC). MAHEC is a joint project between UNC-Asheville and Western Carolina and will be located in Asheville, NC. The building size will be no more than 40,000 square feet. The total cost of the project is $32,500,000.	$1,300,000	NR
Total Appropriation to Capital	**$27,563,778**	**NR**

SENATE FINANCE COMMITTEE
Wednesday, May 26, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on May 26, 2010, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator Jenkins presided. Titianna Goins of Rocky Mount, Ashley Kim of Cary, Moriah Glady of Raleigh, Jince Yoon of Chapel Hill, Ryan Byrd of Williamston, Brittany Whitaker of Durham, Kaylen Cutler of Whiteville, Chris Jefferys of Princeton, and Khidyah Bell and Amesha White of Whiteville served as pages.

S.B. 1135 – Red Oak Deannexation

Senator Swindell was recognized to explain the bill. The local bill would deannex 1.94 acres from the corporate limits of the Town of Red Oak, as requested by the Town and evidenced by a resolution adopted by the Town Council on January 4, 2010. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 655 – Increase Drivers License Restoration Fee

Senator Jones was recognized to explain the bill. Senator Albertson moved to adopt the proposed committee substitute (PCS) and the motion carried. The PCS increases the restoration fee for licenses revoke for impaired driving and other offenses by $25, with the increase in the fee distributed to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of DHHS. Senator Swindell moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

S.B. 1171 – Keeping NC Competitive Act

Senator Clodfelter was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. Senator Clodfelter then offered a technical amendment to clarify language and moved for the amendment's adoption. The motion carried. The PCS provides for various incentives requested by the Department of Commerce to aid in its recruitment initiatives for five specific industries considering expanding or moving to North Carolina. Secretary Crisco, Department of Commerce, was recognized to answer questions. Senator Tillman moved to favorably report the PCS as amended and the motion carried. A copy of the PCS, the summary, the fiscal note and the amendment is attached.

S.B. 1177 – Rev. Laws Technical & Admin. Changes

Senator Clodfelter was recognized to explain the bill. Senator Swindell moved to adopt the PCS for discussion and the motion carried. Senator Clodfelter offered technical amendment and moved for its adoption. The motion carried. Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the PCS. The PCS makes technical, clarifying and administrative changes to various tax statutes and related laws. It removes from the original bill the property tax provision relating to property owned by a homeowners association. Martha Harris, a staff attorney with the Fiscal Research Division, was

recognized to answer questions. Senator Dannelly moved to favorably report the PCS as amended. The motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:36 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: S1378 – Build North Carolina's Future Act has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	May 26, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 655	Increase Drivers License Restoration Fee.	Senator Jones
SB 1135	Red Oak Deannexation.	Senator Swindell IV
SB 1171	Keeping NC Competitive Act.	Senator Clodfelter
SB 1177	Rev. Laws Technical & Admin. Changes.	Senator Clodfelter
SB 1209	No Nonvoted Local Debt For Competing System.	Senator Hoyle

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S1123 – Caswell Beach Sewer Treatment Fee has been removed from the agenda and S1378 – Build North Carolina's Future Act has been added.

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AND
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SB 1171	Keeping NC Competitive Act.	Senator Clodfelter
SB 1177	Rev. Laws Technical & Admin. Changes.	Senator Clodfelter
SB 1209	No Nonvoted Local Debt For Competing System.	Senator Hoyle
SB 1378	Build North Carolina's Future Act.	Senator Foriest

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
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BILL NO.	SHORT TITLE	SPONSOR
SB 655	Increase Drivers License Restoration Fee.	Senator Jones
SB 1123	Caswell Beach Sewer Treatment Fee.	Senator Soles, Jr.
SB 1135	Red Oak Deannexation.	Senator Swindell IV
SB 1171	Keeping NC Competitive Act.	Senator Clodfelter
SB 1177	Rev. Laws Technical & Admin. Changes.	Senator Clodfelter
SB 1209	No Nonvoted Local Debt For Competing System.	Senator Hoyle

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

PAGES ATTENDING

Date: 5-26

Committee: Finance **Room:** 544 1 PM

PLEASE PRINT LEGIBILY!!!!!

10. Titianna Goings Rocky Mount Swindell

	Page Name	Hometown	Sponsoring Senator
1	Ashley Kim	Cary	sen. Stein
2	Moriah Glady	Raleigh	Hunt
3	Jince Yoon	Chapel Hill	Kinnaird
	Ryan Byrd	Williamston	Sen. Clark Jenkins
5	Khidiyah Bell	Ahoskie	Sen. Jones
6	Ameshci white	Ahoskie	Sen. Jones
7	Brittany whitaker	Durham	Mckissick
8	Kaylen Cutler	Whiteville	Soles
9	Chris Jeffers	Princeton	Jones

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 26, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Stanley	Intern
MARK TURNER	BRING GOOGLE FIBER TO RALEIGH!
TANNER LOVELACE	Bring Google Fiber to Durham!
Andrew Cagle	DLC + Assoc.
Thomas Moore	Edwards, Wall
PRESTON HOWARD	MCIC
Amy Hobbs	MWC
Will Culpepper	NVA
Dave Horne	SA
LAWTON BEAN	CITY OF WILMINGTON

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 26, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gene Causby	NCHA

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 26, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Katie Binion	Revenue
Mickey Taylor	Stanly County
[illegible]	Action Audits
Chris	Action Audits
Peggy Mundell	Sage Kids
Peter Gehred	CCNC
Susan Valenuri	Nationwide
Sherman McCoy	Nationwide
[illegible]	Williams Mullen
Estherine Davis	Electri Cities of NC, Inc.
Mia Bailey	Electricities of NC, Inc.

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

May 26, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Dean	NCSEA, NCEDF
AL MILAK	Dept of Revenue
Janice W. Davidson	NC DOR
Donna Alderman	DOR
Eric Chapman	NC DOR
Elizabeth Hudgins	CFTF
Tom Vinegar	CFTF
Johanna Reese	DOT
Ruth Petersen	DPH / DHHS
Eddie Buffaloe	DPH / DHHS
Paul Glenn	DPH/DHHS

VISITOR REGISTRATION SHEET

Senate Finance Committee — May 26, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Deatrice Williams	CUCA
Lindsay Clifton	Governors Office
Dana Fenton	City of Charlotte
Mary Munschauer	Pryor Govan
Jennifer Willis	NCCCS
Eric Schwartzpely	UNC-GA
Terry Ferrell	UNC-GA
Lance Daniel	NC Marine Fisheries
Dave Coates	Forsyth County NC
Jamie Bost	self 1802 Bennet St. 27604
John McAuliff	Meeting woods
Franklin Freeman	" "

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 26, 2010

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

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

S.B. **655** Increase Drivers License Restoration Fee.

Draft Number:	15407
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1171** Keeping NC Competitive Act.

Draft Number:	75392
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1177** Rev. Laws Technical & Admin. Changes.

Draft Number:	55607
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments: Final report of the day.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, May 26, 2010

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

FAVORABLE

S.B. **1135** Red Oak Deannexation.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1135*

Short Title:	Red Oak Deannexation.	(Local)
Sponsors:	Senator Swindell.	
Referred to:	Finance.	

May 17, 2010

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF RED OAK.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Red Oak:

BEGINNING at a point located in the western right–of–way line of SR 1646 (Northern Nash Road) being the southeast property corner of Lot 8 of Richwood Subdivision and the northwest corner of Lot 1 of Northern Estates Subdivision thence from said beginning point along the property line of Lot 8 of Richwood Subdivision with Lots 1, 2, 3 and 4 of Northern Estates Subdivision south 87 degrees 31 minutes 09 seconds west 400.00 feet to an iron stake cornering, thence along the property line of Lots 7, 8, and 9 of Richwood Subdivision north 01 degrees 17 minutes 26 seconds west 213.62 feet to an iron stake corner of Lots 6 and 7 in the line of Lot 9 Richwood Subdivision cornering, thence along the line of lots 6 and 7 of Richwood Subdivision north 87 degrees 56 minutes 58 seconds East 400.20 feet to an iron stake corner of Lots 6 and 7 Richwood Subdivision located in the western right–of–way of SR 1646 (Northern Nash Road) cornering, thence along the western right–of–way line of SR 1646 (Northern Nash Road) south 01 degrees 13 minutes 18 seconds east 210.62 feet to the point of beginning, containing 1.94 acres and being Lots 7 and 8 as shown on final plat of Phase 2 of Richwood Subdivision, Red Oak Township, Nash County, North Carolina, dated August 22, 1991 and revised October 3, 1991 and October 28, 1991, by Joyner–Keeny & Associates and recorded in Plat Book 20 page 184, Nash County Registry.

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

SENATE BILL 1135:
Red Oak Deannexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 22, 2010
Introduced by:	Sen. Swindell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 1135[1] is a local bill that would deannex 1.94 acres from the corporate limits of the Town of Red Oak, as requested by the Town and evidenced by a resolution adopted by the Town Council on January 4, 2010.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill 1135 would remove certain described property from the corporate limits of the Town of Red Oak, as requested by the Town Council of Red Oak.

The property described in the bill is owned by the Sacred Heart Church. The Church owns several contiguous parcels of property. Most of the property is in an unincorporated area of Nash County surrounded by the corporate limits of the Town of Red Oak. The Church owns two parcels that are included in the corporate limits of the Town of Red Oak.

Sacred Heart Church plans to build a fellowship hall and church on the two parcels of property incorporated in the Town of Red Oak. The Church has requested sewer service from the City of Rocky Mount. The City Council of Rocky Mount has agreed to allow the Church to extend the sewer main to its property provided the property is de-annexed from the Town of Red Oak. The City of Rocky Mount provides sewer service to the Town of Red Oak as a wholesale customer and it does not want to infringe in Red Oak's sewer service area. The Town Council of Red Oak adopted a resolution requesting the General Assembly to de-annex the two parcels of land owned by the Church on January 4, 2010.

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

S1135-SMRB-67(e1) v3

[1] As introduced, this bill is identical to H1671, as introduced by Rep. Stewart, which is currently in House Local Government II, if favorable, Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 655
PROPOSED COMMITTEE SUBSTITUTE S655-CSTDf-85 [v.2]

5/25/2010 1:40:51 PM

Short Title: Increase Drivers License Restoration Fee. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE FOR THE RESTORATION OF DRIVERS LICENSES TO PROVIDE FUNDING FOR THE FORENSIC TESTS FOR ALCOHOL BRANCH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(il) reads as rewritten:

"(il) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(a)(2) shall pay a restoration fee of ~~fifty dollars ($50.00).~~seventy-five dollars ($75.00). A person whose drivers license has been revoked under G.S. 20-17(a)(2) shall pay a restoration fee of ~~seventy-five dollars ($75.00).~~one hundred dollars ($100.00). The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. ~~The fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State.~~ Fifty dollars ($50.00) of each fee shall be deposited in the Highway Fund. Twenty five dollars ($25.00) of the one hundred dollar ($100.00) fee shall be deposited in the General Fund. Twenty-five dollars ($25.00) of each fee collected under this section shall be used to fund a statewide chemical alcohol testing program administered by the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of the Department of Health and Human Services. The Office of State Budget and Management shall annually report to the General Assembly the amount of fees deposited in the General Fund and transferred to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of the Department of Health and Human Services under this subsection.

It is the intent of the General Assembly to annually appropriate from the funds deposited in the General Fund under this subsection the sum of five hundred thirty-seven thousand four hundred fifty-five dollars ($537,455) to the Board of Governors of The University of North Carolina to be used for the operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill."

SECTION 2. This act becomes effective July 1, 2010.

SENATE BILL 655:
Increase Drivers License Restoration Fee

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 26 2010
Introduced by:	Sen. Jones	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S655-CSTDf-85		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 655 increases the restoration fee for licenses revoked for impaired driving and other offenses by $25, with the increase in the fee distributed to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of DHHS.***

CURRENT LAW: The fee restoration of a driver's license of an individual whose license has been revoked for impaired driving is $75. The fee for license restoration for an individual whose license has been revoked for other offenses is $50. The first $50 of each fee is deposited in the Highway Fund; the remaining $25 of the fee for restoration after impaired driving offense is deposited in the General Fund.

Individuals who refuse a chemical analysis where an officer has reasonable grounds to suspect the individual of impaired driving are subject to immediate license revocation. An individual may contest the validity of this revocation within 10 days of the revocation. If the revocation is not rescinded, the individual must pay $100 for the costs of the action. The first $50 of the fee is deposited in the General Fund; $25 is used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of DHHS; $25 is remitted to the county for expenses associated with the enforcement of impaired driving offenses.

BILL ANALYSIS: The PCS to Senate Bill 655 increases the driver's license restoration fee for all individuals by $25. The additional $25 of each fee will be transferred to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of DHHS. The new fee for license restoration will be as follows:

	Impaired driving: $100	**All other offenses:** $75
Highway Fund:	$50	$50
General Fund:	$25	
Alcohol Testing of DHHS:	$25	$25

EFFECTIVE DATE: This act becomes effective July 1, 2010.

BACKGROUND: The Forensic Tests for Alcohol Branch (FTA) provides training to law enforcement officers for breath alcohol testing. The FTA operates Breath Alcohol Testing (BAT) mobile units that are used in the Booze It and Loose It campaigns.

S655-SMTD-157(CSTDf-85) v4

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 25, 2010

TO: Senate Finance Committee

FROM: Bob Weiss
Fiscal Research Division

RE: Senate Bill 655 Increase Drivers License Restoration Fee – PCS to First Edition S655-CSTDf-85

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
Driver License Restoration Fees	**$3,807,900**	**$3,807,900**	**$3,807,900**	**$3,807,900**	**$3,807,900**
EXPENDITURES:					
DHHS	**$3,807,900**	**$3,807,900**	**$3,807,900**	**$3,807,900**	**$3,807,900**
Highway Fund DMV - IT	**$6,175**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles, Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of DHHS.

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY: The PCS to Senate Bill 655 increases the restoration fee for licenses revoked for impaired driving and other offenses by $25, with the increase in the fee distributed to the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of DHHS. (Source: Heather Fennel, Research Division, Bill Summary, May 24, 2010)

ASSUMPTIONS AND METHODOLOGY: The Division of Motor Vehicles (DMV) reports that 129,877 individuals paid the $50 restoration fee and 22,439 individuals paid the $75 restoration fee in FY2008-09, for a total of 152,316. Assuming the number of driver license restorations under these statutes remains the same, the increased collections would be 152,316 multiplied by $25, for an annual total of $3,807,900. Under the bill these funds would be used to fund a statewide chemical alcohol testing program administered by the Forensic Tests for Alcohol Branch of the Chronic Disease and Injury Section of the Department of Health and Human Services.

DMV estimates that the programming to make the fee changes in the bill would take 95 hours at a cost of $65 per hour, for a total of $6,175. DMV would use in-house resources.

SOURCES OF DATA: Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: It is likely that DMV would need additional time beyond July 1, 2010 to implement this change. The result would be reduced revenues in the first fiscal year.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1171
PROPOSED COMMITTEE SUBSTITUTE S1171-PCS85356-RB-78

Short Title: Keeping NC Competitive Act. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO MODIFY ELIGIBILITY FOR ECONOMIC INCENTIVE SALES AND USE TAX EXEMPTIONS AND REFUNDS AND FOR ELIGIBILITY FOR THE ONE PERCENT PRIVILEGE TAX ON DATACENTER MACHINERY AND EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3(8e) reads as rewritten:

"(8e) Eligible Internet datacenter. – A datacenter that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in ~~"Internet service providers and Web search portals" industry 51811, as defined by NAICS.~~software publishing included in industry 511210 of NAICS or an Internet activity included in industry 519130 of NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2. G.S. 105-164.3(23a) reads as rewritten:

"(23a) NAICS. – ~~Defined in G.S. 105-129.81.~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007."

SECTION 3. G.S. 105-164.13(55) reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet ~~data center~~ datacenter and eligible business property to be located and used at an eligible Internet ~~data center.~~ datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of ~~Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a.,~~ a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet ~~data center,~~ datacenter, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet ~~data center,~~ datacenter, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 4. G.S. 105-164.14(j)(3) is amended by adding the following new sub-subdivisions to read:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(3) Industries. – This subsection applies to the following industries:

...

i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing means an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

p. Turbine manufacturing. – Turbine manufacturing means an industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. Turbine

manufacturing under this provision does not include the manufacturing of aircraft turbines."

SECTION 5. G.S. 105-187.50 reads as rewritten:

"**§ 105-187.50. Definitions.**

The definitions in G.S. 105-164.3 apply in this Article. ~~In addition, the following definitions apply in this Article:~~

~~(1) Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.~~

~~(2) Eligible datacenter. A datacenter that satisfies each of the following conditions:~~

~~a. Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.~~

~~b. The Secretary of Commerce has made a written determination of the following:~~

~~1. For facilities that are located in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars ($150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.~~

~~2. For facilities that are not located in a development tier one area at the time of application for the written determination, that at least three hundred million dollars ($300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.~~

~~c. The facility satisfies the wage standard and health insurance requirements of G.S. 105-129.83.~~"

SECTION 6. G.S. 105-187.51C reads as rewritten:

"**§ 105-187.51C. Tax imposed on datacenter machinery and equipment.**

(a) Tax. – A privilege tax is imposed on ~~an eligible datacenter, other than one as defined in G.S. 105-164.3(8e),~~ the owner of a datacenter that meets the requirements of subsection (a1) of this section and that purchases machinery or equipment to be located and used at the datacenter that is capitalized for tax purposes under the Code and is used either:

(1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware and software for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.

(2) For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets all of the following requirements:

(1) An investment of private funds of at least two hundred twenty-five million dollars ($225,000,000) has been or will be made in real and tangible

personal property for the facility within five years of the date on which the first property investment is made in the facility.

(2) The wage standard requirements of G.S. 105-129.83.

(3) The health insurance requirements of G.S. 105-129.83.

(a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases machinery or equipment to be located and used at that datacenter. As used in this subsection, the owner of a datacenter includes an entity that is owned by or under common control with the owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if the second datacenter meets the following requirements and the machinery or equipment that is purchased is capitalized for tax purposes under the Code and is used for one of the purposes listed in subsection (a) of this section:

(1) The Secretary of Commerce certifies that an investment of private funds of at least seventy-five million dollars ($75,000,000) has been or will be made in real and tangible personal property for the facility within five years after the facility subject to tax under subsection (a) of this section is placed into service and that the datacenter meets the requirements in subsection (a1) of this section, other than the minimum investment amount in that subsection.

(2) The two datacenters are linked through a fiber optic connection or a similar connection.

(3) The datacenters are placed in service within five years of each other.

(b) Rate. – The tax is one percent (1%) of the sales price of the eligible equipment and machinery. The maximum tax is eighty dollars ($80.00) per article.

(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the combined general rate from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at the combined general rate from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, ~~2013~~2015."

SECTION 7. This act becomes effective July 1, 2010, and applies to sales made on or after that date.

SENATE BILL 1171:
Keeping NC Competitive Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 25, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S1171-CSRB-78		Committee Counsel

SUMMARY: ***Senate Bill 1171[1] would provide various tax incentives requested by the Department of Commerce to aid in its recruitment initiatives. The Senate version of the Appropriations Act of 2010, Version 3 of Senate Bill 897, reserved $10,000,000 for these tax incentives. The PCS for Senate Bill 1171 bill would provide the following tax incentives:***

- ***Expand the sales tax exemption available to an Internet datacenter for the electricity and business property used at its facility. The current exemption applies to a facility engaged in Web search portals; the bill would expand the exemption to include a facility engaged in software publishing. The PCS would use NAICS industry classifications to identify the facilities.***
- ***Allow an annual refund of the sales and use tax paid on building materials, supplies, fixtures, and equipment to construct a paper-from-pulp manufacturing facility and a turbine manufacturing facility. The PCS would remove the wage and job requirements related to the paper-from-pulp manufacturing facility to simplify the sales tax exemption and to recognize that the exemption is primarily related to the large investment being made, not to the creation of jobs.[2]***
- ***Modify the requirements for a datacenter to qualify for the 1%, $80 per article cap, excise tax on the machinery and equipment it purchases. The PCS would allow a datacenter to meet its investment threshold through the construction of two facilities, rather than one facility, and it extends the sunset from July 1, 2013, to July 1, 2015.***

SALES TAX EXEMPTIONS: The General Assembly began offering sales tax exemptions to incent companies to locate and expand in North Carolina[3] in 1998 when it granted a sales tax exemption to a major recycling facility[4] for the lubricants and other additives used at its facility for its machinery and equipment, for the electricity used at its facility, and for the materials and supplies consumed in the manufacturing processes at its facility.[5]

In 2006, the General Assembly granted a sale tax exemption to an Internet datacenter[6] for the electricity and business property used at its facility.[7] To be exempted, the business property must be located at the facility, it must be capitalized for tax purposes under the Code, and it must be used for one of the following purposes:

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[1] As introduced, this bill was identical to H1958, as introduced by Reps. Moore, Burris-Floyd, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

[2] The refund provision applies to at least nine industries. Only one, the refund for solar electricity generating materials manufacturing, carries a similar requirement.

[3] There are at least seven sales tax exemptions targeted to specific industries: G.S. 105-164.13(10a), (45), (45a), (45b), (45c), (55), and (56).

[4] Nucor.

[5] G.S. 105-164.13(10a); S.L. 1998-55.

[6] Google.

[7] G.S. 105-164.13(55); S.L. 2006-66.

- For the provision of a service provided as part of its primary business.
- For the generation, transformation, transmission, distribution, or management of electricity.
- For the provision of related computer engineering or computer science research.

An Internet datacenter is defined as a facility that meets the following requirements:

- Its primary business must be as a Web search portal included in Industry 51811 of NAICS.
- It is comprised of a structure or series of structures located on contiguous parcels of land owned by the same operator.
- It is located in a development tier one or two county.
- The owner commits at least $250,000,000 of private funds in the facility over a five-year period.

The owner of an Internet datacenter must forfeit the sales tax exemptions it has been allowed if it fails to meet the investment threshold, fails to locate and use the property at the datacenter, or fails to use the electricity at the datacenter. A taxpayer that forfeits an exemption is liable for all past taxes avoided as a result of the exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest. The past taxes and interest are due 30 days after the date the exemption is forfeited.

Section 1 of the PCS would expand the definition of an Internet datacenter to include not only a facility primarily engaged in providing Internet service and web search portals, but also a facility primarily engaged in computer software publishing. The bill identifies the provided services by using the industry classifications developed by the North American Industry Classification System (NAICS). NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. It was developed under the auspices of the Office of Management and Budget (OMB) and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

Section 2 of the PCS would update the NAICS reference used in the sales and use tax statutes to the most recent edition of NAICS.[8] OMB updates NAICS every five years. As part of this update, the 2002 NAICS classification for "Internet Service Providers and Web Search Portals," Industry 51811, was changed in the 2007 edition of NAICS to "Internet Publishing and Broadcasting and Web Search Portals," Industry 519130. **Section 1 of the PCS** made this conforming change. **Section 3 of the PCS** also makes a conforming change in language that was based upon the wording used in the 2002 edition of NAICS.

SALES TAX REFUNDS: The General Assembly has allowed various industrial facilities to apply for an annual refund of the sales and use tax paid by them on building materials, supplies, fixtures, and equipment installed during the construction of a facility. Purchases for subsequent repair, renovation or equipment replacement do not qualify for the refund. The list of industrial facilities entitled to this refund has increased over the years:

- Air courier services. (1998).
- Aircraft manufacturing. (2004 and 2007)
- Bioprocessing. (2003)
- Computer manufacturing. (2004)
- Financial services. (2006)
- Motor vehicle manufacturing. (2004)

[8] G.S. 105-164.3 and G.S. 105-187.51B use NAICS references. In those instances, the industry codes did not change with the most recent update. Therefore no conforming changes were necessary.

- Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. (2003)
- Semiconductor manufacturing. (2004)
- Solar electricity generating materials manufacturing. (2008)

To be allowed the refund, all of the listed industries must meet an investment threshold.[9] If the facility is located in a development tier one area, the required investment level is $50,000,000. For all other facilities, the investment level is $100,000,000. If the required investment level is not made within five years after the first refund is allowed, the facility loses its eligibility for the refund and must forfeit all refunds already received.[10] Only one of the listed industries must also meet a wage standard;[11] no industry listed must meet a specified employment level. A request for a refund must be made within six months after the end of the State's fiscal year. A refund applied for after the due date is barred. This refund provision expires for sales made on or after January 1, 2013.

Section 4 of the PCS would expand the list of industries allowed the annual sales and use tax refund to include paper-from-pulp manufacturing and turbine manufacturing. It would remove the requirement that the owner of a paper-from-pulp manufacturing facility would need to pay an average weekly wage equal to or greater than the average wage of the county; only one industry currently allowed this refund must meet a wage standard. It would also remove the requirement that the owner of a paper-from-pulp manufacturing facility would need to create at least 200 additional full-time jobs to qualify for the refund; no other industry allowed this refund must meet a job creation requirement.

1% EXCISE TAX, SUBJECT TO $80 CAP, ON CERTAIN MACHINERY & EQUIPMENT

The 2001 General Assembly enacted Article 5F in response to the requirement of the Streamlined Agreement that states must simplify their sales tax rates. The 2001 legislation repealed the 1% sales tax rate and $80 per article cap imposed on mill machinery and replaced it with a privilege excise tax having the same rate. Since that time, the Article has been expanded to tax other machinery and equipment at the lower rate, so long as the machinery and equipment are capitalized by the company for tax purposes under the Code:

- A major recycling facility. (2005)
- A research and development company in the physical, engineering, and life sciences. (2006)
- A software publishing company. (2007)
- An industrial machinery refurbishing company. (2008)

In 2007, the General Assembly substituted the 1%, $80 cap excise tax for the sales and use tax on certain purchases of machinery and equipment located and used at a datacenter. This provision expires for sales occurring on or after January 1, 2013. To be taxed at lower rate, the machinery and equipment must be used to provide datacenter services or for the generation, transformation, transmission, distribution or management of electricity. To qualify for the reduced tax rate, a datacenter must meet the following requirements:

- Provide infrastructure for hosting or data processing services.[12]
- Satisfy the wage standard and health insurance requirements of Article 3J.[13]

[9] The costs of construction may include the cost of acquiring and improving the land for the facility and the costs of the equipment for the facility.
[10] The owner of the facility is liable for past taxes due plus interest.
[11] Solar electricity generating materials manufacturing.
[12] G.S. 105-164.3(5c).
[13] G.S. 105-164.50(2)c.

- Meet a minimum investment threshold.[14] The minimum investment threshold is $150,000,000 within five years for development tier one areas. The investment threshold is $300 million for facilities not located in a development tier one area. A business that fails to meet the minimum investment threshold forfeits the lower tax rate provided by this Article and must pay all sales and use taxes, with interest, that would have been due on ineligible purchases.[15]

Section 6 of the PCS would allow a datacenter to meet its $300,000,000 investment threshold through the construction of two facilities. The **PCS** would require one facility to meet a large investment threshold of $225,000,000. Once a taxpayer qualifies for the lower 1% privilege tax by constructing a facility satisfying this large investment threshold, the taxpayer may also qualify for the lower tax rate on a second datacenter if the owner invests at least $75,000,000 in the second datacenter and the two datacenters are linked through a fiber optic connection or a similar connection and the two datacenters are placed into service within five years of each other. The **PCS** would also extend the sunset of this section from July 1, 2013, to July 1, 2015.

Section 6 of the PCS would make the following stylistic changes to Article 5F to clarify the provisions related to the datacenter tax statute:

- It would remove the different investment thresholds based upon the development tier designation of the county in which the datacenter locates because it is now clear that the incented company will locate in a development tier two or three county. Removing the different thresholds simplifies the statute and reflects the current investment situation.
- It would incorporate the investment threshold, as well as the wage and health insurance requirements, in the statute providing the lower tax rate for a datacenter so that all of the provisions governing the applicability tax may be found in one statute. **Section 5 of the PCS** would remove the investment, wage, and health insurance requirements from the definitional statute for Article 5F.

EFFECTIVE DATE: The act becomes effective July 1, 2010, and applies to purchases made on or after that date.

S1171-SMRB-72(CSRB-78) v1

[14] G.S. 105-164.50(2)b.

[15] A credit, in the amount of the privilege tax paid, is allowed against the sales and use taxes due following forfeiture, and interest is not computed against the amount of this offset. The past taxes and interest are due 30 days after the date of forfeiture.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 26, 2010

TO: Senate Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: FM S 1171 PCS (#4)

FISCAL IMPACT ($ In Millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES	**(8.85)**	**(13.70)**	**(10.04)**	**(5.58)**	**(0.64)**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY: Senate Bill 1171 provides various tax incentives requested by the Department of Commerce to aid it in its recruitment initiatives. The bill offers these incentives through the following statutory changes:

- Section 1: Amends GS 105-164.3(8e) to provide additional criteria for designating a facility as an eligible internet data center. The change also expands the sales and use tax exemption for

machinery, equipment, and electricity sold to eligible internet data centers under G.S. 105-164.13 (55).

- Section 4: Amends G.S. 105-164.14(j) making a facility eligible for an annual refund of sales and use taxes under the subsection if the facility primarily performs paper-from-pulp manufacturing or manufactures turbine and/or turbine generator set units, creates at least 200 additional jobs, and pays an average weekly wage equal to or greater than the average wage in the county. This refund would apply to taxes paid in purchasing building materials, supplies, fixtures, and equipment.
- Section 6: Amends G.S. 105-187.51C replacing the general sales and use tax rate applicable to property purchased for use in a data center with the 1%, $80 per article cap excise tax under Article 5F. The Article 5F excise tax applies to machinery and equipment purchased by an eligible internet datacenter.
- Provides that a facility owner loses eligibility and must forfeit all refunds if the facility fails to maintain the required number of created jobs.

ASSUMPTIONS AND METHODOLOGY: Using data provided by the North Carolina Department of Commerce (Commerce), Fiscal Research estimates that enacting the tax incentives will reduce General Fund availability by $8.85 million in FY 10-11 and by $ 13.70 million in FY 11-12. The estimate represents the fiscal impact of three types of tax incentives. The paragraphs below describe each incentive in detail.

Section 1: The tax incentive, amending the definition of an eligible internet datacenter, expands the types of companies eligible for a sales tax exemption on machinery and electricity purchases. As shown in Table 1 below, the electricity and machinery tax exemption totals $8.2 million in the 2010-11 fiscal year.

Table 1. Sales and Use Tax Exemption for Machinery and Equipment

Fiscal Year	Qualified Investment (Machinery and Equipment)	Cost Estimate per Fiscal Year (4.75-5.75% Rate)	Qualified Investment (Electricity)	Cost Estimate per Fiscal Year (3% Rate)	Total Cost Estimate per Fiscal Year
2010-11	$148,750,000	$7,864,063	$10,725,000	$321,750	$8,185,813
2011-12	$197,812,500	$10,085,156	$21,450,000	$643,500	$10,728,656
2012-13	$125,000,000	$6,587,500	$26,325,000	$789,750	$7,377,250
2013-14	$65,000,000	$3,737,500	$31,200,000	$936,000	$4,673,500
2014-15	$0	$0	$21,450,000	$643,500	$643,500
Total	**$536,562,500**	**$28,274,219**	**$111,150,000**	**$3,334,500**	**$31,608,719**

By expanding the definition of eligible Internet datacenters, the bill also expands the types of facilities entitled to a sales and use tax exemption on electricity purchases. Commerce estimates that the definition change will reduce General Fund availability by $321,750 during the 2010-11 fiscal year and by $600,000 to $900,000 in subsequent years. Table 1 provides additional detail.

Under current law, these companies are subject to the general sales tax rate on electricity of 3%. Modifying the definition under G.S. 105-164.3 expands the number of facilities eligible for sales and use tax exemptions under G.S. 105-164.13(55).

Section 4: According to Commerce, providing sales and use tax incentives to construct facilities utilized in paper-from-pulp, turbine, or turbine generator set unit manufacturing will generate refunds of $1.1 million during the 2011-10 fiscal year. Table 2 describes the amount of qualified investments and expected sales and use tax refunds per fiscal year. Purchases made during the 2010-11 fiscal year are reflected in the 2011-12 refunds. Companies eligible for sales and use tax incentives under G.S. 105-164.14 (j) apply and receive tax refunds six months after the end of the fiscal year in which the purchases are made. The sales tax refund provided under G.S. 105-164.14 (j) applies to purchases made on or before January 1, 2013. The January 2013 sunset limits the fiscal impact of this statutory change to three fiscal years.

Table 2. Sales and Use Tax Refund for the Construction of Manufacturing Plants

Fiscal Year	Qualified Investment (Construction Materials)	Cost Estimate per Fiscal Year (Refunds Lag Purchases by a Fiscal Year)
2010-11	$19,750,000	$0
2011-12	$15,750,000	$1,135,625
2012-13	$5,500,000	$905,625
2013-14	$0	$316,250
2014-15	$0	$0
Total	**$41,000,000**	**$2,357,500**

Section 6: Amends G.S. 105-187.51C replacing the general sales and use tax rate applicable to property purchased for use in a data center with the 1%, $80 per article cap excise tax under Article 5F. The tax incentive, amending the definition of an eligible datacenter, expands the types of companies eligible for a sales tax exemption on machinery. Machinery purchased by a data center as tax exempt under Article 5 is subject to the 1%/$80 excise tax under Article 5F. For each piece of machinery purchased, companies must remit 1% of the purchase price to the Department of Revenue.

The tax due is capped at $80 per piece of equipment. The sales tax exemption is also set to expire July, 1, 2013. As illustrated in Table 3, Commerce estimates that $12.5 million in equipment purchases will be made during the 2010-11 fiscal year. The fiscal impact of exempting this equipment from the sales tax equals the purchase price of the machinery, multiplied

Table 3. Datacenter Machinery and Equipment under Article 5F

Fiscal Year	Qualified Investment (Machinery and Equipment)	Cost Estimate per Fiscal Year (1%/$80 Tax Rate)
2010-11	$12,500,000	$664,063
*2011-12	$37,500,000	$1,835,938
2012-13	$37,500,000	$1,757,813
2013-14	$12,500,000	$585,938
2014-15	No Data	$0
Total	**$100,000,000**	**$4,843,750**

*Sales tax rate changes from 5.75% to 4.75% effective July 1, 2011. The tax for purchases made in the later portion of 2010-11 will be remitted in FY 2011-12.

by 4.75% (the North Carolina State sales and use tax rate less 1%). This number is then multiplied by 1.25. The 25% increase in forgone sales tax revenue represents the fiscal impact of the $80 cap per piece of machinery. For each piece of machinery with a purchase price exceeding $1,391, a cap of $80 per piece of equipment is imposed. Table 1 above also reflects a reduction in the State sales and use tax rate of 1%, which is set to expire July 1, 2011. Purchases made on or after that date will only be subject to a 4.75% sales and use tax rate. The sales and use tax exemption for mill machinery purchased by an eligible data center sunsets on July 1, 2015.

SOURCES OF DATA: NC Department of Commerce

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1171

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

S1171-ARB-55 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
s1171-CSRB-78

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 4, line 2, by rewriting the line to read:
"first property investment is made by the owner in the facility.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1177*
PROPOSED COMMITTEE SUBSTITUTE S1177-CSRBx-75 [v.3]

5/26/2010 11:49:59 AM

Short Title: Rev. Laws Technical & Admin. Changes. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The introductory language to G.S. 105-113.40A reads as rewritten:

"The Secretary must credit the net proceeds of the tax collected under this ~~Article~~ Part as follows:"

SECTION 2. G.S. 105-129.16D(b1) reads as rewritten:

"(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars ($400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under subsection (b) of this section. The taxpayer may, however, take the portion of an installment under this subsection that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.

If a taxpayer that claimed a credit under this subsection fails to meet the requirements of this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits the difference between the alternative credit claimed under this subsection and the credit allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative credit under this subsection is liable for the additional taxes avoided plus interest at the rate established under ~~G.S. 105-241.1(i),~~ G.S. 105-241.21, computed from the date the additional taxes would have been due if the credit had not been allowed. The additional taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional taxes and interest by the due date is subject to penalties provided in G.S. 105-236."

SECTION 3. G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is three dollars ($3.00) or more may designate on his or her income tax return that three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is six dollars ($6.00) or more, each spouse may designate on the income tax return that three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term "political party" has the same meaning as defined in G.S. 163-96.~~means one of the following that has at least one percent (1%) of the total number of registered voters in the State~~:

~~(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.~~

~~(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes.~~"

SECTION 4.(a) G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(23) A public library created pursuant to an act of the General Assembly."

SECTION 4.(b) This section becomes effective July 1, 2008, and applies to purchases made on or after that date.

SECTION 5. G.S. 105-187.3 reads as rewritten:

"...

(b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. ~~The~~

The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction. ~~The~~

The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner.

~~(b1) Retail Value of Transferred Department of Defense Vehicles. —~~The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad.

..."

SECTION 6. G.S. 105-187.6(a) is amended by adding a new subdivision to read:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

...

(11) To a revocable trust from an owner who is the sole beneficiary of the trust."

SECTION 7.(a) G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, subject to a minimum of five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:

1. The date of the notice of proposed assessment of the ~~tax.~~tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.

2. The date the proposed assessment becomes collectible under G.S. 105-241.22, if the taxpayer files a timely request for a Departmental review of the proposed assessment.

c. When a taxpayer files a consolidated return under G.S. 105-130.6 at the request of the Secretary and the tax due is paid within 45 days after the later of the following:

1. The date the consolidated return is filed, if the taxpayer does not file a timely request for a Departmental review of the tax.

2. The date the Departmental review of the tax ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review."

SECTION 7.(b) G.S. 105-236(a)(5) is amended by adding a new sub-subdivision to read:

"(5) Negligence. –

...

f. Consolidated return. – The amount of tax shown as due on a consolidated return requested by the Secretary under G.S. 105-130.6 is not considered a deficiency and is not subject to this subdivision."

SECTION 7.(c) This section is effective when it becomes law and applies to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

SECTION 8.(a) G.S. 105-241.9(c) is amended by adding a new subdivision to read:

"(c) Notice. – The Secretary must give a taxpayer written notice of a proposed assessment. The notice of a proposed assessment must contain the following information:

(1) The basis for the proposed assessment. The statement of the basis for the proposed assessment does not limit the Department from changing the basis.

(2) The amount of tax, interest, and penalties included in the proposed assessment. The amount for each of these must be stated separately.

(2a) The date a failure to pay penalty will apply to the proposed assessment if the proposed assessment is not paid by that date and the amount of the penalty. If the proposed assessment is not paid by the specified date, the failure to

pay penalty is considered to be assessed and applies to the proposed assessment without further notice.

(3) The circumstances under which the proposed assessment will become final and collectible."

SECTION 8.(b) G.S. 105-241.11 is amended by adding a new subsection to read:

"(c) FTP Penalty. – A request for a Departmental review of a proposed assessment is considered a request for a Departmental review of a failure to pay penalty that is based on the assessment. A taxpayer who does not request a Departmental review of a proposed assessment may not request a Departmental review of a failure to pay penalty that is based on the assessment."

SECTION 9. G.S. 105-241.16 reads as rewritten:

"**§ 105-241.16. Judicial review of decision after contested case hearing.**

A taxpayer aggrieved by the final decision in a contested case commenced at the Office of Administrative Hearings may seek judicial review of the decision in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review must be filed in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). ~~A taxpayer who files~~ Before filing a petition for judicial ~~review~~ review, a taxpayer must pay the amount of tax, penalties, and interest the final decision states is due. A taxpayer may appeal a decision of the Business Court to the appellate division in accordance with G.S. 150B-52."

SECTION 10.(a) G.S. 105-263 reads as rewritten:

"**§ 105-263. ~~Extensions of time for filing a report or return.~~Timely filing of mailed documents and requests for extensions.**

(a) Mailed Document. – Section 7502 of the Code governs when a return, report, payment, or any other document that is mailed to the Department is timely filed.

(b) Extension. – The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing a report or any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a report or return extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the report or return to the date the tax is paid."

SECTION 10.(b) G.S. 105-241.11(b) reads as rewritten:

"(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a proposed assessment is considered filed on the following dates:

(1) For a request that is delivered in person, the date it is delivered.

(2) For a request that is mailed, the date determined in accordance with G.S. 105-263.

(3) For a request ~~not delivered in person,~~ delivered by another method, the date the Department receives it."

SECTION 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(40) To furnish a nonparticipating manufacturer, as defined in G.S. 66-292, the amount of the manufacturer's tobacco products that a taxpayer sells in this State and that the Secretary reports to the Attorney General under G.S. 105-113.4C."

SECTION 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, must begin and continue only on and after the first day of ~~the month of either January or July,~~ a calendar quarter, as set by the board of county commissioners in the resolution levying the tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least ~~90~~60 days advance notice of a new tax levy or tax rate change. The applicability of a new tax or a tax rate change to purchases from printed catalogs becomes effective on the first day of a calendar quarter after a minimum of 120 days from the date the Secretary notifies the seller that receives orders by means of a catalog or similar publication of the new tax or tax rate change."

SECTION 13. Section 27A.3.(c) of S.L. 2009-451 is repealed.

SECTION 14. Reserved.

PROPERTY TAX CHANGES

SECTION 15. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

...

(29a) Land that is within an historic district and is held by a nonprofit corporation organized for historic preservation purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the location of an historic structure on the site within the time period allowed under this subdivision."

SECTION 16. G.S. 105-277.1C(b)(1) reads as rewritten:

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

(1) Disabled veteran. – A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating

that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability.

c. ~~If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was~~ The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was the result of a service-connected condition.

(2) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(5), (6) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(7) Service-connected. – Defined in 38 U.S.C. § 101."

SECTION 17. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. In addition to the provisions in G.S. 105-277.1F, no deferred taxes are due and all liens arising under this subsection are extinguished when the property's historical significance is lost or substantially impaired due to fire or other natural disaster."

SECTION 18. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is used for low- or moderate-income housing within the time period allowed under this subsection."

SECTION 19. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a

telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, ~~a radio common carrier company as defined in G.S. 62-119(3),~~ a cable television company, or a radio or television broadcasting company."

SECTION 20. G.S. 105-333 is amended by adding a new subdivision to read:

"(21) Terminal. – A motor freight carrier facility that includes buildings for the handling and temporary storage of freight pending transfer between locations. The term also includes a facility that handles truckloads only and typically consists of a wide, open space where rolling stock is parked and a building for offices and maintenance of rolling stock."

SECTION 21. Section 4 of S.L. 2009-308 reads as rewritten:

"**SECTION 4.** This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2013. ~~Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.~~Notwithstanding the repeal of this act, residences that are receiving the property tax benefit provided by this act in the year immediately prior to the repeal are not affected by the repeal of this act and remain eligible for approval of this benefit for subsequent taxable years until the occurrence of a disqualifying event."

SECTION 22.(a) Section 22(d) of S.L. 2007-527 reads as rewritten:

"**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2010.~~July 1, 2010. The remainder of this section is effective when it becomes law."

SECTION 22.(b) Section 22(d) of S.L. 2007-527, as amended by Section 66 of S.L. 2008-134, reads as rewritten:

"**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2011,~~July 1, 2013, or when the Division of Motor Vehicles of the Department of Transportation and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law."

SECTION 22.(c) Section 24(c) of S.L. 2009-445 reads as rewritten:

"**SECTION 24.(c)** G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when this act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective ~~July 1, 2011,~~July 1, 2013, and apply to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system or registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law."

SECTION 22.(d) Section 8 of S.L. 2007-471, as amended by Section 25(a) of S.L. 2009-445, reads as rewritten:

"**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2011,~~July 1, 2013, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

SECTION 22.(e) Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L. 2009-445, reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. Section 63 of this act is repealed July 1, 2013."

SECTION 23. Reserved.

SECTION 24. Reserved.

MOTOR FUEL TAX CHANGES

SECTION 25. G.S. 105-241(b)(2a) reads as rewritten:

"(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

...

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under ~~Article 36C or Article 36D~~ Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer.

SECTION 26.(a) G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly ~~report~~ return for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the ~~report.~~ return. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the excess is refundable in accordance with G.S. 105-241.7."

SECTION 26.(b) G.S. 105-449.40(a) reads as rewritten:

"(a) Authority. – The Secretary may require a motor carrier to furnish a bond when any of the following occurs:

(1) The motor carrier fails to file a ~~report~~ return within the time required by this Article.

(2) The motor carrier fails to pay a tax when due under this Article.

(3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article."

SECTION 26.(c) G.S. 105-449.42 reads as rewritten:

"**§ 105-449.42. Payment of tax.**

The tax levied by this Article is due when a motor carrier files a quarterly ~~report~~ return under G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or alternative fuel used by the motor carrier in its operations within this State during the quarter covered by the ~~report.~~ return."

SECTION 26.(d) G.S. 105-449.42A reads as rewritten:

"**§ 105-449.42A. Leased motor vehicles.**

(a) Lessor in Leasing Business. – A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a ~~report~~ return or otherwise, that the lessee is the motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.

Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the

motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.

(b) Independent Contractor. – The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless ~~either of the following applies:~~one of the circumstances listed in this subsection applies. If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

(1) The motor vehicle is leased for fewer than 30 days.

(2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a ~~report~~ return or otherwise, that the lessor is the motor carrier. Before a lessor gives the Secretary written notice that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

~~If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.~~

~~Before a lessor gives the Secretary written notice under subdivision (2) that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.~~

(c) Liability. – An independent contractor who leases a motor vehicle to another for fewer than 30 days is liable for compliance with this Article and the person to whom the motor vehicle is leased is not liable. Otherwise, both the lessor and lessee of a motor vehicle are jointly and severally liable for compliance with this Article."

SECTION 26.(e) G.S. 105-449.44(b) reads as rewritten:

"(b) Presumption. – The Secretary must check ~~reports~~ returns filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the ~~reports~~ returns required by this Article. If the records indicate that a motor carrier operated in this State in a quarter and either did not file a ~~report~~ return for that quarter or understated its mileage in this State on a ~~report~~ return filed for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon."

SECTION 26.(f) G.S. 105-449.45 reads as rewritten:

"**§ 105-449.45. ~~Reports~~ Returns of carriers.**

(a) ~~Report.~~ Return. – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly ~~report~~ return covers a calendar quarter and is due by the last day in April, July, October, and January. A ~~report~~ return must be filed in the form required by the Secretary.

(b) Exemptions. – A motor carrier is not required to file a quarterly ~~report~~ return if any of the following applies:

(1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.

(2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.

(c) ~~Other Reports.~~ Informational Returns. – A motor carrier must file with the Secretary ~~other reports~~ any informational returns concerning its operations that the Secretary requires.

(d) Penalties. – A motor carrier that fails to file a ~~report~~ return under this section by the required date is subject to a penalty of fifty dollars ($50.00)."

SECTION 27. G.S. 105-449.37(a)(1) reads as rewritten:

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

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~June 1, 2008.~~June 1, 2010.

...."

SECTION 28. G.S. 105-449.47A reads as rewritten:

"§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.

The Secretary may refuse to register and issue a decal to an applicant that does not meet the requirements set out in G.S. 105-449.69(b) or that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 29.(a) G.S. 105-449.105A reads as rewritten:

"§ 105-449.105A. Monthly refunds for kerosene.

(a) ~~Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:~~

~~(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:~~

~~a. Heating.~~

~~b. Drying crops.~~

~~c. A manufacturing process.~~

~~(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:~~

~~a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.~~

~~b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.~~

~~(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:~~

~~a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.~~

~~b. It has a dispensing device that is not suitable for use in fueling a highway vehicle.~~

Refund for Undyed Kerosene Sold to an End User for Non-Highway Use. – A distributor who sells kerosene to an end-user for one of the purposes listed in this subsection may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of those purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable.

(1) Heating.

(2) Drying crops.

(3) A manufacturing process.

(b) Liability. – If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. ~~This liability applies regardless of whether the actions of a retailer of kerosene contributed to the overpayment.~~"

SECTION 29.(b) This section becomes effective January 1, 2011, and applies to sales of kerosene made by a distributor on or after that date.

SECTION 30. G.S. 105-449.105B reads as rewritten:

"**§ 105-449.105B. Monthly ~~hold harmless~~ refunds for licensed distributors and some licensed importers.**

~~quarter~~

If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for motor fuel purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State."

SECTION 31.(a) G.S. 105-449.106(b) reads as rewritten:

"(b) Taxi. – A person who purchases and uses motor fuel in a ~~taxicab, as defined in G.S. 20-87(1),~~ taxicab while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. For purposes of this subsection, the term "taxicab" means a motor vehicle that seats no more than nine passengers, transports passengers for hire, operates on call or demand, and accepts and solicits passengers indiscriminately. An application for a refund must be made in accordance with this Part."

SECTION 31.(b) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel ~~to operate special mobile equipment off highway~~ for the off-highway operation of special mobile equipment registered under Chapter 20 of the General Statutes may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 31.(c) Subsection (b) of this section becomes effective October 1, 2010, and applies to motor fuel purchased on or after that date. The remainder of this section is effective when it becomes law.

SECTION 32. G.S. 105-449.108(b) reads as rewritten:

"(b) Requirements. – An application for ~~an annual~~ a refund allowed under this Part must be filed with the Secretary and be in the form required by the Secretary. The application ~~must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part~~ must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction. An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year."

SECTION 33. Reserved.

SECTION 34. Reserved.

OTHER CHANGES

SECTION 35. G.S. 20-81.12(b11) reads as rewritten:

"(b11) Animal Lovers Plates. – The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the Spay/Neuter Account established in ~~G.S. 19A-60.~~G.S. 19A-62."

SECTION 36.(a) G.S. 55-16-22(c) reads as rewritten:

"(c) Due Date. – An annual report eligible to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. At the option of the filer, an annual report may be filed directly with the Secretary of State in electronic form. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the ~~third~~ fourth month following the close of the corporation's fiscal year."

SECTION 36.(b) G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of State.**

(a) Requirement and Content. – Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this ~~State, shall deliver to the Secretary of State for filing an annual report, in~~ State must file an annual report with the Secretary of State on a form prescribed by the Secretary ~~of State, that sets forth all of the following:~~and in the manner required by the Secretary. The annual report must specify the year to which the report applies and must set out the information listed in this subsection. The information must be current as of the date the company completes the report. If the information in the company's most recent annual report has not changed, the company may certify on its annual report that the information has not changed in lieu of restating the information.

The following information must be included on an annual report of a limited liability company:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.
(3) The address and telephone number of its principal office.
(4) The names and business addresses of its managers or, if the limited liability company has never had members, its organizers.
(5) A brief description of the nature of its business.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.~~

~~(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.~~

(c) Notice and Due Date. – The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report ~~shall be delivered to the Secretary of State~~ of a limited liability company is due by April 15th of ~~each year.~~the year following the calendar year in which the company files its articles of organization with the Secretary of State. Each subsequent annual report is due on April 15.

(d) Incomplete Report. – If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments. – Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

SECTION 36.(c) A limited liability company that was formed on or after September 1, 2001, but before January 1, 2010, and has filed an annual report in each calendar year after the calendar year in which it was formed is not required to file any additional annual reports for those years. A limited liability company that was formed on or after January 1, 2010, but before April 15, 2010, is not required to file an annual report until April 15, 2011. A limited liability company that has filed more annual reports than is required under this section is not allowed a refund of the annual report filing fee paid for filing the unnecessary report but is not required to pay the annual report filing fee when filing the annual report due April 15, 2011. The Secretary of State must provide a place on the annual report form for calendar year 2011 for a limited liability company to designate that it is not subject to the 2011 annual report filing fee in accordance with this section. The Secretary must also provide instructions that explain why some limited liability companies are subject to the 2011 annual report filing fee and some are not.

SECTION 36.(d) This section is effective when it becomes law.

SECTION 37.(a) G.S. 143B-437.012(j) reads as rewritten:

"(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department.

Each grant agreement ~~for a business that is a major employer under subdivision (1) of subsection (d) of this section~~ shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a

notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required.

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General."

SECTION 37.(b) This section becomes effective July 1, 2010.

SECTION 38.(a) G.S. 143B-437.012(l)(4) reads as rewritten:

"(4) Ninety-five percent (95%) of the sales and use taxes paid on ~~electricity,~~electricity and the excise tax paid on piped natural ~~gas, and the privilege tax paid on other fuel for electricity, piped natural gas, and other fuel consumed at the project that is the subject of the agreement.~~gas."

SECTION 38.(b) This section becomes effective July 1, 2010.

SECTION 39. G.S. 159-107(e) reads as rewritten:

"(e) ~~Increment Agreements.~~ Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties."

SECTION 40. G.S. 160A-239.4(b) reads as rewritten:

"(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under ~~G.S. 153A-210.6~~G.S. 160A-239.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments."

SECTION 41. G.S. 160A-613(b) is repealed.

SECTION 42. Section 27A.3(c) of S.L. 2005-451 is repealed.

SECTION 43. Reserved.

SECTION 44. Reserved.

EFFECTIVE DATE

SECTION 45. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 1177:
Rev. Laws Technical & Admin. Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 26, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S1177-CSRBx-75		Committee Counsel

SUMMARY: ***Senate Bill 1177[1] makes technical, clarifying, and administrative changes to various tax statutes and related laws. The summary below highlights the sections that have been added or changed by this PCS. The PCS also removed the property tax provision relating to property owned by a homeowners association.***

BILL ANALYSIS: Except as otherwise specified, the bill would become effective when it becomes law.

Section	Explanation
VARIOUS TAX LAW CHANGES	
1	Corrects a reference.
2	Corrects a statutory cite.
3	Conforms the definition of "political party" in Chapter 105 with the definition in Chapter 163. When the General Assembly enabled taxpayers to designate part of their tax refund to a political party, the definition of 'political party' in the tax statute conformed to the definition of 'political party' in Chapter 163. The General Assembly changed the definition of 'political party' in Chapter 163 in 2006, but failed to make a conforming change in Chapter 105. The two different definitions have led to confusion because the definition under Chapter 163 recognizes three political parties while the definition in the tax statutes recognizes only two political parties.
4	Allows a public library created by an act of the General Assembly a sales and use tax refund. Unlike other public libraries that are part of a city or county government, the Public Library of Charlotte and Mecklenburg County is a creature of law. The General Assembly chartered the library in 1903 as a body corporate. Other public libraries are allowed an annual sales and use tax refund as part of a unit of local government. This section adds public libraries created pursuant to an act of the General Assembly to the list of governmental entities allowed an annual refund. Prior to 2008, the Public Library applied for semi-annual sales and use tax refunds as a charitable entity under G.S. 105-164.14(b). The General Assembly clarified the charitable refund provision in 2008 as applying to 501(c)(3) organizations to limit the expansion of the provision by a Court of Appeals decision in *The Lynnwood Foundation v. N.C. Department of Revenue.* (S.L. 2008-107). The Public Library of Charlotte and Mecklenburg County is not organized as a 501(c)(3) entity. The section is effective July 1, 2008, and applies to purchases made on or after that date. The retroactive effective date refers to the date that the 2008 clarifying legislation became effective.
5	Consolidates two subsections into one because both subsections define the retail

[1] As introduced, this bill was identical to H1810, as introduced by Rep. Wainwright, which is currently in House Finance.

	value of a motor vehicle for purposes of the highway use tax.
6	Provides that a certificate of title issued as the result of a transfer to a revocable trust from an owner who is the sole beneficiary of the trust is exempt from the highway use tax. This transfer is essentially a transfer to the same owner. The current law currently exempts transfers to the same owner to reflect a name change.
7	Provides that a negligence penalty does not apply to a taxpayer when the taxpayer complies with the Secretary's request and files a consolidated return and that a failure to pay penalty does not apply to a taxpayer who has requested a hearing on the tax liability used as the basis for the penalty.
8	Clarifies that the federal mailbox rule governs when a document that is mailed to the Department of Revenue is timely filed. Under the federal mailbox rule, documents submitted by mail to the IRS are considered to be filed on the date shown on the postmark stamped by the USPS. Under current NC law, a notice of appeal submitted to the Property Tax Commission by mail is considered to be filed on the date shown on the postmark stamped by the USPS. However, in regards to other documents submitted to the Department, the issue is unclear. The statutes typically provide that a return or payment must be filed by a certain date or is due by a certain date. The Department has traditionally abided by the mailbox rule. As part of the Tax Appeals changes in 2007, G.S. 105-241.11 provides that requests for review of a denial of a refund or a proposed assessment are considered timely filed on the date the Department receives it. The Department believes the law is now unclear with regards to other filings. This section clarifies the law with respect to documents submitted by mail to the Department and it makes a conforming change to the Tax Appeals statute to remove any ambiguity.
9	Clarifies a disputed tax amount must be paid before seeking judicial review.
10	Consolidates two separate notices concerning taxes owed into one notice. The two notices are a notice of a proposed assessment of tax and a notice of a failure to pay penalty if the proposed assessment of tax is not paid within 45 days. Section 3(a) requires a notice of a proposed assessment of tax to inform the taxpayer that a failure to pay penalty will apply to the assessed tax if the assessment is not paid or protested within 45 days. This change streamlines the assessment process and eliminates the mailing costs for the current, separate notice of the failure to pay penalty. Section 3(b) clarifies that the protest of a proposed assessment applies to any failure to pay penalty imposed on the underlying assessment.
11	Enables nonparticipating manufacturers to have access to the information that is used to determine their escrow payments. Currently, when there is dispute about the volume of sales in this State, the nonparticipating manufacturers have no way to verify the sales.
12	Provides that a local sales tax rate may be changed on the first day of any calendar quarter so long as the county gives the Department of Revenue at least 60 days notice. The current law requires 90 days notice and provides that a tax rate change may only be made on the first day of either January or July. The General Assembly enacted the current provision in July 2000 as part of the Streamlined Sales Tax Agreement changes. The Agreement, subsequently enacted in January

	2001, provided for the quarterly dates and 60 days notice. This change will conform the local statutes to the SSTA.
13	Corrects an effective date error. Section 27A.3(b) of S.L. 2009-451 eliminated the delayed repeal of G.S. 105-269.14 which means that taxpayers will continue to pay use tax annually on the individual income tax return. Section 27A.3.(c) amended the effective date of the original legislation enacted in 2000. By amending the effective date, the change inadvertently triggered a retroactive application of the way individuals would be required to pay the use tax between July 14, 2000, and August 7, 2009. To correct this interpretation, this section repeals Section 27A.3.(c) of S.L. 2009-451, as suggested by the codifier of the General Statutes.
14	Reserved.
PROPERTY TAX CHANGES	
15	Clarifies that liens are extinguished when property is used for low or moderate income housing within allowed statutory time period.
16	Amends the definition of "disabled veteran" to include a veteran whose death was the result of a service-connected condition.
17	Clarifies that no deferred taxes are due and all liens are extinguished on historic properties when the historical significance of the property is lost or impaired due to fire or other natural causes.
18	Clarifies that liens are also extinguished when an historic structure is located on the sited within allowed statutory time period.
19	Removes the obsolete term "radio common carrier" from the definition of "public service company" in G.S. 105-333.
20	Adds a definition for "terminal facility" to G.S. 105-333.
21	Clarifies that the repeal of the builder's inventory property tax deferral does not affect the eligibility of certain property receiving the benefit.
22	Corrects an incorrect effective date for the combined motor vehicle system.
23-24	Reserved.
MOTOR FUEL TAX CHANGES	
25	Requires taxpayers who must file a return electronically to pay the tax by electronic funds transfer. Current law already requires electronic funds transfer of taxes due by corporations that must pay federal estimated tax by EFT, sales tax prepayments, utilities franchise tax payments, and taxpayers of motor fuel taxes and alternative fuel taxes. This section would expand the requirement to motor carriers and to kerosene suppliers under Article 3 of Chapter 119.
26	Changes the word "report" to "return" to more accurately reflect the type of document described.
27	Updates the reference to the International Fuel Tax Agreement.
28	Provides that a motor carrier who wants to register in North Carolina as its base state under IFTA must be incorporated in this State or authorized to transact business in this State.
29	Repeals some of the purposes for which a distributor may obtain a monthly refund

	for the motor fuel tax the distributor paid on kerosene used for a non-highway purpose. The end-user of the fuel may apply for an annual refund of the motor fuel tax paid on the kerosene under G.S. 105-449.197 if the end-user uses the kerosene for a non-highway purpose. In 1994, the federal government began requiring motor fuel to be dyed if it was non-tax-paid fuel. The dyed fuel indicates that the fuel is used for a nontaxable purpose under federal law and for a non-highway use in North Carolina. Dyed fuel is not subject to either the federal or State excise tax on motor fuel. Effective July 1, 1998, the federal government began requiring diesel fuel to be dyed. Kerosene is defined as diesel fuel. By requiring kerosene to be dyed, the federal government provided a way to purchase kerosene for non-highway uses, such as heating, without having to pay the motor fuel excise tax on the fuel. However, at the time, the public feared that dyed kerosene could not safely be used in kerosene heaters. When North Carolina conformed to the federal law in 1998, it enacted this refund provision.[2] The fear that dyed kerosene would be unsafe for heaters has not materialized and the refund provision at the distributor level is no longer necessary since retailers who wish to sell kerosene for non-highway uses may purchase and sell dyed kerosene. Specifically, this section repeals the refund provided to a distributor who sells kerosene to a retailer and dispenses the kerosene into a dispensing device that is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene. The distributor is liable for any overpayment of the refund, even if the overpayment is attributable to an act of the retailer. It also repeals the refund provided to a distributor who sells kerosene to an airport to be used only for fueling airplanes because no tax has been refunded for this purpose for at least the past four years. This section becomes effective January 1, 2011, and applies to sales of kerosene made by a distributor on or after that date.
30	Removes a miscellaneous word created by a redlining error.
31(a)	Provides a definition of taxicab that is substantially the same as the one that existed in G.S. 20-87(1), prior to repeal.
31(b)	Clarifies that the quarterly refund of motor fuel tax paid on fuel used to operate special mobile equipment is for the *non-highway* operation of the equipment and for equipment that is registered as SME under Chapter 20. This section becomes effective October 1, 2010, and applies to motor fuel purchased on or after that date.
32	Provides that applications for refunds must be filed in the form required by the Secretary. This change will allow for the electronic filing of refund applications.
33-34	Reserved.
OTHER RELATED LAW CHANGES	
35	Corrects a statutory reference.

[2]S.L. 1994-726 and S.L. 1998-146.

36(a)	Conforms the due date for filing annual reports to the due date for filing corporate income tax returns. In 1997, at the recommendation of the General Statutes Commission, the General Assembly set the due date for corporate annual reports at the due date for filing tax returns.[3] The change was designed to make the filing of annual reports easier: the report could be made to one agency, the Department of Revenue, at a more familiar deadline date with the corporation's tax return. In 2007, the General Assembly changed the date a corporate tax return is due to be filed from the 15th day of the third month following the close of the corporation's fiscal year to the 15th day of the fourth month.[4] However, a conforming change was not made to the annual report filing statute. The lack of uniformity has caused confusion. This subsection makes the necessary conforming change.
36(b)	Provides that the first annual report required to be filed by a LLC is due by April 15th of the year *following* the calendar year in which the company files its articles of organization and that the annual report must specify the year to which the report applies. Prior to 2002, the annual report for a LLC was due by the 15th day of the fourth month following the close of the company's fiscal year. S.L. 2001-387, Section 59A, changed the filing date to April 15th. In March 2009, the Secretary of State's Office mailed 270,000 notices to businesses stating they were late in filing their annual reports. Failure to file an annual report is grounds for administrative dissolution for both business corporations and LLCs. The Secretary of State found that many businesses thought their first annual reports were due the year after their formation.[5] The Secretary of State informed the businesses that the first annual report is due on April 15th, regardless of when the business is formed. Also, the practice of the Secretary of State's Office is to credit an annual report that it receives to the oldest year in which an annual report is due and owing.
36(c)	Responds to the March 2009 mailing from the Secretary of State's Office by eliminating the need for a LLC formed after September 1, 2001, to file an annual report for the calendar year in which it was formed. This subsection provides that a LLC that has filed an annual report for each calendar year after the calendar year in which it was formed is not required to file any additional reports. The subsection also provides that a LLC may not ask for a refund of an annual report filing fee paid for an unnecessary report, but the LLC will also not be required to pay the filing fee for its 2011 annual report.
37	Corrects a drafting error in S.L. 2009-520. This section becomes effective July 1, 2010; the same date S.L. 2009-520 becomes effective.
38	Clarifies reference to tax imposed on manufacturing fuel.
39	Removes a duplicate subsection header.
40	Corrects an incorrect statutory reference.
41	Repeals a redundant statute. S.L. 2009-527 adjusted the local vehicle registration fee that may be imposed by a transit authority. The subsection being repealed not only conflicted with the 2009 law change but also became unnecessary in light of

[3] S.L. 1997-475, section 6.1.
[4] S.L. 2007-491, section 14.
S.L. 2001-387, section 59A.

	the 2009 law change.
42	S.L. 2009-451 repealed the repeal of a statute inadvertently reviving the provision. Clarifies the repeal of the original provision.
43-44	Reserved.
EFFECTIVE DATE	
45	Except as otherwise noted, this act is effective when it becomes law.

S1177-SMRB-73(CSRBx-75) v1

SENATE FINANCE COMMITTEE
Tuesday, June 1, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 1, 2010, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator Clodfelter presided. Neel Mandarilli of Cary,. Scot Braswell of Charlotte, Amoz Outlaw of Williamston, Cecilia Best of Albertson, Sean Ginter of High Point, and Lauren Broadwell of Wendell served as pages.

S.B. 1209 – No Non-Voted Local Debt for Competing System

At Senator Hoyle's (the sponsor) request, this bill was removed from the agenda.

S.B. 1212 – Local Government Other Post-Employment Benefits

Senator Clodfelter was recognized to explain the bill. The bill modifies a law enacted in 2007 to allow local governments to invest moneys set aside to fund post-employment benefits inequity securities through the State Treasurer so that the financial disclosure obligations of the fund remain with the local government. Vance Holloman, Deputy State Treasurer, was recognized to answer questions. Senator Blue moved for a favorable report and the motion carried. A copy of the bill, the summary and a handout from the Treasurer's office is attached.

S.B. 1378 – Build North Carolina's Future Act

Senator Foriest was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS makes technical changes to S.B. 1378 which would authorize the issuance of $450,836,175 of special indebtedness for the repair and renovation of State facilities, equipment purchases for the university system and community colleges system, and for the construction of two engineering facilities, one at NC A&T and the other at NCSU. Randy Woodson, Chancellor at NCSU, and Harold Martin, Chancellor at NC A&T, were recognized to speak in favor of the bill. Dr. Garrett Hinshaw, Catawba Valley Community College President, was recognized to speak in favor of the bill. Pat Danahy, Greensboro Partnership's CEO, and Ed White, Chair of the NC State Engineering Foundation, were recognized to speak in favor of the bill. Vance Holloman and Mark Bondo, a fiscal analyst with the Fiscal Research Division, were recognized to answer questions. Senator Stevens was recognized to further explain the bill and moved for a favorable report. The motion carried. A copy of the PCS, the summary, the fiscal note and the Catawba Valley Community College equipment needs handout is attached.

The meeting adjourned at 1:36 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 01, 2010

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

FAVORABLE

S.B. **1212** Local Gov't. Other Post-Employment Benefits.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 01, 2010

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

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

S.B. **1378** Build North Carolina's Future Act.

Draft Number:	55612
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

Corrected: S1432 – Lexington Deannexation has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 2, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1154	UNC Nonappropriated Capital Projects.	Senator Stevens
SB 1298	Town of Pembroke Occupancy Tax.	Senator Walters
SB 1331	Allow Wheel Locks for City of Fayetteville.	Senator Dickson
SB 1389	Graham Deannexation.	Senator Foriest

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

PAGES ATTENDING

Date: 6-1 1pm

Committee: Finance **Room:** 544 LOB

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Neel Mandaviili	Cary	Senator Stevens
2 Scott Braswell	Charlotte	Rucho
3 Amoz Outlaw	Williamston	Clark Jenkins
4 Cecilia Best	Albertson	Senator Albertson
5 Sean Ginter	P. Berger; High Point	Senator P. Berger
6 Lauren Broadwell	Wendell	Senator Rouzer
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the eeting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Anders	PFFPNC
Lu-Ann C Pegram	DLC
Andrew Cagle	DLC
Tom Coley	CWA
Doris Weaver	CWA
Jay Ostbye	Citizen
Cathy Lee	AA.
Michael Crowell	City of Salisbury
Brian Brown	City of Wilson
Tim Morgan	Fl
Amy Hobbs	MWC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	MVA
AGNES SPEIGHT	CITY OF WILSON
MARK TURNER	BRING LOCAL FIBER TO RALEIGH
Andy Silver	self
Weatherly Rose	Hunton + Williams
WENDELL F. PHILLIPS	NC A&T SU
Rudy Ivy	NC General Assembly
Chris Stanley	Intern
Allison Waller	Charlotte Chamber
Christie Barbee	CAPA
Katherine Joyce	NCASA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Robbie Bullock Comar	Comar Assoc
Joyce Peters	JR Assoc
DAVID BARNES	Pryor Govt Affairs
Carolyn Hawthorne	BHSF
Joel Maynard	GPM & Assoc
Chris Valanos	Valanos Group LLC
Peyton Mayne	
Doug Mosier	PSG
Patrick Bo	MCAEC
Preston Howard	MCIC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Tom Cors	TNC
Andrew Meehan	Capstrat
Gary Robertson	AP
John McNulla	MFTS
John Hardin	MFTS
Michelle Fravier	MFTS
Seth Pinner	Office of Lt Gov
Jim Cauley	Wilson
Bruce Rose, MAYA	Wilson
Susan Kluttz	Mayor of Salisbury

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DOUG PARIS	CITY OF SALISBURY

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ed White	NCSU 111b S. Dan Nelson Hall Raleigh NC 27695
Karen Bryjs	NCCCS
Grantt Hinshaw	Catawba Valley CC
Jennifer Willis	NCCCS
Jennifer Haygood	"
Scott Ralls	"
Mike Taylor	Stanly County
Harold L. Martin	NC A&T SU
Randy Woodson	NC State
E. D. Jewell	N. C. State
Ben Hughes	N.C State
Anita Watkins	UNCGA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Clark	NC State
Louis Martin-Vega	NC State
Herb Crenshaw	AT+T
Mia Bailey	ElectriCities of NC, Inc.
Katie Larsson	Professional Engineers of NC
Kevin MacNaughton	NC State Univ
Charles Leffler	NC State Univ.
John Eick	Civitas Institute
Erin Schaettpelz	UNC-GA
[illegible]	UNC
Catherine Heath	Wake U

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pat Danahy	Greensboro Partnership
OCTAVIA RAINEY	
Linda Bunker	NCAE
Dana Fenton	City of Charlotte
Vance Holloman	St. Treasurer
A. SOLARI	DST
Ron Mitton	Contemporary
Lisa Martin	NC Home Builders

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 1, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1209	No Nonvoted Local Debt For Competing System.	Senator Hoyle
SB 1212	Local Gov't. Other Post-Employment Benefits.	Senator Clodfelter
SB 1378	Build North Carolina's Future Act.	Senator Foriest

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

SENATE BILL 1212

Short Title:	Local Gov't. Other Post-Employment Benefits.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LOCAL GOVERNMENT OTHER POST-EMPLOYMENT BENEFITS (OPEB) FUND AND TO ALLOW EACH UNIT OF LOCAL GOVERNMENT TO ESTABLISH A SEPARATE OPEB TRUST FUND THAT MAY THEN BE INVESTED BY THE DEPARTMENT OF STATE TREASURER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-30(g) reads as rewritten:

"(g) A local government, public authority, an entity eligible to participate in the Local Government Employee's Retirement System, or a local school administrative unit may make contributions to ~~the~~ a Local Government Other Post-Employment Benefits ~~Fund~~ Trust established ~~in G.S. 147-69.4.~~ pursuant to G.S. 159-30.1."

SECTION 2. G.S. 159-30.1(b) reads as rewritten:

"(b) Restrictions. – Monies in an irrevocable trust established under subsection (a) of this section may be appropriated only for the purposes for which the trust was established. Monies in the trust are not subject to the claims of creditors of the entity that established the trust. An entity that establishes a trust may not deposit money in the trust if the total amount held in trust would exceed the entity's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purposes for which the trust was established. A trust established pursuant to subsection (a) of this section shall be referred to as a Local Government Other Post-Retirement Benefits Trust, and the assets of that trust may be invested as provided in G.S. 159-30(c) or deposited with the State Treasurer for investment pursuant to G.S. 147-69.2(b4)."

SECTION 3. G.S. 147-69.2(a) reads as rewritten:

"(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

...

(17g) ~~The~~ Funds deposited with the State Treasurer by Local Government Other Post-Employment Benefits ~~Fund.~~ Trusts pursuant to G.S. 159-30.1."

...."

SECTION 4. G.S. 147-69.2(b4) reads as rewritten:

"(b4) In addition to the investments authorized under subdivisions (b)(1) through (6) of this section, the State Treasurer may invest funds deposited ~~in the Local Government Other Post-Employment Benefits Fund~~ pursuant to subdivision (17g) of subsection (a) of this section in any of the investments authorized under subdivisions (b)(6c) and (b)(8) of this section, notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. Funds deposited pursuant to this subsection by a Local Government Other Post-Employment Benefits Trust and interest or other investment income earned from those funds shall be prorated and credited to the contributing trust on the basis of the amounts

contributed, figured according to sound accounting principles. For investments ~~from that Fund made~~ under subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars ($100,000) and may assess fees of up to 15 basis points per annum as a condition of ~~making the investment. The fee~~ participation pursuant to this subsection. Fees assessed by the State Treasurer may be used to defray the costs of administering the Fund."

SECTION 5. G.S. 147-69.4 is repealed.

SECTION 6. This act becomes effective July 1, 2010.

SENATE BILL 1212:
Local Gov't. Other Post-Employment Benefits

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 28, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1212 modifies a law enacted in 2007 to allow local governments to invest moneys set aside to fund post-employment benefits in equity securities through the State Treasurer so that the financial disclosure obligations of the fund remain with the local government.

CURRENT LAW: In 2007, the General Assembly established the Local Government Other Post-Employment Benefits (OPEB) Fund to allow local government units access to equity markets as an investment vehicle for moneys set aside to fund post employment benefits provided to their employees. To participate in the Fund, a local government unit must create an irrevocable trust. The local unit may make irrevocable contributions from the trust to the Fund. The State Treasurer may invest monies in the Fund in preferred or common stock to the same extent as is allowed for the State Retirement System.

Recently, upon guidance given to the State Treasurer's Office from the Governmental Auditing Standards Board, it has been determined that the OPED Fund is an OPEB plan operating at the State level. This determination means the Treasurer will have to make financial disclosures concerning the fund. It also means that each local unit participating in the fund must utilize the same actuarial study date cycle and that all units' financial information pertinent to OPED must be compiled by August 31st of each fiscal year.

BILL ANALYSIS: The intent of the 2007 legislation was not to create a state-level OPED plan. As originally envisioned, the irrevocable trust was to exist at the local level and the fund created at the State level was to be only an investment vehicle managed by the Department of the State Treasurer.

Senate Bill 1212 would restructure the OPED fund so that each local government unit will be able to establish a separate OPED irrevocable trust, which will maintain the overall financial disclosure obligations with each local unit participant. The funds from the trust may continue to be invested by the State Treasurer in public equities through a collective or common trust.

EFFECTIVE DATE: The bill becomes July 1, 2010.

S1212-SMRB-77(e1) v2

NORTH CAROLINA

OFFICE OF THE TREASURER

JANET COWELL, TREASURER

Senate Bill 1212
Local Government Other Post-Employment Benefits

Senate 1212 (Senator Clodfelter)
Relevant Statutes GS 147-69.2(a); GS 147-69.2(b4); GS 147-69.4; GS 159-30.1; GS 159-30.1(b); GS 159-30(c); GS 159-30(g)

Bill Description

This legislation modifies the statute that established the Local Government Other Post-Employment Benefits (OPEB) fund. As modified, the statute will allow each unit of local government to establish a separate OPEB trust fund that may then be invested by the Department of State Treasurer.

Background/Issues

The OPEB irrevocable trust was established to allow local government units access to equity markets as an investment vehicle for moneys set aside to fund post employment benefits provided to their employees. As originally envisioned, the irrevocable trust was to exist at the local level and the fund created at the State level was to be only an investment vehicle managed by the Department of State Treasurer.

Given recently available guidance from the Governmental Auditing Standards Board, it was determined that the OPEB Irrevocable Trust Fund was in fact an OPEB plan operating at the State level. This determination means that the Treasurer will have to make burdensome financial disclosures regarding the fund. It also means that each local unit participating in the fund must utilize the same actuarial study date cycle, and all units' financial information pertinent to OPEB must be compiled by August 31st of each fiscal year. The intent of the enabling legislation was to create an investment vehicle for local units to use as a way to better fund their individual plans. There was never the intent to create a state-level OPEB plan.

Goal

The minimal statutory changes being sought will restructure the OPEB fund so that each local government unit will be able to establish a separate OPEB irrevocable trust, which will maintain the overall financial disclosure obligations with each local unit participant. This would be in accord with the original intent of the program. It would also allow funds to remain invested by the Department of State Treasurer in public equities through a collective or common trust.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1378
PROPOSED COMMITTEE SUBSTITUTE S1378-CSRBx-80 [v.4]

6/1/2010 12:10:20 PM

Short Title: Build North Carolina's Future Act. (Public)

Sponsors:

Referred to:

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO CREATE JOBS AND MAKE NORTH CAROLINA MORE COMPETITIVE GLOBALLY BY FINANCING THE BUILDING OF ENGINEERING EDUCATION FACILITIES, THE ENHANCEMENT AND REPAIR OF STATE ASSETS AND COMMUNITY COLLEGE ASSETS, AND INVESTMENT IN RESEARCH AND JOB TRAINING EQUIPMENT AT UNIVERSITIES AND COMMUNITY COLLEGES.

Whereas, the State of North Carolina has always prioritized higher education, from the founding of the nation's first public university in 1793 until today, when both our public university system and community college system are regarded as among the best in America; and

Whereas, the North Carolina Community College System, one of the largest community college systems in the nation, plays a critical role in training our State's educated workforce and in helping nearly 900,000 North Carolinians enhance their job skills; and

Whereas, employers across the State and country understand the importance of higher education in supporting business workforce needs and in preparing tomorrow's workers, leaders, and innovators for success and achievement; and

Whereas, key achievements in North Carolina's history are based on innovation and science, including the Wright Brothers' historic flight at Kitty Hawk, the establishment of the Research Triangle Park, and the State's first Nobel Prize winner in medicine; and

Whereas, as the economy becomes more global in nature, North Carolina is increasingly competing with other countries for economic success – particularly in the fields of science, health and medicine, engineering, technology, and innovation; and

Whereas, the engineering profession has a notable economic impact on our State, with high-paying jobs that are critical to the growth and future success of North Carolina; and

Whereas, the Colleges of Engineering at North Carolina State University and North Carolina Agricultural and Technical State University both have received significant federal funding and recognition for their research, which has led to additional economic benefits in our State; and

Whereas, investing in new engineering facilities on these campuses will better position North Carolina for the future as the nation's economy moves toward recovery; and

Whereas, investing in new research and training equipment at our universities and community colleges will enhance educational opportunities for students in the fields of health and medicine, science, technology, engineering, and computer science; and

Whereas, North Carolina is able to make these investments while still remaining under the debt affordability guidelines set forth in the Debt Affordability Study due to the

General Assembly's longtime practice of conservative and responsible borrowing, resulting in favorable comparisons to other AAA-rated states in terms of debt ratios and payback; and

Whereas, making these investments now would have short-term benefits by taking advantage of low costs in the current construction market and creating immediate economic activity in construction-related industries, and also would have long-term benefits in strengthening North Carolina's ability to educate, produce, and innovate; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this section. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness:

(1) In the maximum aggregate principal amount of one hundred thirty million dollars ($130,000,000) to finance the capital facility costs of repairing and renovating State facilities and related infrastructure, to be allocated by the General Assembly.

(2) In the maximum aggregate principal amount of fifty-five million dollars ($55,000,000) to finance the capital facility costs of acquiring equipment and completing related capital improvements as provided in Subsection 3(b) of this act for use by The University of North Carolina System and the North Carolina Community College System.

(3) In the maximum aggregate principal amount of one hundred four million three hundred seventy-four thousand dollars ($104,374,000) to finance the capital facility costs of completing the College of Engineering building and related site work, land acquisition, and infrastructure at North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

(4) In the maximum aggregate principal amount of one hundred sixty-one million four hundred sixty-two thousand one hundred seventy-five dollars ($161,462,175) to finance the capital facility costs of completing an Engineering IV building and related site work and infrastructure on the Centennial Campus of North Carolina State University. No more than a maximum aggregate amount of twenty million dollars ($20,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

SECTION 2. Unless the Current Operations and Capital Improvements Appropriations Act of 2010, in its allocation of funds in the Reserve for Repairs and Renovations for the 2010-2011 fiscal year, provides for a different allocation of proceeds of special indebtedness issued or incurred pursuant to subdivision (1) of Section 1 of this act, such proceeds shall be allocated fifty-four percent (54%) to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of the University of North Carolina, and forty-six percent (46%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3. If the proceeds of special indebtedness are allocated to the Board of Governors and the Office of State Budget and Management for repairs and renovations pursuant to this act, this act constitutes the act of appropriation by the General Assembly for purposes of G.S. 143C-4-3(c).

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 3.(a) Of the proceeds of special indebtedness issued or incurred pursuant to subdivision (2) of Section 1 of this act, forty percent (40%) shall be allocated to the Board of Governors of The University of North Carolina and sixty percent (60%) shall be allocated to the State Board of Community Colleges. These funds shall be used by those institutions to purchase equipment for constituent institutions of The University of North Carolina and individual community colleges to be used for teaching and research in the fields of health, science, engineering, and technical education.

SECTION 3.(b) Funds allocated to the State Board of Community Colleges pursuant to subsection (a) of this section may also be used to make capital improvements to existing facilities that are necessary in order to use the equipment purchased pursuant to that subsection. Notwithstanding any other provision of law, community colleges are not required to match allocations made pursuant to this section. For purposes of this subsection, it is not sufficient that a capital improvement would facilitate the use of purchased equipment. The only capital improvements authorized by this subsection are those without which purchased equipment could not be effectively utilized.

SECTION 3.(c) The Board of Governors and the State Board of Community Colleges shall report to the Joint Legislative Commission on Governmental Operations on the allocation or reallocation of funds expended pursuant to this section.

SECTION 4. In addition to any other funds in the Reserve for Repairs and Renovations for the 2010-2011 fiscal year, the proceeds of any bonds and notes issued pursuant to subdivision (1) of Section 1 of this act are transferred to that Reserve.

SECTION 5. The Secretary of Administration is directed to develop a price-matching preference for North Carolina bidders on contracts for projects financed by this act so that qualified North Carolina companies whose bid is within five percent (5%) of the lowest bid may be awarded the contract.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 1378:
Build North Carolina's Future Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2010
Introduced by:	Sen. Foriest	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S1378-CSRBx-80		

SUMMARY: ***Senate Bill 1378 would authorize the issuance of $450,836,175 of special indebtedness for the following:***

- ***Repair and renovation of State facilities and related infrastructure. Of this amount, 56% is allocated to the Board of Governors of The University of North Carolina and 46% is allocated to the Office of State Budget and Management. ($130,000,000)***
- ***Equipment purchases. Of this amount 40% is allocated to the Board of Governors of The University of North Carolina and 60% is allocated to the State Board of Community Colleges.***
- ***The construction of two engineering facilities, one at NC A&T and one at NCSU. Of the amounts allocated for these facilities, no more than $40,000,000 of special indebtedness may be issued or incurred prior to July 1, 2011.***

The proposed committee substitute makes technical and clarifying changes on page 2, lines 22 and 28. It changes the reporting requirement to a simple report of the expenditure of funds, rather than a consultation prior to the expenditure of funds, for the proceeds allocated for equipment needs. And lastly, it directs the Secretary of Administration to develop a price-matching preference for projects funded by these bond proceeds, similar to Executive Order 50.

CURRENT LAW: Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

BILL ANALYSIS: Senate Bill 1378 would authorize the issuance of up to $130,000,000 of special indebtedness to finance the capital facility costs of repairing and renovating State facilities and related infrastructure. The Senate budget did not transfer any funds to the Repairs and Renovations Reserve Account. Of this amount, 54% is allocated to The University of North Carolina and 46% is allocated to the Office of State Budget and Management. The General Assembly has used bond proceeds to fund repairs and renovations on at least two other occasions.[1]

The bill would authorize the issuance of up to $55,000,000 of special indebtedness to finance the capital facility costs of acquiring equipment for use by The University of North Carolina System and the North Carolina Community College System (NCCCS). Of this amount, 40% is allocated to the University System and 60% is allocated to the Community College System. Colleges face two competing pressures when it comes to equipment needs: replacing obsolete equipment and adding new equipment.

The current equipment budget for the NCCCS allows the 58 campuses to replace equipment about once every nine years. The goal of the NCCCS is to replace equipment approximately once every six years. To meet this goal, it would need $65.2 million and a recurring increase of $21.9 million. This provision would also allow the NCCCS to make any necessary building renovations necessary to use the new equipment.

The bill would authorize the issuance of up to $104,374,000 to finance the capital facility costs of completing the college of Engineering building at NC A&T University. No more than $20,000,000 of special indebtedness may be issued or incurred prior to July 1, 2011. This building is the number one priority of NC A&T in its 2009-11 Capital Needs Plan.

Lastly, the bill would authorize the issuance of up to $161,462,175 to finance the capital facility costs of completing an Engineering IV building on the Centennial Campus of NCSU. No more than $20,000,000 of special indebtedness may be issued or incurred prior to July 1, 2011. This project would complete the final phase of the Engineering Complex and provide space for the relocation of the departments of Industrial Engineering, Civil Engineering, Nuclear Engineering, and the College of Engineering Administration to Centennial Campus.

The PCS for Senate Bill 1378 directs the Secretary of Administration to develop a price-matching policy similar to the one authorized by the Governor in Executive Order 50 for the purchase of goods. Under Section 5 of the PCS, a North Carolina bidder on a contract for a project financed by this act whose bid is within five percent (5%) of the lowest bid of an out-of-state bidder would be allowed to match the lower bid and receive the contract.

EFFECTIVE DATE: This bill would become effective when it become law.

S1378-SMRB-78(CSRBx-80) v1

[1] 2003-284 authorized $300 million of special indebtedness. 2009-209 authorized $50 million of

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 28, 2010

TO: Senate Finance

FROM: Mark Bondo
Fiscal Research Division

RE: Senate Bill 1378 (First Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES					
EXPENDITURES					
Total	$18,222,000	$37,806,530	$39,105,920	$41,202,921	$45,057,245
Debt Service	$18,222,000	$37,806,530	$39,105,920	$39,106,120	$39,106,500
Reserve for Repair And Renovations	No Estimate Available				
Equipment Purchases	No Estimate Available				
NC A&T Building Operating Impact	$0	$0	$0	$1,968,598	$3,474,786

NCSU Building Operating Impact	$0	$0	$0	$128,203	$2,475,959
POSITIONS (cumulative):	88.7	88.7	88.7	88.7	88.7

PRINCIPAL DEPARTMENT(S)

PROGRAM(S) AFFECTED: University of North Carolina, North Carolina Community College System, All General Fund Supported State Agencies

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY: Senate Bill 1378 authorizes $450,836,175 of special indebtedness, pursuant to Article 9, Chapter 142 of the General Statutes. The Bill authorizes the proceeds of the bonds to be allocated to the Reserve for Repairs and Renovations, equipment purchases at the University of North Carolina and the North Carolina Community College System, building the College of Engineering Building at North Carolina Agricultural and Technical State University, and building Engineering Building IV at North Carolina State University.

Section 1.(a): Authorizes the issuance of special indebtedness pursuant to Article 9 of Chapter 142 of the General Statutes (State Capital Facilities Finance Act). The specific projects and special indebtedness authorizations are detailed in the table below:

Table 1: Debt Authorization by Project

Project	FY 2010-11	FY 2011-12	Total Authorization
Reserve for Repairs and Renovation	$130,000,000	$0	$130,000,000
Equipment Purchases	$55,000,000	$0	$55,000,000
North Carolina Agricultural and Technical State University College of Engineering Building	$20,000,000	$84,374,000	$104,374,000
North Carolina State University Engineering Building IV	$20,000,000	$141,462,175	$161,462,175
Total	$225,000,000	$225,836,175	$450,836,175

Section 1.(b): Allocates the funds for the Reserve for Repairs and Renovations to the Board of Governors of the University of North Carolina and the Office of State Budget and Management. Of the total amount authorized, the campuses of the University of North Carolina will receive 54% or $70,200,000 and the Office of State Management and Budget will receive 46% or $59,800,000 to be allocated among state facilities and related infrastructure that is supported by the general fund. The allowable uses of Reserve Funds are delineated in G.S. 143C-4-3.

Section 2.(a). Allocates proceeds authorized for equipment purchases to the Board of Governors of the University of North Carolina and the State Board of the Community College System. Of the

total amount authorized, the University of North Carolina will receive 40% or $22,000,000 and the State Board of the Community College System will receive 60% or $33,000,000. The equipment to be purchased is limited to that which is to be used for teaching and research in the fields of health, science, engineering, and technology. The individual Community College Campuses are not required to match any funds for the purchase of equipment, as required by G.S. 115(D)-31(a)1 or any other provision in law.

Section 2.(b): Allows the State Board of Community Colleges to utilize a portion of the funds authorized for equipment purchases for capital improvements to existing facilities. The only improvements allowed are those, without which the equipment would be inoperable.

Section 3: Transfers funds allocated in Section 1(a) to the Reserve for Repair and Renovations, in addition to any other funds allocated to the Reserve in FY 2011-12.

ASSUMPTIONS AND METHODOLOGY:

Debt Service Impacts: Annual debt service payment impacts of the Bill were provided by the North Carolina Department of State Treasurer. At the beginning of FY 2010-11, $225,000,000 of the authorized special indebtedness is assumed to be issued. At the beginning of FY 2011-12, $225,836,175 of the authorized special indebtedness is assumed to be issued. The assumed interest rate is 6.00%. The following table provides the General Fund impact for debt service payments.

Table 1: Increase in Debt Service Payments

Issue Number	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
First Issue	$18,222,000	$19,516,680	$19,516,580	$19,516,320	$19,516,520
Second Issue	$0	$18,289,850	$19,589,340	$19,589,980	$19,589,980
Total	$18,222,000	$37,806,530	$39,105,920	$39,106,120	$39,106,500

Reserve for Repair and Renovations: No estimate exists for expenditure impacts related to allocations from the Reserve for Repair and Renovations. Currently, the specific projects to be funded from this reserve are unknown, as the Board of Governors at the University of North Carolina and the Office of State Management and Budget will determine the recipients of funding, should the Bill become law. It is possible that some savings could result from repair and renovation projects, as buildings could become more efficient.

Equipment Purchases: No estimate exists for expenditures related for equipment purchases at either the Community College System or the University of North Carolina. It is possible that the acquisition of certain equipment could lead to operating expenditures, such as increased utility expenditures, increased software expenditures, and training expenditures. However, the exact equipment to be purchased is unknown, and will be determined by the Board of Governors at the University of North Carolina and the State Board of the Community College System.

NC Agriculture and Technical State University New College of Engineering: The New College of Engineering Building will replace the McNair Building. The total size of the building will be no more than 240,000 gross square feet. The new building is not expected to come online

until December 2013. NC A&T provided estimated additional General Fund operating budget expenditures as a result the new building.

Table 3: NC A&T College of Engineering Operating Expenditures

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Salary				$691,550	$1,383,099
Benefits				$198,803	$397,605
Supplies				$150,858	$247,706
Utilities				$681,120	$1,362,240
Moving				$65,000	$0
Maintenance Contracts				$35,238	$70,476
Insurance				$6,830	$13,660
Vehicles				$80,000	$0
Other Equipment				$55,200	$0
Total				**$1,964,598**	**$3,474,786**
Positions				44.3	44.3

NC State University Engineering Building IV: Engineering Building IV will create a new engineering building on NC State's Centennial Campus and build related infrastructure to service the building. The building will house NC State's Departments of Industrial and Systems Engineering, College of Engineering Administration, and a Data Center. The building will serve as a replacement to Page Hall. The total building size will be no more than 258,000 gross square feet. The new building is not expected to come online on April 1, 2014. The related infrastructure at the building will be completed a year sooner and will result in increased maintenance costs. NC State provided the estimated additional General Fund expenditures.

Table 4: NC State Engineering Building IV Operating Expenditures

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Salary					$664,048
Benefits					$228,073
Supplies					$174,943
Utilities					$643,187
Maintenance Contracts					$109,946
Infrastructure Maintenance				$128,203	$256,405
Insurance					$1,128
Vehicles					$126,300
Other Equipment					$271,929
Total				**$128,203**	**$2,475,959**
Positions					44.4

Positions Created: The following tables provide detail on the positions created at the two new buildings:

Table 5: NC A&T Additional Position Detail

NC A&T	Positions
Housekeepers	20
Housekeepers Supervisor	1.7
Maintenance Mechanic IV	11.4
Police Officer I	2.4
Environmental Health and Safety Officer	2.4
IT Staff	1
IT Classroom Support Staff	1.2
General Utility Worker	4.2
Total	**44.3**

Table 6: NC State Additional Position Detail

NC State	Positions
Building Environment Service Tech.	21.5
Building Environmental Service Tech. Supervisor	1.8
Facilities Maintenance Tech. Mechanical	11.2
Public Safety Officer	2.6
Environmental Health and Safety Tech.	1.3
IT Networking Technician	1
IT Networking Technician (Classroom)	0.5
Facilities Maintenance Tech. Trade	4.5
Total	**44.4**

SOURCES OF DATA: Department of the Treasurer, North Carolina State University, North Carolina Agricultural and Technical State University.

TECHNICAL CONSIDERATIONS: None

Catawba Valley Community College: Equipment Needs 2010

With 5,400 full-time equivalent (FTE) students and enrollment growth of more than 17 percent over this past year, Catawba Valley is stretching every equipment dollar to meet the needs of new educational and training programs, to update technology in high-demand sectors and to fulfill the equipment needs of new students. CVCC has immediate equipment demands of more than twice its current annual equipment allotment of $836,000. When escalating enrollments collide with the high-tech training needs of business and industry, how do our community colleges like CVCC choose?

In-Demand New Programs Demand New Equipment

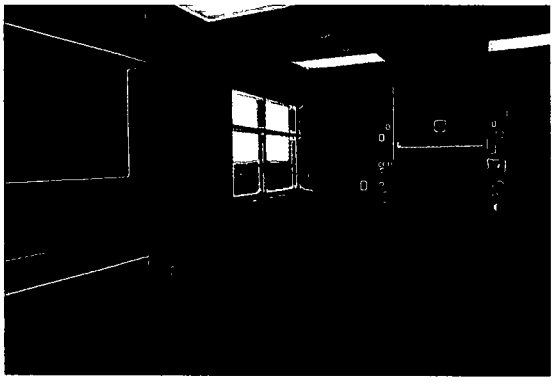
The demand for healthcare education is skyrocketing across the state and nation. CVCC restructured low-demand educational areas to offset the high cost of healthcare programs and built the largest simulated hospital on the East Coast. One problem: it will cost $1.2 million to fully equip the facility which is more than 1.5 times CVCC's annual equipment allotment. CVCC has more than 1,000 students waiting to get into healthcare programs with other area community colleges experiencing similar demand. This simulated hospital could help alleviate the "clinical crunch" that has restricted much of the potential growth in healthcare education for CVCC and other regional community colleges. However, the cost for just one simulated "patient" is at least $60,000.

Replacing Outdated Equipment

With current equipment funding, NC Community Colleges can only replace equipment every nine years and only then if it could be purchased at the original price. CVCC is already two cycles behind on computer replacements meaning students, faculty and staff are learning and working on low-performing, outdated technology. In several critical employment areas such as machining, automotive and welding, the students are being taught on what industry would call antiquated equipment which is difficult to repair when it breaks down. New high-skilled jobs in CVCC's region are calling for robotics and mechatronics training for their future employees. Just one piece of equipment to begin, not sustain, this program costs $35,000.

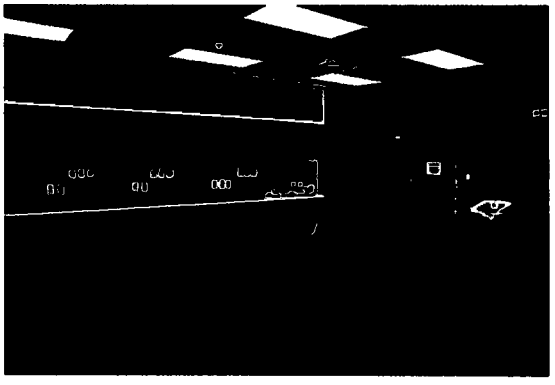
Growing Enrollments Mean Growing Equipment Needs

Often when people think of growing enrollment, they think of classrooms, seats and desks, but what about the computers, labs and training equipment that these students need daily to fulfill their educational goals? CVCC has increased its student body by 855 FTE students (18.7 percent) in the last two years while their annual equipment funding has decreased by 7.7 percent. **With historic enrollment growth, community colleges are forced to choose between beginning and equipping new programs, replacing outdated equipment in current programs or supplying the needs of new students. Whatever they choose, North Carolina's workforce development loses.**



An ICU room at CVCC's Regional Simulated Hospital is awaiting equipment to replicate an ICU wing of a hospital.

The Regional Simulated Hospital occupies 27,000 square feet, the entire fifth floor of the Cuyler A. Dunbar Building on CVCC's campus.



CVCC has seen a 20% increase in respiratory therapy students. This unit will provide real-world training in the field of respiratory therapy.

SENATE FINANCE COMMITTEE
Wednesday, June 2, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 2, 2010, in Room 544 of the Legislative Office Building. Thirty-three members of the committee were present. Senator Jenkins presided. Haley Wachter of Elizabethtown, Courtney Speight of Fremont, Samantha Freeman of Wilkesboro, Lauren Broadwell of Wendell, Cecilia Best of Albertson, Sean Grier of High Point, Philip Hendrick of Greensboro and David Ojo of Fayetteville served as pages.

S.B. 1209 – No Non-Voted Local Debt for Competing System

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS authorizes the Revenue Laws Study Committee to appoint an advisory subcommittee to study local government owned and operated communication services such as a cable system or a system that provides internet access service and provides interim financing provisions for these systems. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS, the summary and the bill is attached.

S.B. 1298 – Town of Pembroke Occupancy Tax

Senator Walters was recognized to explain the bill. The bill authorizes the Town of Pembroke to levy a three percent room occupancy and tourism development tax. Senator Soles moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 1331 – Allow Wheel Locks for City of Fayetteville

Senator Dickson was recognized to explain the bill which allows the City of Fayetteville to use wheel locks to enforce parking regulations. Senator Brock moved for a favorable report. The motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:43 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 02, 2010

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

FAVORABLE

S.B. **1298** Town of Pembroke Occupancy Tax.
Sequential Referral: None
Recommended Referral: None

S.B. **1331** Allow Wheel Locks for City of Fayetteville.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 02, 2010

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

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

S.B. **1209** No Nonvoted Local Debt For Competing System.

Draft Number:	55616
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Finance Committee
Wednesday, June 2, 2010, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1209	No Nonvoted Local Debt For Competing System.	Sen. Hoyle
SB 1298	Town of Pembroke Occupancy Tax.	Sen. Walters
SB 1331	Allow Wheel Locks for City of Fayetteville.	Sen. Dickson

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1209
PROPOSED COMMITTEE SUBSTITUTE S1209-CSTD-83 [v.14]

6/2/2010 12:26:31 PM

Short Title: Study Competing Systems/Interim Debt. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO CONTINUE ITS REVIEW OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SYSTEMS AND TO TEMPORARILY LIMIT THE FINANCING OPTIONS FOR THESE SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Communication system. – As used in this act, the term "communication system" means a system that provides high-speed broadband Internet access service or other Internet access service, cable service, telecommunications service, video programming service, or a combination of these services. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3.

SECTION 2.(a) Study. – The Revenue Laws Study Committee is directed to continue its study begun in 2009 of local government owned and operated communication systems and to report its findings and any recommended legislation on this subject to the 2011 General Assembly by March 1, 2011. As part of its study, the Committee shall determine the following:

(1) The extent to which current law authorizes units of local government to offer communication services not traditionally thought of as cable television services.

(2) The requirements and standards that should apply to a unit of local government and to a private provider when the local unit offers a communication service that is offered by a private provider.

(3) Whether varying or different provisions are needed to accommodate communication systems placed in service by cities before the effective date of this act.

(4) Policies and incentives that can be established to facilitate the offering and expansion of communication service by both public and private service providers, including public-private ventures and other opportunities.

SECTION 2.(b) Membership. – In conducting the study described in subsection (a) of this section, the Revenue Laws Study Committee cochairs are authorized to appoint an advisory subcommittee and to ask the Local Government Commission to designate an individual to participate in the subcommittee's deliberations in an ex-officio, nonvoting capacity. The subcommittee may consist of no more than 12 members and may include

individuals who are not members of the Committee or of the General Assembly, eight of whom represent the following interests:

(1) A cable service provider.
(2) A wireless telecommunications service provider.
(3) A local exchange provider that is not a wireless telecommunications service provider.
(4) A local exchange provider that is a wireless telecommunications service provider.
(5) A city that operates a cable system and an electric power system as a public enterprise.
(6) A city that operates a cable system as a public enterprise and does not operate an electric power system as a public enterprise.
(7) A city that is a member of a joint agency established under G.S. 160A-462 for the operation of a cable system as a public enterprise.
(8) The North Carolina League of Municipalities.

SECTION 3.(a) Interim Financing Provisions. – The Local Government Commission may not approve an application for financing under G.S. 160A-20 or G.S. 160A-466 by a unit of local government or a joint agency for a communication system that provides consumer Internet service at retail until the date a bill recommended to the 2011 regular session of the 2011 General Assembly by the Revenue Laws Study Committee as a result of the study directed by Section 2 of this act becomes law or, if a bill is not recommended by that Committee or is not enacted, until the adjournment of the 2011 regular session of the 2011 General Assembly. Consumer Internet service at retail does not include systems and services provided by a unit of local government only for its own use or, pursuant to an interlocal or service agreement, for use by other units or agencies of government.

The prohibition in this section does not apply to an application submitted by any of the following:

(1) A unit of local government or a joint agency that, as of June 1, 2010, had previously entered into a contract under G.S. 160A-20 or G.S. 160A-466 to finance a communication system that provides consumer Internet service at retail.
(2) A unit of local government that meets all of the following requirements:
   a. As of June 1, 2010, has contracted with an outside party for a high-speed broadband Internet feasibility study. A high-speed broadband Internet feasibility study is a study that addresses the potential market for a publicly owned consumer Internet service at retail, explores a system design and deployment strategy for various models and levels of service, or identifies the investments in property and equipment necessary to develop a system under various models and levels of service.
   b. On or before December 1, 2010, has taken formal action, as reflected in the minutes of the city council's meetings, to instruct city staff to file an application with the Local Government Commission to approve a contract by the city to finance a communication system that provides consumer Internet service at retail.
(3) The recipient of a federal grant, if the recipient stated in its grant application that it would provide any matching funds required as a condition of receiving the grant through financing under G.S. 160A-20.
(4) A unit of local government chosen by Google for its Fiber Project, if the financing is needed to qualify as the Fiber Project.

SECTION 3.(b) Interim Notice Requirements. A unit of local government that plans to submit an application to the Local Government Commission during the period the

prohibition in subsection (a) of this section is in effect and whose application is eligible for approval during this period because of the exclusion in subdivision (2) of that subsection must hold a public hearing on the proposed application and must send written notice to each person that provides consumer Internet service at retail within the unit of its intent to submit an application. The notice must be sent at least 15 days before the date of a public hearing held on the proposal. If the unit submits an application to the Local Government Commission after the public hearing, the Local Government Commission must accept written and oral comments from the providers the unit is required to notify under this subsection.

SECTION 3.(c) New Requirements Apply. A unit of local government whose application to the Local Government Commission is approved under subdivision (a)(2) of this section will be fully subject to the requirements of any bill enacted by the 2011 regular session of the 2011 General Assembly upon the recommendation of the Revenue Laws Study Committee as a result of the study directed by Section 2 of this act.

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

SENATE BILL 1209:
Study Competing Systems/Interim Debt.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 25, 2010
Introduced by:	Sen. Hoyle	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S1209-CSTDx-83		Committee Counsel

SUMMARY: ***The proposed committee substitute to Senate Bill 1209 authorizes the Revenue Laws Study Committee to appoint an advisory subcommittee to study local government owned and operated communication services such as a cable system or a system that provides internet access service, and provides interim financing provisions for these systems.***

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate and finance a number of public enterprises, including cable television systems. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E. 2d 721 (2005),* interprets the statutory authority to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise. Salisbury is currently constructing a system to provide these services.

The cities that currently operate cable and internet systems financed their systems through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism, commonly known as certificates of participation, was not authorized when cities were given the authority to operate a cable system as a public enterprise. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. A certificate of participation is a document setting out the share of the city's debt that is owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation.

BILL ANALYSIS: The PCS to Senate Bill 1209 directs Revenue Laws to study local government owned and operated communication systems including the extent to which current law authorizes local governments to offer communications systems, the requirements and standards that should be applied to a local government offering a communication system, whether varying provisions are need to accommodate communications systems placed in service before the effective date of this act, and policies and incentives to facilitate the offering of communications services. The cochairs of Revenue Laws are authorized to appoint an advisory subcommittee comprised of private communications providers, local government communication providers, members of the General Assembly, and a designee of the Local Government Commission to participate in an ex-officio, nonvoting capacity.

Section 3 of the bill prohibits the Local Government Commission from approving applications to finance communications systems under G.S. 160A-20 or G.S. 160A-466 unless certain exceptions apply. The moratorium expires the later of enactment of a bill recommended by Revenue Laws under the study directed in this bill, or the end of the 2011 regular session if no bill is recommended or enacted. The moratorium does not apply to local governments or joint agencies that currently offer a retail communication system financed under G.S. 160A-20 or G.S. 160A-466, units that are in the process of

conducting a high-speed broadband Internet feasibility study, recipients of federal grants with matching requirements where the grant application specified the match would be involve financing under G.S. 160A-20, or local governments selected by Google for its Fiber Project.

Units eligible to submit applications for financing during this interim period as units that are in the process of conducting a high-speed broadband Internet feasibility study, must hold a public hearing and provide written notice to other providers of consumer Internet service at least 15 days before the public hearing. If the unit submits an application to the Local Government Commission, the LGC must accept written or oral comments from providers the unit is required to notify. Units eligible to submit applications for financing during this interim period as units that are in the process of conducting a high-speed broadband Internet feasibility study will be fully subject to the requirements of any bill enacted upon the recommendation of the Revenue Laws Study Committee as a result of the study in this act.

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

S1209-SMTD-158(CSTDx-83) v9

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1209

Short Title:	No Nonvoted Local Debt For Competing System.	(Public)
Sponsors:	Senators Hoyle, Blue, Brunstetter, Hartsell, Jenkins, and Tillman.	
Referred to:	Finance.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A LOCAL GOVERNMENT THAT COMPETES WITH PRIVATE COMPANIES IN PROVIDING COMMUNICATION SERVICES HAS THE SUPPORT OF ITS CITIZENS IN FINANCING THOSE SERVICES AND TO CONTINUE THE REVENUE LAWS STUDY COMMITTEE'S REVIEW OF THE TAX AND ECONOMIC DEVELOPMENT IMPACTS OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-20 is amended by adding a new subsection to read:

"(e2) Communication System. – This section does not apply to an external communication system. A unit of local government may not enter into a contract under this section to purchase, or finance or refinance the purchase of, property for use in an external communication system or to finance or refinance the construction or repair of fixtures or improvements for use in an external communication system. A communication system is a system that provides broadband service or other Internet access service, cable service, telecommunications service, video programming service, or a combination of these services. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. A communication system is external if it provides services to a person who is not a unit of local government or a part of that unit."

SECTION 2. Sections 7.1 and 7.2 of Chapter 574 of the 2009 Session Laws authorize the Revenue Laws Study Committee to study local government owned and operated communication services and to report its findings to the 2010 Session of the 2009 General Assembly. The Revenue Laws Study Committee may continue the study authorized by those sections and may report its findings and any recommended legislation to the 2011 General Assembly.

SECTION 3. This act is effective when it becomes law. This act does not affect contracts entered into under G.S. 160A-20 before the effective date of this act.

SENATE BILL 1298*

Short Title:	Town of Pembroke Occupancy Tax.	(Local)
Sponsors:	Senators Walters; Bingham, Blue, Foriest, Goss, Snow, and Vaughan.	
Referred to:	Finance.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF PEMBROKE TO LEVY A THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Town Council of the Town of Pembroke may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Pembroke shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pembroke Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Pembroke and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Pembroke Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax

under this act, it shall also adopt a resolution creating the Pembroke Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Pembroke shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under Section 1 of this act for the purposes provided in that section. The Authority shall promote travel, tourism, and conventions in the town, in sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Pembroke Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mooresville, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

SENATE BILL 1298:
Town of Pembroke Occupancy Tax

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2010
Introduced by:	Sen. Walters	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1298 would authorize the Town of Pembroke[1] to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. The bill is effective when it become law.***

CURRENT LAW: Currently, Pembroke does not have authority to levy a room occupancy tax. Pembroke is located in Robeson County, which does not have authority to levy a 3% occupancy tax. However, the City of Lumberton and the Town of St. Pauls, [2] both located in Robeson County, have authority to levy a 3% room occupancy tax.

BILL ANALYSIS: Senate Bill 1298 would authorize the Town of Pembroke to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines[3] referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

S1298-SMRB-80(e1) v2

[1] As introduced, this bill was identical to H1894, as introduced by Rep. Sutton, which is currently in House Local Government II, if favorable, Finance.

[2] Lumberton received authorization to levy a room occupancy tax in 1983; St. Pauls in 1998.

[3] The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1298 (First Edition)

SHORT TITLE: Town of Pembroke Occupancy Tax.

SPONSOR(S): Senator Walters

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES					
Town of Pembroke	**$28,576**	**$29,528**	**$30,958**	**$32,202**	**$33,132**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Pembroke

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

BILL SUMMARY:

Senate Bill 1298 would authorize the Town of Pembroke to levy a room occupancy tax of up to three percent (3%) of the gross receipts collected from the rental of any eligible room. SB1298 would also create the Pembroke Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Pembroke and shall use the remainder for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

The Town of Pembroke is located in Robeson County. According to the NC Department of Commerce, the average daily room rate for hotels located in this economic region is $76.81, with a room occupancy rate of 54.8%. Pembroke has only one existing hotel with 62 rooms. Using these assumptions ($76.81 room * 62 rooms * 54.8% occupancy * 365 days * 3% occupancy tax), the city would collect $28,576 in occupancy taxes in FY10-11. This number was then grown using the Leisure and Hospitality growth rates from Moody's Economy.com.

SOURCES OF DATA: Town of Pembroke; Moody's Economy.com; NC Department of Commerce

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 1, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1331

Short Title:	Allow Wheel Locks for City of Fayetteville.	(Local)
Sponsors:	Senators Dickson; and Shaw.	
Referred to:	Finance.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF FAYETTEVILLE TO USE WHEEL LOCKS TO ENFORCE PARKING REGULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2003-240, as amended by S.L. 2007-330, reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the City of Fayetteville and the Towns of Boiling Springs, Carolina Beach, and Wrightsville Beach only."

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

SENATE BILL 1331:
Allow Wheel Locks for City of Fayetteville

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 1, 2010
Introduced by:	Sen. Dickson	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1331[1] adds Fayetteville to the list of cities and towns that may use wheel locks on illegally parked vehicles for which there are three or more outstanding, unpaid, and overdue parking tickets.

CURRENT LAW: A number of local bills have been enacted over the past several years authorizing local governments to adopt ordinances allowing the use of wheel locks on illegally parked vehicles that have three or more unpaid parking tickets. For most municipalities, the unpaid tickets must have accumulated over a period of ninety days. However, for Boiling Springs, Carolina Beach, and Wrightsville Beach, the unpaid tickets must have been issued on at least three separate days. In all cases, the ordinance has to provide for notice or warning to be put on the vehicle and immobilization through the wheel locks. In all but two cases, the ordinance may provide for an immobilization fee of not more than $50.00.[2] The ordinance must also provide for towing, impoundment, and an appeal hearing. The cities are not responsible for any damage that may occur to immobilized illegally parked vehicles that results from unauthorized attempts to free or move the vehicle.

BILL ANALYSIS: Senate Bill 1331 would allow the City of Fayetteville to enact an ordinance to allow for the use of wheel locks. Wheel locks could be used on illegally parked vehicles that have three or more unpaid and overdue parking tickets issued on at least three separate days. The City could impose an immobilization fee of not more than $50.

BACKGROUND: Several municipalities throughout North Carolina have authority to use wheel locks: Apex[3], Asheville[4], Boiling Springs[5], Carolina Beach, Chapel Hill[6], Charlotte[7], Durham, Greensboro, Greenville[8], Henderson, Hickory, Lenoir, Monroe, Raleigh, Salisbury[9], Winston-Salem, Wilmington (central business district only), Wrightsville Beach, and the Town of Yadkinville.

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

S1331-SMRB-81(e1) v1

[1] As introduced, this bill was identical to H1916, as introduced by Reps. Parfitt, E. Floyd, which is currently in House Local Government I, if favorable, Finance.

[2] The fee may not exceed $25 for the cities of Asheville and Henderson.

[3] Section 2 of Chapter 291 of the 1993 Session Laws, as amended by Chapter 381 of the 1995 Session Laws, S.L. 1997-218, S.L. 2002-127, S.L. 2003-240, S.L. 2003-328, S.L. 2009-152 covers Apex, Durham, Greensboro, Hickory, Lenoir, Monroe, Raleigh, Wilmington, Winston-Salem, and Yadkinville.

[4] S.L. 1995-75 covers Asheville and Henderson.

[5] Section 1 of S.L. 2003-240, as amended by S.L. 2007-330 covers Boiling Springs, Carolina Beach, and Wrightsville Beach.

[6] The Charter of the Town of Chapel Hill, being Chapter 473 of the 1975 Session Laws, as amended by S.L. 1993-358.

[7] Chapter VI, Subchapter A, Article II of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as amended by S.L. 2000-59 and S.L. 2001-88.

[8] S.L. 1993-609.

[9] S.L. 2003-130.

DeAnne Mangum (Finance CA)

From: DeAnne Mangum (Finance CA)

Sent: Tuesday, June 01, 2010 2:57 PM

To: @Finance; @Senate Principal Clerk's Office; @SenateCommitteeNotice; Bonnie McNeil (Sen. Blue); Cindy Garrison (Sen. Goss); David Nachman (Fiscal Research); Judy Edwards (Sen. Rouzer); Lucius Pullen; Stephen Kouba (Sen. Rouzer); Sen. A.B. Swindell; Sen. Andrew C. Brock; Sen. Austin Allran; Sen. Bob Atwater; Sen. Bob Rucho; Sen. Charlie Albertson; Sen. Charlie Dannelly; Sen. Clark Jenkins; Sen. Dan Blue; Sen. Daniel Clodfelter; Sen. David Hoyle; Sen. David Rouzer; Sen. Don East; Sen. Eddie Goodall; Sen. Ellie Kinnaird; Sen. Fletcher Hartsell, Jr.; Sen. Floyd McKissick; Sen. Harris Blake; Sen. Harry Brown; Sen. Jean Preston; Sen. Jerry W. Tillman; Sen. Joe Sam Queen; Sen. Josh Stein; Sen. Julia Boseman; Sen. Larry Shaw; Sen. Linda Garrou; Sen. Margaret H. Dickson; Sen. Martin Nesbitt; Sen. Michael Walters; Sen. Neal Hunt; Sen. Phil Berger; Sen. R. C. Soles; Sen. Richard Stevens; Sen. Steve Goss; Sen. Tom Apodaca; Sen. Tony Foriest; Sen. William Purcell

Subject: REVISED Senate Finance Committee Meeting Notice for Wednesday, June 02, 2010

Principal Clerk _____
Reading Clerk _____

Corrected: S1209 – No Non-Voted Local Debt for Competing System has been added to the agenda. S1154 – UNC Nonappropriated Capital Projects and S1389 – Graham Deannexation have been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 2, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1209	No Nonvoted Local Debt For Competing System.	Senator Hoyle
SB 1298	Town of Pembroke Occupancy Tax.	Senator Walters
SB 1331	Allow Wheel Locks for City of Fayetteville.	Senator Dickson

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S1432 – Lexington Deannexation has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 2, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1154	UNC Nonappropriated Capital Projects.	Senator Stevens
SB 1298	Town of Pembroke Occupancy Tax.	Senator Walters
SB 1331	Allow Wheel Locks for City of Fayetteville.	Senator Dickson
SB 1389	Graham Deannexation.	Senator Foriest

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
BILL SPONSOR NOTICE

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SB 1298	Town of Pembroke Occupancy Tax.	Senator Walters
SB 1331	Allow Wheel Locks for City of Fayetteville.	Senator Dickson
SB 1389	Graham Deannexation.	Senator Foriest
SB 1432	Lexington Deannexation.	Senator Bingham

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 2, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	CWC
Brad Phillips	TWC
Tommy Robinson	TWC
John Stone	TWC
Mary Tate	Brooks Pierce
John Merritt	McGuire Woods
Rhett P. Dusenbury	Mooresville, NC
Allison Cooper	Bailey & Dixon
Steve Brewer	CenturyLink
Ron McHone	CenturyLink
Doris Weaver	CWA

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 2, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Rose, Mayor	City of Wilson
GRANT GOINGS	WILSON
Stan Pace	Verizon
Cameron Moore	BASE
Jessi Hayes	NC Home Builders
Lisa Martin	
Paula A. Wolf	Wake UP Wake County
Amy Hobbs	MWC
Dave Shutt	CTIA
John Lyon	AT+T

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 2, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Coley	CWA
Chris Telesca	self
John Shaw	PCS
Kellie Slappey	John Locke Foundation
Herb Crenshaw	AT+T
Dwight Allen	Allen Law Offices
Octavia Rainey	
Bob Welch	North State Communications
Bill Leigh	alltel
Susan Kluttz	Mayor of Salisbury
Doug Paris	City of Salisbury

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 2, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tim Romocki	State Treasurer
Agnes Spruce	City of Wilson
Linda Armentrout	HSUS
Amy Vega	HSUS
Sherry Stafford	HSUS
Angie Bailey	e-NC Authority
Fiona Morgan	New America Foundation
Anna Marshall Barnes	Capstrat
Jay Dr Hyde	Citizen
Michael Crowell	City of Salisbury
CRic	AA

VISITOR REGISTRATION SHEET

Senate Finance Committee — **Name of Committee**

June 2, 2010 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brian Dumas	CA of Wilson
MARK TURNER	BRING GOOGLE FIBER TO RALEIGH
Michelle Frazier	MF+S
Dana Fountain	City of Charlotte
Bill Scoggin	TSS
[signature]	SA
Mia Bailey	Electric Cities of NC, Inc.
Katherine Davis	" " " " "
Jim Caulley	Wilson
Patrick Buffkin	NCAEC
KEVIN LEONARD	NCACC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 2, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRAD RITT	U Cal
Ed Burchins	City of Laurinburg
Paul Meyer	NCLM
Kelly Hunter	NCLM
Andrew Cagle	DLC
[illegible]	H&W
Will Culpepper	MVP
Lisa Pierce	Ragsdale Liggett PLLC
Augustine Wong	NCASLA
Richard Thompson	Dominion

SENATE FINANCE COMMITTEE
Wednesday, June 9, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 9, 2010, in Room 544 of the Legislative Office Building. Thirty-one members of the committee were present. Senator Jenkins presided. Carol Browning, Lonnie Goss, Andrew Allen, Michael Wallace, Mitchell Cook, Cindy Kaley and Molly Hurst of Raleigh and Jimmy Andrews of Whitsett served as pages.

S.B. 1172 – Fair Tax Penalties

Senator Clodfelter was recognized to explain the bill and requested that it only be discussed without a vote. Senator Apodaca moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS ensures that taxpayers are not subjected to penalties for requesting a hearing or for failing to file a return in a manner that is prohibited by law. A copy of the PCS, the summary, and the bill is attached.

S.B. 1176 – Construction of Wills and Trusts

Senator Clodfelter explained the bill. It would construe certain formula clauses that reference federal estate and generation-skipping transfer tax laws applicable to estates and trusts of decedents dying in calendar year 2010, during which time there is no applicable federal estate or generation-skipping transfer tax, it refers to the applicable laws as they applied with respect to estates and trusts of decedents dying on December 31, 2009. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 1154 – UNC Nonappropriated Capital Projects

Senator Stevens was recognized to explain the bill which would authorize the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bones, not appropriations from the General Fund. Senator Tillman moved for a favorable report. The motion carried. A copy of the bill, the fiscal note and the summary is attached.

S.B. 1216 – Extend Emergency Foreclosure Program

Senator Blue was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would amend and extend the Emergency Program to Reduce Foreclosures Act by making the act applicable to all home loan foreclosures, rather than just certain subprime loans. The PCS also creates the State Home Foreclosure Prevention Trust Fund and extends the expiration date of the program until May 31, 2013. Mark Pierce, Chief Deputy Commissioner of Banks, was recognized to further explain the bill and answer questions. Senator Queen moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal note, and the bill is attached.

S.B. 1362 – Orange/Alamance Boundary

Senator Kinnaird was recognized to explain the bill which enables the transition of properties of the area along the common boundary between Alamance County and Orange

County as a result of the North Carolina Geodetic Survey's assessment. Senator Soles moved to adopt a technical amendment and give the bill as amended a favorable report. The motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:36 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 09, 2010

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

FAVORABLE

S.B.	**1154**	UNC Nonappropriated Capital Projects.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1176**	Construction of Wills and Trusts.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 09, 2010

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

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

S.B. **1362** Orange/Alamance Boundary.

Draft Number:	PCS 15410
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1216** Extend Emergency Foreclosure Program.

Draft Number:	PCS85363
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 9, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1154	UNC Nonappropriated Capital Projects.	Senator Stevens
SB 1172	Fair Tax Penalties.	Senator Clodfelter
SB 1176	Construction of Wills and Trusts.	Senator Clodfelter
SB 1362	Orange/Alamance Boundary.	Senator Kinnaird
SB 1409	Boiling Spring Lakes Refund Water Fund.	Senator Soles, Jr.

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee — June ~~2~~ 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	AOC
Chuck Allen	US Airways
Jim Blackburn	Association of County Commissioners
Clyde Albright	Alamance County Attorney
John Roberts	Orange County
Michael O'Connor	App State
Nancy Rendleman	WM
Lindsay Clifton	Governor's office
Lauren Whaley	NC Credit Union League
Will Pauy-Gatin	NCHFA
Bin Lenin	NCAE

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9, 2010
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Ardis Watkins	SEANC
Suzanne Beasley	SEANC
David Motford	Civitas
[illegible]	WM
Amy Hobbs	MWC
Harry Kaplan	Disney World
Daniel Rann	Troutman Sanders
[illegible]	H&W
Edna Doosh	UNC Charlotte
Allison Wallen	Charlotte Chamber

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9th, 2010
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ernie Murphrey	UNC-GA
TERRANCE TERVICH	UNC
KAREN L. SMITH MD	NCAFP
Phil Lehman	NC ABC
Chris Kukla	CRC
Will Corbett	NCCOB
Mia P. Bailey	Electricities of NC, Inc.
William B. Stronach IV	Capstrat
Anna Marshall Bruss	Capstrat
Nathan Stanley	NCDOR
Kevin Marcilliat	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9th, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Katie Binion	NCDOR
Beth Stevenson	NC DOR
Kevin MacNaughton	NC State Univ
Dwayne Pinkney	UNC - Chapel Hill
Philip Rogers	ECU
[illegible]	[illegible]
[illegible]	N.C. B.A
Butch Gunnells	NC Beverage A
Matthews Eisley	Smith Anderson
Al Ripley	NC Justice Ctr
Valerie Foushee	Orange Co. BOCC
Angie Harris	Williams Mullen

VISITOR REGISTRATION SHEET 9

Senate Finance Committee — June 2, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	Williams Mullen
David Ferrell	Vanderbilt Block
DAVID RICE	MANATUB FULTON
Will Culpepper	MVA
Rommel Langkamp	NS
Jeff Maynard	HCAPP
Steve Ainsworth	NSS
Kay Hobart	DOS
Ken Lay	NCDOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 9th 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Angie Aclamp	NC Conf of Superior Court Clerks
Barbara Moore	Conf of Clerks of Sup Ct
Eva Schwellpet	UNC-GA
Anita Watkins	UNC-GA
Peter Daniel	NC Farm Bureau
Chris Villaus	Villaus Group LLC
Anna McElroy	UNC-TV
Rebecca Turk	NCACC

Senate Finance Committee
Wednesday, June 9, 2010, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1154	UNC Nonappropriated Capital Projects.	Senator Stevens
SB 1172	Fair Tax Penalties.	Senator Clodfelter
SB 1176	Construction of Wills and Trusts.	Senator Clodfelter
SB 1216	Extend Emergency Foreclosure Program.	Senator Blue
SB 1362	Orange/Alamance Boundary.	Senator Kinnaird

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1172
PROPOSED COMMITTEE SUBSTITUTE S1172-CSRB-84 [v.2]

6/8/2010 4:55:58 PM

Short Title: Fair Tax Penalties. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT TAXPAYERS ARE NOT SUBJECTED TO PENALTIES FOR REQUESTING A HEARING OR FOR FAILING TO FILE A RETURN IN A MANNER THAT IS PROHIBITED BY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, subject to a minimum of five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:

1. The date of the notice of proposed assessment of the ~~tax.~~tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.

2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.

c. When a taxpayer files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:

1. The date the return is filed.

2. The date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.

3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review."

SECTION 2. G.S. 105-236(a)(5) is amended by adding a new sub-subdivision to read:

"(5) Negligence. –

...

f. Consolidated or combined return. – The amount of tax shown as due on a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter is not considered a deficiency and is not subject to this subdivision."

SECTION 3. G.S. 105-241.22 reads as rewritten:

"**§ 105-241.22. Collection of tax.**

The Department may collect a tax in the following circumstances:

(1) When a taxpayer files a return showing an amount due with the return and does not pay the amount shown due. This subdivision does not apply to a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter.

(2) When the Department sends a notice of collection after a taxpayer does not file a timely request for a Departmental review of a proposed assessment of tax.

(3) When a taxpayer and the Department agree on a settlement concerning the amount of tax due.

(4) When the Department sends a notice of final determination concerning an assessment of tax and the taxpayer does not file a timely petition for a contested case hearing on the assessment.

(5) When a final decision is issued on a proposed assessment of tax after a contested case hearing.

(6) When the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute."

SECTION 4. This act is effective when it becomes law. Sections 1 and 2 of this act apply to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

SENATE BILL 1172:
Fair Tax Penalties

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S1172-CSRB-84		

SUMMARY: ***Senate Bill 1172 would provide that a penalty for understatement of tax due does not apply to a taxpayer who complies with the Secretary's request and files a consolidated or combined return and that a failure to pay penalty does not apply to a taxpayer who has requested a hearing on the tax liability used as the basis for the penalty.***

The Senate included the contents of this bill in its version of the 2010 budget, SB 897, Third Edition. The House did not include the provision in its version of the budget, SB 897, Sixth Edition. The proposed committee substitute makes clarifying changes in sections 1 and 2 and adds a new section 3.

CURRENT LAW: North Carolina is a single entity filing state, meaning that a multistate corporation must determine its State net income as if it filed a separate return for federal income tax purposes. G.S. 105-130.14 prohibits a corporation from filing a consolidated or combined return in North Carolina unless specifically directed to do so by the Secretary of Revenue. Under G.S. 105-130.6, the Secretary can require a corporation to file a combined return with other parent, subsidiary, or affiliated corporations when the Department believes the corporation's net income attributable to this State is not accurately reflected on its separate entity filing return.[1] G.S. 105-130.6 states that a corporation has 60 days to file a combined return after being directed to do so by the Secretary before the corporation is subject to penalties under G.S. 105-236. The penalties under G.S. 105-236 include a failure to file penalty of 5% to 25%, a failure to pay penalty of 10%, a negligence penalty of 10%, and a large understatement penalty of 25%. It appears the Department's penalty practice when it requires combined returns is as follows:

Action	**Failure to File** 105-236(a)(3)	**Failure to Pay** 1015-236(a)(4)	**Large Deficiency/ Negligence** 105-236(a)(5)
Return filed within time requested and payment made	No	No	Yes
Return filed within time requested but no payment with return because hearing requested	No	Yes	Yes
Return not filed within time requested but hearing requested	Yes	Yes	Yes

[1] The Department of Revenue has collected millions of dollars in taxes from forced combinations. The Department generated $424 million through Resolution Initiative in 2009. The House and Senate budgets include $110 million in their adjustments to availability attributable to 'Department of Revenue Settlement Initiative'.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1172 would make two penalty changes and one technical change.

The first penalty change in Section 1 of the bill would make it clear that a taxpayer who disputes the amount of tax owed and requests a hearing on the issue is not subject to a penalty for failure to pay the disputed tax before the hearing is held. As set out in this section, a taxpayer who requests a hearing has 45 days after the conclusion of the administrative process to pay any amount that is determined to be due without incurring a failure to pay penalty. If the amount is not paid within the 45-day period, the penalty applies. This change would be consistent with the tax appeal provisions contained in G.S. 105-241.9 through G.S. 105-241.16, which provide a taxpayer does not need to pay the tax due when an assessment is made against the taxpayer in order to have a hearing on the merits of the taxpayer's defense to the assessment before an independent hearing officer.

The second penalty change in Section 2 of the bill would affect taxpayers that file a combined return at the direction of the Secretary. It would provide that the difference between the taxes due on a combined return filed at the request of the Secretary, as compared to the taxes due on a single entity return, is not considered a deficiency and is not subject to the negligence or understatement penalties under G.S. 105-236(a)(5). Currently, these penalties are being assessed even though the taxpayer could not lawfully file the combined return without receiving the request from the Secretary.

Section 3 of the bill is a technical change that would make it clear that the filing of a combined return at the request of the Secretary does not trigger the automatic collection of the tax. The subdivision is intended to apply when a taxpayer files an original or amended individual income tax return that shows an amount due but does not include payment.

EFFECTIVE DATE: The act would become effective when it becomes law. Sections 1 and 2 of the act would apply to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

S1172-SMRB-84(CSRB-84) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1172

Short Title:	Fair Tax Penalties.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT TAXPAYERS ARE NOT SUBJECTED TO PENALTIES FOR REQUESTING A HEARING OR FOR FAILING TO FILE A RETURN IN A MANNER THAT IS PROHIBITED BY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, subject to a minimum of five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:

1. The date of the notice of proposed assessment of the ~~tax.~~tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.

2. The date the proposed assessment becomes collectible under G.S. 105-241.22, if the taxpayer files a timely request for a Departmental review of the proposed assessment.

c. When a taxpayer files a consolidated return under G.S. 105-130.6 at the request of the Secretary and the tax due is paid within 45 days after the later of the following:

1. The date the consolidated return is filed, if the taxpayer does not file a timely request for a Departmental review of the tax.

2. The date the Departmental review of the tax ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review."

SECTION 2. G.S. 105-236(a)(5) is amended by adding a new sub-subdivision to read:

"(5) Negligence. –

...

f. Consolidated return. – The amount of tax shown as due on a consolidated return requested by the Secretary under G.S. 105-130.6 is not considered a deficiency and is not subject to this subdivision."

SECTION 3. This act is effective when it becomes law and applies to penalties that are assessed and unpaid as of the effective date, penalties that are paid as of the effective date but are based on a tax that is the subject of an administrative or judicial action that is pending on the effective date, and penalties and taxes assessed on or after that date.

SENATE BILL 1176*

Short Title:	Construction of Wills and Trusts.	(Public)
Sponsors:	Senators Clodfelter, Blue, Brunstetter, Hartsell, Hoyle, Jenkins, Stein, and Tillman.	
Referred to:	Finance.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.**

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts, and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills of decedents who die in calendar year 2010.

(b) Applicability. – This section applies to a will of a decedent who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. This section does not apply to a will that is executed or amended after December 31, 2009, or to a will that clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(c) Construction. – A will that is subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: 'applicable credit amount,' 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,' 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital deduction,' 'unified credit,' or 'unlimited marital deduction.'

(2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the

General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent."

SECTION 2. Article 1 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.**

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts, and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in trusts created by settlors who die in calendar year 2010.

(b) Applicability. – This section applies to a trust created by a settlor who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. This section does not apply to a trust that is executed or amended after December 31, 2009, or to a trust that clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(c) Construction. – A trust subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the trust contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: 'applicable credit amount,' 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,' 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital deduction,' 'unified credit,' or 'unlimited marital deduction.'

(2) The formula measures a share of a trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The trustee of the trust or an affected beneficiary under the trust may commence a proceeding to determine whether the settlor intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the settlor."

SECTION 3. G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

"(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of any of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

(2) Actions by or against creditors or debtors of a ~~trust;~~trust.

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and ~~negligence;~~negligence.

(4) Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1;~~ G.S. 36C-4-405.1.

(5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1; and~~ G.S. 36C-4A-1.

(6) Actions involving the exercise of the trustee's special power to appoint to a second trust pursuant to G.S. 36C-8-816.1.

(7) Actions to construe a formula contained in a trust subject to G.S. 36C-1-113."

SECTION 4. This act is effective when it becomes law and applies to the estates of decedents dying after December 31, 2009, and to trusts created by settlors who die after December 31, 2009.

SENATE BILL 1176:
Construction of Wills and Trusts

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 8, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1176[1] would construe certain formula clauses that reference federal estate and generation-skipping transfer tax laws applicable to estates and trusts of decedents dying in calendar year 2010, during which time there is no applicable federal estate or generation-skipping transfer tax, to refer to the applicable laws as they applied with respect to estates and trusts of decedents dying on December 31, 2009. The bill is a recommendation of the Revenue Laws Study Committee.

CURRENT LAW: Effective January 1, 2010, the federal estate tax and generation-skipping transfer tax law is repealed for one year. North Carolina imposes an estate tax on the estate of a decedent when a federal estate tax is imposed on the estate. Consequently, North Carolina's estate tax is also repealed for one year. The Fiscal Research Division estimates an $85 million loss of revenue associated with this repeal to the General Fund for fiscal year 2010-2011.

Many wills and trust agreements include formula provisions to determine what amounts of the estate will pass to different beneficiaries or to trusts for the benefit of different beneficiaries. These formula provisions are usually based upon the estate and generation-skipping transfer tax laws applicable at the time of the decedent's death. With the repeal of the federal estate law for the year 2010, these provisions could result in a devise contrary to the decedent's intent. For example, a will or trust agreement could include a formula provision allocating the largest amount or percentage of the testator's estate that can pass free of estate tax to a "Family Trust" for the benefit of the testator's children and the remainder of the estate to a "Marital Trust" for the benefit of the testator's surviving spouse. Under the current law, it is possible that this kind of provision would result in the entire estate passing to the Family Trust and nothing passing to the Marital Trust.

BILL ANALYSIS: Senate Bill 1176 provides that a will or trust agreement of a decedent that dies in calendar year 2010 that refers to the federal estate and generation-skipping transfer tax laws is deemed to refer to the law as it existed on December 31, 2009, unless the document clearly manifests an intent that a contrary rule apply. At least six other states have adopted similar construction provisions[2] and at least four states are considering similar legislation.[3]

EFFECTIVE DATE: The bill is effective when it becomes law and applies to the estates of decedents who die after December 31, 2009, and to trusts created by settlers who die after December 31, 2009.

BACKGROUND: In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). That law made significant changes to the federal estate and generation-skipping transfer tax laws. EGTRRA increased permanently the exclusion amount from $675,000 to $1,000,000. It gradually increased the exclusion amount from $1,000,000 in 2002 to $3,500,000 in 2009; it gradually reduced the maximum estate tax rate from 55% in 2001 to 45% in 2009; and it culminated in the repeal of the tax for one year in 2010. The 2001 Act provided that the changes made by EGTRRA would

[1] This bill is identical to H1865, as introduced by Rep. Carney, which is currently in House Judiciary I, if favorable, Finance.
[2] Idaho, Indiana, South Dakota, Tennessee, Virginia, and Washington.
[3] Florida, Maryland, Nebraska, and New York.

expire on December 31, 2010, and the tax law would be applied as if the provisions and amendments made by the legislation had never been enacted.

Most people did not anticipate that Congress would let the estate tax expire. In April 2009, Congress approved a Fiscal 2010 Budget Resolution which called for extending the federal estate tax into 2010. However, Congress did not enact the necessary legislation to extend the tax. The House of Representatives passed HR 4151 on December 12, 2009. That bill would have made permanent the $3,500,000 estate tax exemption amount and the 45% maximum tax rate. The Senate did not pass the legislation; hence the expiration of the estate tax for 2010. If Congress does not act before the end of the year, the provisions enacted by EGTRRA in 2001 will sunset and the federal estate will be reinstated in 2011 at a rate of 45% and an exclusion amount of $1,000,000.

Not only is the existence of North Carolina's estate tax law tied to the federal estate tax law, but also the amount of the State's estate tax. North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999, and replaced it with an estate tax that is equivalent to the state estate tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government. As part of EGTRRA, Congress phased out the state estate tax credit over a four-year period, beginning in 2002. Although North Carolina conformed to the increased exemption amounts enacted in EGTRRA, it did not conform to the phase out of the estate tax credit. The amount of the estate tax in North Carolina is the amount of the state estate tax credit that would have been allowed under the Code as of December 31, 2001[4].

If Congress does not act, the provisions enacted by EGTRRA in 2001 will sunset and the federal estate tax will be reinstated. For North Carolina, the reinstatement means the State's estate tax will become effective again in 2011 and the amount of the tax payable to the State will be the amount of the state estate tax credit under federal tax law. The credit will be based upon a federal tax calculated at 45%, and imposed on estates that exceed the $1,000,000 exemption amount.

S1176-SMRB-83(e1) v1

[4] S.L. 2002-126, Section 30C.3; S.L. 2003-284, Section 37A.4; and S.L. 2005-144, Section 8.1.

SENATE BILL 1154

Short Title:	UNC Nonappropriated Capital Projects.	(Public)
Sponsors:	Senators Stevens; Bingham, Foriest, and Swindell.	
Referred to:	Finance.	

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS AND AFFILIATED ENTERPRISES OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions and affiliated enterprises of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both, are as follows:

Appalachian State University	
Steam and Chilled Water Tunnel Serving the Center for Student Leadership and Development	$ 2,752,000
Plemmons Student Union Expansion	20,619,000
Center for Student Leadership and Development Honors Residence Hall	32,887,000
Steam Distribution System Improvements – Phase IV-A	2,492,000
Winkler and Belk Residence Halls Fire Suppression Sprinkler System Installations	1,162,000
East Carolina University	
Clement and Greene Residence Halls Fire Suppression Sprinkler System Installations	2,910,600
North Carolina A & T University	
Aggie Stadium Press Box Renovation and Expansion	3,200,000
North Carolina State University	
Talley Student Center Renovation and Expansion	120,000,000

Greek Village Townhouses	25,000,000
The University of North Carolina at Asheville	
Governors Village Renovation and Expansion	24,917,000
The University of North Carolina at Chapel Hill	
Carolina North Infrastructure Improvements	5,000,000
Graham Student Union Renovations	7,500,000
Kenan Stadium Improvements, Phase 2 – Carolina Student Athlete Center for Excellence	55,000,000
Lenoir Hall Renovations	5,000,000
Woollen Gymnasium Renovations, Phase 2	7,100,000
The University of North Carolina at Charlotte	
Football Complex	45,394,000
Parking Deck I	28,080,000
The University of North Carolina at Greensboro	
Quad Residence Halls Comprehensive Renovation and Expansion	52,500,000
Dining Hall Comprehensive Renovation	31,500,000
Ragsdale and Mendenhall Residence Hall Fire Suppression Sprinkler System Installations	1,700,000
Western Carolina University	
Residence Halls Renovation	4,735,300

SECTION 3. The capital improvements projects, and their respective costs, authorized by this act to be financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both, are as follows:

UNC Hospitals	
Ambulatory Care Center (ACC) Expansion and Renovation	$ 26,777,000
Imaging and Outpatient Center	21,871,000
General Internal Hospital Renovations and Equipment	6,000,000

SECTION 4. Pursuant to G.S. 143C-8-12, the following projects are authorized for planning only and, for that purpose, are to be funded entirely with non-General Fund money:

The University of North Carolina at Charlotte	
New Residence Hall Phase X	$ 5,156,500
Residence Dining Hall Renovations/Replacement	2,033,000
Parking Deck J	2,741,800
The University of North Carolina at Pembroke	
Student Health Services Comprehensive Renovation and Addition	390,052

SECTION 5. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of,

funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 6. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 5 of this act.

SECTION 7. With respect to the University of North Carolina at Chapel Hill's Kenan Stadium Improvements, Phase 2 Carolina Student Athlete Center for Excellence, capital project, the institution may accomplish construction and financing through lease arrangements to and from the Educational Foundation, Inc., or any other special purpose entity created for that purpose. After the completion of the renovation and improvement and acquisition of the project by the institution, and notwithstanding any provision of the General Statutes governing the negotiation and execution of contracts or leases for the operation and management of a facility, the institution may provide for the operation and management of all or part of the renovated and improved portion of Kenan Stadium by contracting with the Educational Foundation, Inc., or by leasing that portion of Kenan Stadium to the Educational Foundation, Inc., or by contracting with or leasing to any other special purpose entity created for that purpose.

SECTION 8. This act is effective when it becomes law.

SENATE BILL 1154:
UNC Nonappropriated Capital Projects

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	May 22, 2010
Introduced by:	Sen. Stevens	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1154 would authorize the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.***

CURRENT LAW: There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. for the educational institutions, the University of North Carolina Health Care System, the University of North Carolina General Administration, and the University of North Carolina Hospitals at Chapel Hill. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are not payable from tax revenues.

BILL ANALYSIS: Senate Bill 1154 would authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods. The projects include academic, research, clinical and administrative space and improvements to student services, residential living, dining, recreation, and athletics facilities. Once approved, a detailed financial plan will be developed in consultation with financial advisors and bond counsel for each project. The plans must be approved by the Chancellor, the Boards of Trustees, the President, and the Board of Governors before construction contracts may be awarded and bonds issued.

The self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds are listed in Sections 2 and 3 of the bill. The UNC revenue bond act in Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds to finance the cost of a variety of capital projects, including facilities for the University of North Carolina Hospitals at Chapel Hill.[1] The UNC special obligation bond act in Article 3 of Chapter 116D of the General Statutes requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated.

[1] Projects of the UNC Hospitals have traditionally been financed with self-liquidating indebtedness as part of the list of UNC capital projects. This bill puts those projects in a separate section to recognize that the UNC Hospitals are an affiliated enterprise of the UNC system.

Section 6 of the bill expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 2 and 3 of the act plus 5%. The additional 5% may be used for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

This year's bill includes 21 capital projects on nine campuses. The Chancellors and Boards of Trustees for the listed campuses, as well as the President and the Board, have approved these projects. It also authorizes three capital projects for the UNC Hospitals. If authorized, construction on the projects is expected to begin before June 30, 2011.[2] Support from General Fund sources for operating costs will be required only for facilities used for academic programs.

Section 7 authorizes the University of North Carolina at Chapel Hill to construct and finance the Carolina Student Athlete Center for Excellence through lease arrangements to, from, and with the Educational Foundation, Inc. or any other special purpose entity created for that purpose. Once constructed and approved by state reviewing agencies, the improvements would transfer to UNC-CH. The University may contract with the Educational Foundation, Inc. for the operation and management of all or part of the facility.

Section 4 authorizes the Board of Governors to expend non-General Fund money to plan four capital projects on two campuses.

S1154-SMRB-68(e1) v3

[2] Two of the three projects requested by the UNC Hospitals are under construction. UNC Hospitals originally sought to pay for these projects with operating reserves. Due to historically low interest rates, the Board of Directors of the UNC Health Care System determined that it is in the best interest of UNC Hospitals to finance these projects.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1154 (First Edition)

SHORT TITLE: UNC Nonappropriated Capital Projects.

SPONSOR(S): Senator Stevens

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES		**(Non-General Fund)**			
	$28,830,385	**$39,723,979**	**$39,723,979**	**$44,098,155**	**$49,081,444**
EXPENDITURES		**(Non-General Fund)**			
Total	**$557,373,258**	**$29,737,880**	**$36,599,917**	**$40,639,722**	**$51,841,322**
Debt Service Receipt Supported Expenditures	**$10,829,973**	**$23,473,187**	**$29,903,044**	**$33,069,019**	**$33,109,284**
Receipt Supported Operating	**$2,125,033**	**$6,264,693**	**$6,696,873**	**$7,570,703**	**$7,727,035**
Self-Liquidating Capital Projects	**$544,418,252***				
POSITIONS (cumulative):	**57.8**	**79.7**	**82.2**	**111.5**	**111.5**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina and University of North Carolina Hospitals

* FY 2010-11 reflects the total cost of the non-appropriated capital project and are not reflected on a cash flow basis. All other costs are related to operating expenditures.

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY:

May 13, 2010

S 1154. UNC NONAPPROPRIATED CAPITAL PROJECTS. Filed 5/13/10. TO AUTHORIZE THE CONSTRUCTION AND FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE

CONSTITUENT INSTITUTIONS AND AFFILIATED ENTERPRISES OF THE UNIVERSITY OF NORTH CAROLINA.

Section 1: Authorizes the construction of the following capital improvement projects by certain constituent institutions and affiliated enterprises of the University of North Carolina and authorizes their financing with funds available to the institutions from gifts, grants, receipts, self-liquidating special indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

Section 2: New Projects

Projects By Campus	**Project Amount**
1. Appalachian State University	
Steam and Chilled Water Tunnel serving the Center for Student Leadership and Development Project	$2,752,000
Plemmons Student Union Expansion	$20,619,000
Center for Student Leadership and Development Honors Residence Hall	$32,887,000
Steam Distribution System Improvements – Phase IV-A	$2,492,000
Winkler and Belk Residence Halls Fire Suppression Sprinkler System Installations	$1,162,000
2. East Carolina University	
Clement and Greene Residence Halls Fire Suppression Sprinkler System Installations	$2,910,600
3. North Carolina A&T State University	
Aggie Stadium Press Box Renovation and Expansion	$3,200,000
4. North Carolina State University	
Talley Student Center Renovation and Expansion	$120,000,000
Greek Village Townhomes	$25,000,000
5. The University of North Carolina at Asheville	
Governors Village Renovation and Expansion	$24,917,000
6. The University of North Carolina at Chapel Hill	
Carolina North Infrastructure Improvements	$5,000,000
Graham Student Union Renovations	$7,500,000
Kenan Stadium Improvements, Phase 2 Carolina Student Athlete Center for Excellence	$55,000,000
Lenoir Hall Renovations	$5,000,000
Woollen Gymnasium Renovations, Phase 2	$7,100,000
7. The University of North Carolina at Charlotte	
Football Complex	$45,394,000
Parking Deck I	$28,080,000
8. The University of North Carolina at Greensboro	
Quad Residence halls Comprehensive Renovation and Expansion	$52,500,000
Dining Hall Comprehensive Renovation	$31,500,000

Projects By Campus	Project Amount
8. The University of North Carolina at Greensboro (cont)	
Ragsdale and Mendenhall Residence Halls Fire Suppression Sprinkler System Installations	$1,700,000
9. Western Carolina University	
Residence Halls Renovation	$4,735,300
Total	**$479,448,900**

Section 3: Under G.S. 116-37(j), the UNC Hospital System has authority to construct new projects. They only require the authority to finance under G.S. 116-26(d).

UNC Hospitals	Cost
Ambulatory Care Center (ACC) Expansion and Renovation	$26,777,000
Imaging and Outpatient Center	$21,871,000
General Internal Hospital Renovations and Equipment	$6,000,000
Total	**$54,648,000**

Section 4: Under G.S. 143C-8-7, the University of North Carolina requires approval from the General Assembly prior to beginning full project planning.

Campus	Cost
University of North Carolina at Charlotte	
New Residence Hall Phase X	$5,156,500
Residence Dining Hall Renovations/Replacement	$2,033,000
Parking Deck J	$2,741,800
University of North Carolina at Pembroke	
Student Health Services Comprehensive Renovation and Addition	$390,052
Total	**$10,321,352**

Section 5: At the request of the Board of Governors of The University of North Carolina, the Director of the Budget may authorize specified changes.

Section 6: Pursuant to G.S. 116D-26, the Board of Governors may, subject to the approval of the Director of the Budget, issue special obligation bonds of the Board of Governors for some projects.

Section 7: With regards to the University of North Carolina at Chapel Hill's Kenan Stadium Improvements Phase 2 Carolina Student Athlete Center for Excellence, the institution may accomplish construction and financing through lease arrangements to and from the Educational Foundation, Inc or any other special purpose entity created for that purpose. After the completion of the aforementioned capital project, the University of North Carolina at Chapel Hill may contract for operating and management of the constructed facility with the Educational Foundation, Inc. or any other special purpose entity created for that purpose. Furthermore, the University of North Carolina at Chapel Hill may also lease the aforementioned capital project to the Educational Foundation, Inc. or any other special purpose entity created for that purpose.

ASSUMPTIONS AND METHODOLOGY: The following table uses information supplied by the University of North Carolina to estimate various impacts of the University of North Carolina Capital Projects. When a campus seeks to issue Special Indebtedness, they are required under G.S. 116D-26(b), to submit information to the General Assembly regarding these projects. The following table consolidates this information.

Table 1

Campus	Project	Project Amount	Source of Funds	Effect of debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
ASU	Steam and Chilled Water Tunnel serving the Center for Student Leadership and Development Project	$2,752,000	Utility Receipts		$0	$0
ASU	Plemmons Student Union Expansion	$20,619,000	Student Debt Service Fees	$100	$672,893	$0
ASU	Center for Student Leadership and Development Honors Residence Hall	$32,887,000	Housing Receipts	$200	$1,270,355	$0
ASU	Steam Distribution System Improvements – Phase IV-A	$2,492,000	Utility Receipts		$0	
ASU	Winkler and Belk Residence Halls Fire Suppression Sprinkler System Installations	$1,162,000	Housing Receipts		$0	$0
ECU	Clement and Greene Residence Halls Fire Suppression Sprinkler System Installations	$2,910,600	Housing Receipts		$0	$0
NCA&T	Aggie Stadium Press Box Renovation and Expansion	$3,200,000	Gifts, Seat Licenses, Athletic Receipts		$48,076	$0
NCSU	Talley Student Center Renovation and Expansion	$120,000,000	Student Debt Service Fee	$290*	$455,442	$0
NCSU	Greek Village Townhomes	$25,000,000	Housing Receipts		$267,033	$0
UNCA	Governors Village Renovation and Expansion	$24,917,000	Housing Receipts	****	$1,033,706	$0
UNCCH	Carolina North Infrastructure Improvements	$5,000,000	Facilities and Administrative Receipts		$0	$0

Campus	Project	Project Amount	Source of Funds	Effect of debt on Students	Increase in Annual Operating Costs (1st Year)	General Fund Support of Operating Costs (1st Year)
UNCCH	Graham Student Union Renovations	$7,500,000	Dining Debt Service Fee & Student Activity Fee	$20.93**	$425,475	$0
UNCCH	Kenan Stadium Improvements, Phase 2 Carolina Student Athlete Center for Excellence	$55,000,000	Athletic Receipts, Gifts		$600,874	$0
UNCCH	Lenoir Hall Renovations	$5,000,000	Dining Debt Service Fee	$13.92***	$61,447	$0
UNCCH	Woollen Gymnasium Renovations, Phase 2	$7,100,000	Campus Recreation Receipts, Athletic Receipts		$371,930	$0
UNCC	Football Complex	$45,394,000	Gifts, Seat Licenses, Student Debt Service Fees	$120	$914,976	$0
UNCC	Parking Deck I	$28,080,000	Parking Receipts		$231,173	$0
UNCG	Quad Residence Halls Comprehensive Renovation and Expansion	$52,500,000	Housing Receipts	****	$763,797	$0
UNCG	Dining Hall Comprehensive Renovation	$31,500,000	Dining Receipts	****	$269,223	$0
UNCG	Ragsdale and Mendenhall Residence Halls Fire Suppression Sprinkler System Installations	$1,700,000	Housing Receipts		$9,000	$0
WCU	Residence Halls Renovation	$4,735,300	Housing Receipts		$7,583,290	$0

* The NC State University Tally Student Center Renovation and Expansion Project will be funded by a student fee to be phased in over a four-year period. In Fall 2010, the fee will be $83 per student; the Fall 2011 fee will increase to $185 per student; the Fall 2012 fee will increase to $275 per student; the Fall 2013 fee will increase to $290 per student.

** The UNC-Chapel Hill Graham Student Union Renovations will be financed through a $16.75 increase in the Student Facilities Debt Service Fee and portion ($4.18) of an increase in the Student Dining Debt Service Fee.

*** The UNC-Chapel Hill Lenoir Hall Renovation will be financed with the remainder of the increase of the Student Dining Debt Service Fee referenced above. The portion of the fee financing this project will be $13.92.

**** The Governor's Village Renovation and Expansion at UNC-Asheville is predicated on a typical 3% per year increase in housing rents. At UNC-Greensboro, the Quad Residence Halls Comprehensive Renovation and Expansion requires a 4% increase in housing rents and the Dining Hall Comprehensive Renovation requires a 3% increase in dining costs. These increases reflect typical yearly increases.

Total Project Cost:
Cost of new capital projects: $544,418,252.

Estimated General Fund Impact:

There is no estimated impact on the General Fund.

Indebtedness Funding Methods: The following chart illustrates the special indebtedness funding methods.

Table 2

Funding Source	Amount	Percent of Total
Debt Service Fee	$195,513,000	41%
Housing Receipts	$145,811,900	30%
Athletic and Recreation Receipts	$65,300,000	14%
Dining Receipts	$31,500,000	7%
Parking Receipts	$28,080,000	6%
Utilities, Facilities, and Administrative Receipts	$10,244,000	2%

Revenues: Many of the projects will be financed by University of North Carolina Campus revenue, as illustrated in Table 2 and Table 1. The following table illustrates expected gross revenues as a result of the various projects.

Table 3 Estimated Gross Revenue Associated with Specified Projects

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
UNC	$9,775,501	$30,688,158	$37,590,578	$39,416,102	$39,821,998
UNC Hospitals	$28,830,385	$35,694,401	$39,723,979	$44,098,155	$49,081,444
Total	**38,605,886**	**66,382,559**	**77,314,557**	**83,514,257**	**88,903,442**

Estimated University and Affiliated Enterprises Impact: There will be impacts to the Universities and affiliated enterprises in the form of debt service payments. The total non-general fund supported debt service is reflected below:

Table 4: Non-General Fund Supported Debt Service Expenditures

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
UNC	$7,952,861	$20,196,119	$26,626,426	$29,789,801	$29,831,316
UNC Hospitals	$2,877,112	$3,277,068	$3,276,618	$3,279,218	$3,277,968
Total	**10,829,973**	**23,473,187**	**29,903,044**	**33,069,019**	**33,109,284**

Fiscal impacts as a result of this bill will be financed by non-General Fund Revenue. The University of North Carolina estimates the creation of up to 111.5 full time equivalent positions as a result of this bill. The reported expenditures also include other items, such as increases in utilities and supplies. The figures submitted by UNC were adjusted for inflation per the Fiscal Research Division's guidelines.

Table 5 Further Operating Impacts at the University of North Carolina

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
UNC	$2,125,033	$6,382,845	$7,280,775	$8,581,082	$9,063,373

SOURCES OF DATA: Financial data for these charts was provided by the Division of Finance, University of North Carolina General Administration.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Bondo

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 27, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1216
Commerce Committee Substitute Adopted 6/8/10
PROPOSED COMMITTEE SUBSTITUTE S1216-CSTD-88 [v.9]

6/9/2010 11:06:10 AM

Short Title: Extend Emergency Foreclosure Program. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"**§ 45-100. (For expiration date, see note) Title.**

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

"**§ 45-101. (For expiration date, see note) Definitions.**

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

~~(1a) Annual percentage rate. Defined in G.S. 24-1.1F.~~

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied

by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

~~(3a) Rate-spread home loan. – A home loan in which all the following apply:~~

~~a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~(4) Subprime loan. A loan, originated on or after January 1, 2005, but before December 31, 2007, that meets the definition of a rate spread home loan under this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act.~~"

"**§ 45-102. (For expiration date, see note) Pre-foreclosure notice for ~~subprime~~ home loans.**

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of ~~subprime~~ home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.

(2) An itemization of any other charges that must be paid in order to bring the loan current.

(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

(6) The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of ~~Banks.~~ Banks, or, alternatively, if the loan is by a credit union, the address, telephone number, and other contact information for the consumer complaint section of the Credit Union Division.

"**§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the Administrative Office of the Courts for ~~certain subprime~~ home loans.**

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional information requested shall be determined in connection with the design of the database established by subsection (c) of this section. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable.

~~(c) No later than October 1, 2008, the Administrative Office of the Courts shall establish an internal database to track information provided in this section. The Commissioner of Banks shall design and develop this database, in consultation with the Administrative Office of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention~~

~~Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have access to the database."~~

"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention ~~Project.~~Project and Fund.

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other state agencies, mortgage lenders, mortgage servicers, and other partners.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Office of the Commissioner of Banks. The funds shall be held separate from any other funds received by the Office of the Commissioner of Banks in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The collection of this fee shall be managed by the Office of the Commissioner of Banks in a manner so as to minimize burdens on mortgage servicers in complying with the requirements of this section.

(d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure Prevention Trust Fund to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of Banks, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project shall be directed to the North Carolina Housing Trust Fund.

(e) The Commissioner of Banks shall have the discretion to enter into an agreement to administer funds under subsections (d)(2) and (3) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

"§ 45-105. (For expiration date, see note) Extension of foreclosure process.

The Commissioner of Banks shall review information provided in the database created by G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination.

"**§ 45-106. (For expiration date, see note) Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article.

"**§ 45-107. (For expiration date, see note) Foreclosure filing.**

(a) For the duration of the program authorized by this Article, foreclosure notices filed on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding."

SECTION 2. G.S. 45-21.16(c2) reads as rewritten:

"(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15, 2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the

evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), or if the loan is a ~~subprime~~ home loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. Section 6 of S.L. 2008-226 reads as rewritten:

"**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. ~~The remainder of this act becomes effective November 1, 2008, and expires October 31, 2010.~~ Sections 1, 2, 3, and 5 become effective November 1, 2008, and expire May 31, 2013. The remainder of this act is effective when it becomes law."

SECTION 5. Sections 1 through 3 of this act become effective November 1, 2010. The remainder of this act becomes effective when it becomes law.

SENATE BILL 1216:
Extend Emergency Foreclosure Program

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2010
Introduced by:	Sen. Blue	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition S1216-CSTD-88		

SUMMARY: ***Senate Bill 1216 would amend the Emergency Program to Reduce Home Foreclosures Act by making the act applicable to all home loan foreclosures, rather than just certain subprime loans. The bill would also create the State Home Foreclosure Prevention Trust Fund, and extend the expiration date of the Program until May 31, 2013.***

The Proposed Committee Substitute makes technical changes to the effective date and sunset of the act. The PCS also adds a provision requiring that the pre-foreclosure notice refer complaints about credit union loans to the Credit Union Division, and directing the Commissioner of Banks to notify the Administrator of the Credit Union Division when a foreclosure extension determination is made involving a credit union. The PCS clarifies that the notice to the Administrator is not a public record.

CURRENT LAW:

S.L. 2008-226 created an "Emergency Program to Reduce Home Foreclosures". The program established a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure and submit information on those loans to a database housed within the Administrative Office of the Courts (AOC). The Commissioner of Banks uses the information from the database to attempt to find solutions for homeowners to avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days in appropriate cases.

The act directed the Commissioner of Banks to use $600,000 of the funds available to the State Banking Commission for grants to nonprofit counseling agencies, and to use $400,000 from the State Banking Commission to design and operate the foreclosure reduction program. The Office of Commissioner of Banks was directed to report to the General Assembly on the operation of the program by May 1 of each year until the funds were expended. The act became effective November 1, 2008, and will expire on October 31, 2010.

BILL ANALYSIS:

SB 1216 amends the Emergency Program to Reduce Home Foreclosures Act by eliminating the restrictions on the types of loans subject to the act. Currently, the program only applies to subprime home loans that were originated between January 1, 2005 and December 31, 2007. This bill would make the act applicable to all home loans in the State in which the borrower is facing foreclosure.

The bill would also create the State Home Foreclosure Prevention Trust Fund, to be managed and maintained by the Commissioner of Banks. The bill provides that upon filing the information required for the database, the mortgage servicers would be required to pay a fee of $75.00 to the Fund. The fee could only be charged once for a home loan covered by the act. In administering the Fund, the Commissioner must allocate the money as follows:

- No more than the greater of $2,200,000 or 30% of the funds per year may be used for administrative costs to operate the program.

- No more than the greater of $3,400,000 or 40% per year may be used to make grants to or to reimburse non-profit housing counseling agencies that provide foreclosure prevention counseling services to homeowners.
- No more than 30% of the total funds collected each year may be used to make grants to or to reimburse non-profit legal service providers for services rendered on behalf of homeowners facing foreclosure.
- Any funds remaining after the expiration of the program shall be directed to the North Carolina Housing Trust Fund.

The Commissioner is also given discretion to enter agreements with other State and federal programs aimed at foreclosure prevention.

EFFECTIVE DATE: The act would become effective November 1, 2010.

Karen Cochrane-Brown, counsel to Senate Commerce, substantially contributed to this summary.

S1216-SMTD-164(CSTD-88) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1216
Commerce Committee Substitute Adopted 6/8/10

Short Title: Extend Emergency Foreclosure Program. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"**§ 45-100. (For expiration date, see note) Title.**

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

"**§ 45-101. (For expiration date, see note) Definitions.**

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

~~(1a) Annual percentage rate. – Defined in G.S. 24-1.1F.~~

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower

as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

~~(3a) Rate spread home loan. – A home loan in which all the following apply:~~

~~a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~(4) Subprime loan. – A loan, originated on or after January 1, 2005, but before December 31, 2007, that meets the definition of a rate spread home loan under this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of~~

~~the period covered by this Article provided by the Commissioner of Banks for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act.~~"

"**§ 45-102. (For expiration date, see note) Pre-foreclosure notice for ~~subprime~~ home loans.**

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of ~~subprime~~ home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.

(2) An itemization of any other charges that must be paid in order to bring the loan current.

(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

(6) The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of Banks.

"**§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the Administrative Office of the Courts for ~~certain subprime~~ home loans.**

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional information requested shall be determined in connection with the design of the database established by subsection (c) of this section. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable.

~~(c) No later than October 1, 2008, the Administrative Office of the Courts shall establish an internal database to track information provided in this section. The Commissioner of Banks shall design and develop this database, in consultation with the Administrative Office of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~"

"**§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention ~~Project.~~Project and Fund.**

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input

from HUD-approved housing counselors, community organizations, state agencies, mortgage lenders, mortgage servicers, and other partners.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Office of the Commissioner of Banks. The funds shall be held separate from any other funds received by the Office of the Commissioner of Banks in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The collection of this fee shall be managed by the Office of the Commissioner of Banks in a manner so as to minimize burdens on mortgage servicers in complying with the requirements of this section.

(d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure Prevention Trust Fund to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of Banks, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project shall be directed to the North Carolina Housing Trust Fund.

(e) The Commissioner of Banks shall have the discretion to enter into an agreement to administer funds under subsections (d)(2) and (3) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

"§ 45-105. (For expiration date, see note) Extension of foreclosure process.

The Commissioner of Banks shall review information provided in the database created by G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the

allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts.

"**§ 45-106. (For expiration date, see note) Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article.

"**§ 45-107. (For expiration date, see note) Foreclosure filing.**

(a) For the duration of the program authorized by this Article, foreclosure notices filed on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding."

SECTION 2. G.S. 45-21.16(c2) reads as rewritten:

"(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15, 2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), or if the loan is a ~~subprime~~ home loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where

any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. This act becomes effective November 1, 2010, and expires on May 31, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 9, 2010

TO: Senate Finance Committee

FROM: David Nachman
Fiscal Research Division

RE: PCS - S1216

FISCAL IMPACT ($ in millions)

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES ($million)					
State Home Foreclosure Prevention Trust Fund	$6.3	$4.2	$3.85	$0	$0
EXPENDITURES ($millions)					
NCCOB Admin Expenses	$1.4	$2.3	$2.2	$0	$0
Counselor Funding grants	$2.7	$1.8	$1.7	$0	$0
Legal Services grants	$.9	$.6	$.6	$0	$0
NCCOB Total	$5.1	$4.7	$4.5	$0	$0
AOC	See Assumptions and Methodologies				
POSITIONS (cumulative):					
NCCOB	15	15	15	0	0
AOC	See Assumptions and Methodologies				
PRINCIPAL DEPARTMENT(S) &					

PROGRAM(S) AFFECTED: Office of the Commissioner of Banks; Administrative Office of the Courts

EFFECTIVE DATE: November 1, 2010

BILL SUMMARY:
This bill would amend and extend the Emergency Program to Reduce Home Foreclosures Act (the "Act"). Under current law, the Act requires pre-foreclosure notices to be filed with regard to subprime mortgages. This notice must be sent to the homeowner and filed with the Administrative Office of the Courts. The bill would extend the requirement to all home loans. The bill would also require the mortgage servicer to pay a $75 fee when filing a pre-foreclosure notice. Such fee would be deposited with the State Home Foreclosure Prevention Trust Fund.

The State Home Foreclosure Prevention Trust Fund is an account that is established by the bill and managed and maintained by the Office of the Commissioner of Banks (the "NCCOB"). The bill requires that the NCCOB allocate the funds in the State Home Foreclosure Prevention Trust Fund to (i) the administrative costs of operating the program, (ii) grants and reimbursements to non-profit housing counseling agencies for providing foreclosure prevention counseling services, and (iii) grants and reimbursements to non-profit legal service providers for certain services related to foreclosure avoidance. Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project will be directed to the North Carolina Housing Trust Fund.

The Act expires on October 31, 2010. The bill would extend the Act to May 31, 2013.

BACKGROUND:
The Act went into effect on November 1, 2008 in response to a substantial increase in mortgage foreclosures. The purpose of the Act was to bring borrowers and lenders together to avoid foreclosures where possible. The requirements of the Act are limited to subprime loans.

The Act requires mortgage servicers to send a notice to homeowners with certain subprime loans 45 days prior to the filing of a foreclosure proceeding (the "Notice"). In addition, the Act requires the mortgage servicer to file such Notice with the Administrative Office of the Courts. The Notice is entered into a database and allows the NCCOB to contact homeowners and encourage them to take steps to avoid foreclosure including referrals to a non-profit housing counselor who can contact the mortgage servicer. Mortgage servicers and housing counselors report that once they are in contact, two out of three homeowners are able to avoid foreclosure. The NCCOB has also made a series of grants to nonprofit housing counseling agencies to expand the availability of foreclosure prevention counselors.

ASSUMPTIONS AND METHODOLOGY:

I. Revenue

NCCOB has estimated that the following number of pre-foreclosure filings will be made between November 1, 2010, which is the effective date of the bill, and May 31, 2013, which is the

expiration of the bill. Their estimates are based on delinquency data from the Mortgage Bankers Association as well as economic forecasts regarding future delinquencies and foreclosure activity.

	FY 2010-11	FY 2011-12	FY 2012-2013
Number of Pre-Foreclosure Filings	84,000	56,000	51,333

Each mortgage servicer will pay a fee of $75 for each pre-foreclosure notice filed, which will lead to the following revenue:

	FY 2010-11	FY 2011-12	FY 2012-2013
Revenue	$6,300,000	$4,200,000	$3,850,000

II. Administrative Expense

Staff needed for the administration of the bill will include 15 time limited employees in the State Home Foreclosure Prevention Project ("SHFPP") as well as permanent staff from the NCCOB that will be partially allocated to the project. The SHFPP staff sends out an initial letter to each homeowner that receives a Notice. They also act as an intermediary between counselors and mortgage servicers, especially with regard to more difficult workout situations. In addition, they conduct legal reviews of certain loans, including the investigation of fraudulent situations, and respond to homeowner concerns and complaints with regard to the program.

The annual cost for the 15 employees in the SHFPP based on FY 2010-11 expected costs will be as follows:

	Salary	Health Insurance	Retirement	SS & Medicare	Total Per Employee	Number of Employees	Total
Director	$90,000	$4,929	$9,450	$6,885	$111,264	1	$111,264
Foreclosure Prevention Fellows	$78,000	$4,929	$8,190	$5,967	$97,086	5	$485,430
Foreclosure Prevention Paralegals	$42,000	$4,929	$4,410	$3,213	$54,552	8	$436,416
Audit	$50,000	$4,929	$5,250	$3,825	$64,004	1	$64,004
						15	**$1,097,114**

In addition, seven employees from NCCOB will be partially allocated to the foreclosure prevention program. These seven employees earn $220,159 per year inclusive of benefits and will be allocated 70% to the program which will bring about an allocated annual cost of $154,111.

Since the bill will only be in effect for 8 months of FY 2010-11 and 11 month of FY 2012-13, and these amounts will be increased by inflation each year, we expect the following staff expenses:

	FY 2010-11	FY 2011-12	FY 2012-13
SHFPP Staff Expense	$731,409	$1,187,516	$1,197,303
NCCOB Staff Expense	$102,741	$166,810	$168,185
Total Staff Expense	**$834,150**	**$1,354,326**	**$1,365,488**

In addition to the staff mentioned above, NCCOB has contracted with Connectinc. to operate a call center. The initial letter sent to each homeowner instructs them to call a 1-800 number for assistance. Connectinc. receives the initial call and makes the initial referral to a housing counseling agency. NCCOB is also planning an outreach campaign that will include primarily public service radio advertisements, but may also include television advertisements and a door to door campaign to contact especially hard to reach borrowers. We are expecting the following additional annual administrative expenditures which are based on expected FY 2010-11 costs:

IT	$119,028.00
Postage and supplies	$352,961.26
Telephone and call center	$243,516.00
Outreach	$175,000.00
Travel/registrations/training	$25,000.00
Total	**$915,505.26**

Since the bill will only be in effect for 8 months of FY 2010-11 and 11 month of FY 2012-13, and these amounts will be increased by inflation each year, we expect the following other administrative expenses:

	FY 2010-11	FY 2011-12	FY 2012-13
Total other administrative expenses	**$610,337**	**$939,675**	**$883,764**

Based on the above, we expect the following total administrative expenses:

	FY 2010-11	FY 2011-12	FY 2012-13
Total staff expense	$834,150	$1,354,326	$1,365,488
Total other administrative expenses	$610,337	$939,675	$883,764
Total Administrative Expense	**$1,444,487**	**$2,294,001**	**$2,249,252**

III. Counselor Funding Grants

Currently, about 10% of the homeowners that receive a pre-foreclosure notice receive counseling. The cost to counsel each homeowner is estimated at $325. Based on these assumptions, we expect the following grant schedule to counselors:

	FY 2010-11	FY 2011-12	FY 2012-13
Estimated pre-foreclosure filings	84,000	56,000	51,333
Estimated number to counselors (10%)	8,400	5,600	5,133
Cost to counsel ($325)	**$2,730,000**	**$1,820,000**	**$1,668,333**

IV. Legal Services Grants

The SHFPP will also make grants for legal services. After deducting administrative and counseling costs, the program has approximately $2.1 million left to allocate to legal services. This amount will likely be distributed over the three years in proportion to pre-foreclosure filings and we expect grants as follows:

	FY 2010-11	FY 2011-12	FY 2012-2013	Total
Number of pre-foreclosure filings	84,000	56,000	51,333	191,333
Percent of total	44%	29%	27%	100%
Funds for legal service grants	**$941,237.88**	**$627,491.92**	**$575,197.19**	**$2,143,927**

V. Effects on the Administrative Offices of the Courts

The bill would likely also increase the number of pre-foreclosure filings that the Administrative Offices of the Courts would receive since these notices would be required as a part of all home loan foreclosures rather than only subprime loans. The information is, though, received by the Administrative Offices of the Courts in an electronic format that they designate. As a result, we expect that the bill will not have a significant fiscal impact on the Administrative Offices of the Courts.

SOURCES OF DATA: Office of the Commissioner of Banks; Moody's economy.com

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1362

Short Title:	Orange/Alamance Boundary.	(Local)
Sponsors:	Senators Kinnaird and Foriest.	
Referred to:	State and Local Government.	

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE TRANSITION OF PROPERTIES OF THE AREA ALONG THEIR COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY DUE TO THE 2008 NORTH CAROLINA GEODETIC SURVEY WORK THAT DEPICTED AND MONUMENTED THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. Over the years, this line became uncertain, and so pursuant to G.S. 153A-18(c) entitled 'Uncertain or Disputed Boundary,' both county boards of commissioners passed resolutions (Alamance County, December 17, 2007, and Orange County, January 18, 2008) to request that the North Carolina Geodetic Survey (hereinafter "NCGS") perform a preliminary resurvey and present a proposed map for consideration by both counties. During the 160 years since the 1849 survey, the exact location of the surveyed line has become uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections within and among Alamance County, Orange County, and the Town of Mebane.

SECTION 2. The Alamance County Board of Commissioners agreed by vote on April 21, 2008, and Orange County on May 20, 2008, to approve authorizing NCGS to conduct the preliminary survey and the placing of monuments by the NCGS consistent with their research to form a boundary baseline.

SECTION 3. In the 160 years since the initial survey of the Alamance County/ Orange County boundary line, Alamance and Orange Counties have entered multiple taxing agreements that have resulted in properties being taxed in one county by the adjoining county. Other situations have arisen in which children of one county attend school in the adjoining county and voters in one county have voted in the adjoining county. The General Assembly recognizes the difficulties in addressing these issues and authorizes Alamance County and Orange County to maintain the current taxing, elections, education, and any other recognized government functions in place until July 1, 2011.

SECTION 4.(a) On and after July 1, 2011, all papers, documents, and instruments required or permitted to be filed or registered that involve residents and property located in areas affected by the resurvey of the boundary line that previously may have been recorded in the adjoining counties shall be recorded in the county to which the property has been annexed.

SECTION 4.(b) All public records related to residents and property located in areas affected by the resurvey of the boundary line that were filed or recorded prior to July 1,

2011, in the adjoining counties shall remain in those respective adjoining counties where filed or recorded, and such records shall be valid public records as to the property and persons involved, even though they are recorded in an adjoining county which is a county where the property is no longer located as evidenced by the 2008 North Carolina Geodetic Survey and the subsequent partial resurvey pursuant to Section 7 of this act.

SECTION 4.(c) On and after July 1, 2011, all real and personal property located in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation on January 1, 2011, shall be subject to ad valorem taxes in the county to which the property is annexed for the fiscal year beginning July 1, 2011, to the same extent as it would have been had it been correctly recognized by the tax departments of each county on January 1, 2011, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 2011, the tax administrators of the adjoining counties shall transfer to the respective county tax assessors the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in areas affected by the resurvey of the boundary line, except classified motor vehicles that were registered in the adjoining counties prior to July 1, 2011. For the fiscal year that begins July 1, 2011, all real and personal property located in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation in that area on January 1, 2011, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed in adjoining counties between January 1, 2011, and June 30, 2011, shall be collected by the appropriate adjoining county tax collector, and all such taxes shall be retained by that adjoining county. The taxes on all classified registered motor vehicles registered after June 30, 2011, shall be assessed and collected by the county tax department in the county to which the real property wherein the classified registered motor vehicles are situated has been annexed.

(2) The values established by the particular adjoining county tax administrator on all personal property other than classified registered motor vehicles shall be used by the each county tax assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 2011. All such taxes shall be assessed and collected by the appropriate county tax department.

(3) For the interim time period between the annexation of properties into their respective counties and until such time as the next regularly scheduled revaluation period, Alamance County and Orange County may select either of two methods of valuating the property annexed into their respective county by this act. The selection of either method by a county shall not give any individual or entity grounds for challenging such temporary valuation. Such methods are delineated as follows:

a. The values established by the adjoining counties' tax administrators on all real property formerly taxed in their respective county shall be adjusted by the appropriate county tax assessor by applying the difference between one hundred percent (100%) of such values and the appropriate county median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 2012. The taxes determined by applying this method will be collected and retained by the appropriate county tax collector. The value of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

b. The values established by the adjoining counties' tax administrators on all real property formerly taxed in their respective county shall be

adopted by the appropriate county tax assessor upon the transition of property to the adjoining county. The valuation of such property shall then be revalued according to the regularly scheduled revaluation period for each county.

(4) Beginning January 1, 2012, all property in areas affected by the resurvey of the boundary line that is subject to ad valorem taxation shall be listed, assessed, and taxed by the appropriate county tax administrator in the same manner as is prescribed by law for all other property located within each county.

(5) The final tax values of property subject to ad valorem taxation in areas affected by the resurvey of the boundary line as of January 1, 2011, shall be determined by the adjoining county tax administrator. Appeals to the North Carolina Property Tax Commission or to the courts by property owners of properties affected by the boundary line change shall be defended by both counties, and both counties shall be responsible for their costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2011, or for prior years on property subject to taxation in areas affected by the resurvey of the boundary line shall continue to be valid and enforceable by the respective adjoining county, including (i) the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and (ii) the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. The Alamance County and Orange County tax administrators shall supply one another with a list of unpaid taxes as of July 1, 2011. Any such taxes collected by either county shall be promptly paid to the appropriate adjoining county, including accrued interest. The provisions of G.S. 105-352 (d) shall not apply to: those areas in an adjoining county previously taxed by either county outside the areas affected by the resurvey of the boundary line that shall forthwith be properly listed and taxed in the county to which they have been annexed; and those areas within each county that were in the past improperly listed and taxed by the adjoining county due to uncertainty as to the exact location of the true historic Alamance County/Orange County boundary line. Under the discovery process, each county may waive any interest and penalties accrued for tax years 2006-2011 in its sole discretion.

SECTION 4.(d) No cause of action, including criminal actions, involving persons or property located in areas affected by the resurvey of the boundary line that is pending on July 1, 2011, shall be abated, and such actions shall continue in the appropriate adjoining county.

SECTION 4.(e) The board of elections of each adjoining county shall, effective July 1, 2011, transfer the voter registration records pertaining to persons residing in areas affected by the resurvey of the boundary line and located in either county to the adjoining county's board of elections, and thereafter the registered voters so transferred shall be validly registered to vote in that adjoining county.

SECTION 4.(f) The Jury Commission of each adjoining county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in areas affected by the resurvey of the boundary line, said revised jury lists to be effective July 1, 2011.

SECTION 4.(g) The areas affected by the resurvey of the boundary line and located in each county shall be transferred into the appropriate superior court district, district court district, and prosecutorial district. The areas affected by the resurvey of the boundary line shall remain in the same congressional district, the same State House of Representatives district, and the same State Senate district.

SECTION 4.(h) Any cause of action relating to taxation as it is currently exercised by the counties along or near the Alamance County/Orange County boundary, or any other cause of action related in any way to the Alamance County/Orange County boundary or properties affected by changes in the boundary, is stayed, and no new cause of action relating to these matters shall be commenced until ratification of the official line by the North Carolina General Assembly. Thereafter, causes of action related to the taxation of property shall be defended as described in subdivision (5) of this Section 4(c) of this act.

SECTION 5. The Alamance County Board of Education shall cooperate with the Orange County Board of Education on behalf of residents that have students affected by this act to ensure that a transition is made that provides students and their siblings with a choice to remain in their current school system until graduation from high school for so long as they reside in the residence affected by this act.

SECTION 6. Any child who was a resident county of any area county annexed by this act on its date of ratification and who was a student in the Orange County or Alamance County school system during the 2009-2010 or 2010-2011 school year, and the siblings of any such person, may attend school in the same school system as their siblings without necessity of a release or payment of tuition. Any such student, while attending the Orange County school system, shall be considered a resident of Orange County for all public school purposes, including transportation, athletics, and funding formulas. Any such student, while attending the Alamance County school system, shall be considered a resident of Alamance County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to all affected school systems by the parent or guardian in order to exercise the privilege granted by this section.

SECTION 7. Alamance County and Orange County shall establish an administrative method by which owners of property that is annexed or bisected by the North Carolina Geodetic Survey line shall have the opportunity to petition Alamance County and Orange County either to remain in the county to which their property was previously assigned or, in the case of a bisection, to be assigned to one county or the other, save and except that small lot subdivisions shall not be divided on a lot by lot basis. Notice of such opportunity to petition shall be delivered by United States mail to the affected property owners no later than 30 days after the effective date of this act. All administrative reviews on such petitions shall be concluded and final no later than December 15, 2010.

SECTION 8. Alamance County and Orange County shall cause areas of the boundary line to be resurveyed in areas where property owners have met the established administrative criteria to be assigned to a specific county and in areas where for practical or other reasons the North Carolina Geodetic Survey line is not reasonable or is unduly burdensome.

SECTION 9. Upon the conclusion of the survey and petition process established in Section 7 of this act, and no later than May 15, 2011, Alamance County and Orange County shall submit to the North Carolina General Assembly for ratification a completed survey that includes both the North Carolina Geodetic Survey line and all mutually agreed upon modifications thereto.

SECTION 10. The elected and appointed officials and employees of Alamance County and Orange County shall incur no liability under any local or North Carolina statute, law, ordinance, rule, or regulation for any act or failure to act relating to taxation, school attendance, land-use controls, elections, or any other governmental function as it relates to the currently utilized boundary line of Alamance County and Orange County.

SECTION 11. Owners and future owners of properties affected by this act shall be put on notice of the terms and conditions of this act by a written instrument filed in the office of the register of deeds of the county to which the property has been annexed.

SECTION 12. This act becomes effective July 1, 2010.

SENATE BILL 1362: Orange/Alamance Boundary

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 9, 2010
Introduced by:	Sen. Kinnaird	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: SB 1362 enables the transition of properties along the common boundary between Alamance County and Orange County as a result of the North Carolina Geodetic Survey's assessment. This act becomes effective July 1, 2010.

BACKGROUND: The historic boundary line between Alamance County and Orange County was described and surveyed in 1849. Over the past 160 years since the 1849 survey, due to the uncertainty of the exact location of the surveyed line, there have been unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections within and among Alamance County, Orange County, and the Town of Mebane. Consequently, the North Carolina Geodetic Survey performed a preliminary resurvey and presented a proposed map for consideration by both counties.

BILL ANALYSIS:

Sections 1 and 2 of the bill provides background information on the historic boundary line forming Alamance County from Orange County, outlines some of the issues that have arisen as a result of the uncertain location of the boundary line, and states the Counties have authorized by resolution the North Carolina Geodetic Survey to conduct the preliminary survey and the placing of monuments.

Section 3-6 authorizes Alamance County and Orange County to maintain the current taxing, elections, education, and any other recognized government functions in place, until July 1, 2011 and provides the terms and conditions governing the transition of properties along the boundary line regarding real and personal property taxes, legal causes of action, elections/voter registration, jury duty, court districts, and school assignments and attendance.

Sections 7 and 8 require Alamance and Orange counties to establish an administrative method by which property in the affected areas may petition the counties regarding the assignment of their property to one of the counties. This section also requires that the notice of the right to petition be mailed to affected property owners no later than 30 days after the effective date of this act. The aeas of the boundary line must be resurveyed where property owners have met the established criteria or where the survey line is unreasonable or unduly burdensome.

Section 9 requires Alamance and Orange counties to submit a completed survey that includes the North Carolina Geodetic Survey line and all mutually agreed upon modifications to the General Assembly, no later than May 15, 2011.

Section 10 provides that appointed and elected officials and employees of Alamance and Orange counties shall not incur any liability as to the currently utilized boundary line between the two counties.

Section 11 directs that current and future property owners affected by this act be advised as to the terms and conditions by written notice filed in the office of the register of deeds office of the county in which the property has been annexed.

EFFECTIVE DATE: This act becomes effective July 1, 2010.

Kelly Quick and Hal Pell, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1362

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

S1362-ATD-76 [v.1]

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

Date _____,2010

Senator Kinnaird

moves to amend the bill on page 2, line 20 by deleting the term "each" where it appears;

and on page 4, line 13, by deleting the term "county" each time it appears.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Wednesday, June 16, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 16, 2010, in Room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Clodfelter presided. Rachel Payne of Burlington, Nalini Peres-da-Silva of Carrboro, Quinn Burkhalter, Miles Lewhers, Jaye Hunt, and James Springs of Charlotte, Madison Gibbs of Greensboro, Esham Ahmed or Hickory Brandon Patton of Youngsville, Tegan George of Raleigh and Harrison Wicker of Sanford served as pages.

S.B. 1332 – Spay/Neuter Program Funding

Senator McKissick was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would move the Spay/Neuter Program from the Department of Health and Human Services to the Department of Agriculture and Consumer Services and changes the source of funding for the program. Senator Foriest moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal note is attached.

S.B. 1210 – Increase Licensure Fees/Athletic Trainers

Senator Hoyle explained the bill, which would authorize the Board of Athletic Trainer Examiners to increase licensure fees. Senator Walters moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

S.B. 1389 – Graham Deannexation

Senator Foriest was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would deannex 234 acres from the corporate limits of the City of Graham, as requested by the City and evidenced by a resolution adopted by the City Council on May 4, 2010. Senator Hoyle moved for a favorable report. The motion carried. A copy of the PCS and the summary is attached.

S.B. 1444 – Kannapolis Doughnut Hole Annexations

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would authorize Kannapolis to annex certain properties that are surrounded by its municipal boundaries and would give the City of Concord the same ability to annex 'doughnut holes' within its corporate limits. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

Senator Clodfelter asked Senator Hartsell to preside as chair for the remainder of the meeting since Senator Clodfelter had another commitment.

S.B. 1215 – Economic Incentives Alignment & Changes

Senator Jenkins was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. As recommended by the Revenue Laws Study Committee, the PCS would (1) harmonize sunset and reporting features and requirements across the

State's various economic incentives, (2) create a single, unified economic incentives report that contains the information currently reported separately for each economic incentive, and (3) delete obsolete credits under Articles 3C and 3G. A copy of the bill and the summary is attached. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 1:22 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 16, 2010

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

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

S.B. **1215** Economic Incentives Alignment & Changes.

Draft Number:	85368
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1332** Spay/Neuter Program Funding.

Draft Number:	65082
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1389** Graham Deannexation.

Draft Number:	55624
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 16, 2010

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

FAVORABLE

S.B. **1210** Increase Licensure Fees/Athletic Trainers.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1444** Kannapolis Doughnut Hole Annexations.
Draft Number: 55621
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Finance Committee
Wednesday, June 16, 2010, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1210	Increase Licensure Fees/Athletic Trainers.	Sen. Hoyle
SB 1215	Economic Incentives Alignment & Changes.	Sen. Jenkins
SB 1332	Spay/Neuter Program Funding.	Sen. McKissick
SB 1389	Graham Deannexation.	Sen. Foriest
SB 1444	Kannapolis Doughnut Hole Annexations.	Sen. Hartsell

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 16, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	UNC School of Government
AL MILAC	DOR
C. WAYNE MULLIS	GNORC
Don Champion	GNORC
Milt Rutledge	GNORC
Julie Haubeck	NCDA&CS
Joy Hicks	NCDA&CS
LEE Hunter	NCDACS
Barry Bloch	NCDOT
Dennis Becker	St. James NCLM
Joe Blanquard	NCNG; CS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 16, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
ANGIE WHITENER	NCPC

VISITOR REGISTRATION SHEET

SENATE ~~RULES~~ FINANCE — 6-15-2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
L. Andrews	NCFB
Will Culpepper	MVA
Brenda McRae	Town of Mint Hill, NC
BILL SCOGGIN	TSS
Tom Rhyne	DHHS Public Health
CARL WILLIAMS	DHHS
Jack Ward	Rowan — Against Forced Annexation
Barbara S. Wilson	Rowan "
Steve Poteat	Rowan "
Will Yochim	ROWAN CO. "
Grace Mallett	Rowan Co. "
Barbara Earnhardt	Rowan County - Annexation Reform

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 16, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul C. Quinsky Jr.	Voter - Rowan Co. No Forced Annexation
Carl Eagle	Rowan County - No Annexation
RAY PARADOWSKI	11
Jed Maynard	CMS
Chris Hastie	
Lee Anne Coogan	MCIC
PRESTON HOWARD	MCIC
Jim Blackburn	NC Association of County Commissioners
Lori Cooper	NMRS
Amanda Lufton	H&S
Evelyn Hemmore	CHOR

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 16, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lonnie Brown	Rowan Co Against Forced Annexation
Ruth Brown	"
Malcolm Green	"
Wayne McCullough	Rowan Against Forced Annexation
Charlie Heldrix	Rowan Against Annexation
Marie Howell	" " Forced "
Dani Burris	" " "
Debby McCoy	Rowan Against Forced Annexation
Emily McCoy	Rowan
John McCoy	Rowan Against Forced Annexation
Bob Holzmann	Rowan County

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 16, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	JD, AT, PA
Paola Learoyd	NC Board Athletic Trainer Examiners
Tom Jones	NCACC
Rebecca Tennyson	NCACC
	SA
Kate Bonnen	NCDOR
M Carter	Rowan County
Marcia Carter	Rowan County
Kathryn Westcott	ACEC/NC
Tina Hall	Rowan Co. Commissioner
Roz Savitt	NCDA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1332
PROPOSED COMMITTEE SUBSTITUTE S1332-CSTDf-92 [v.2]

6/14/2010 3:19:37 PM

Short Title: Spay/Neuter Program Transfer. (Public)

Sponsors:

Referred to:

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO TRANSFER ADMINISTRATION OF THE VOLUNTARY SPAY/NEUTER PROGRAM TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO AMEND THE FUNDING FOR THE SPAY/NEUTER ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Spay/Neuter Program established under G.S. 19A-61 and the Spay/Neuter Account established under G.S. 19A-61 are transferred from the Department of Health and Human Services to the Department of Agriculture and Consumer Services. Any unexpended funds appropriated to the Department of Health and Human Services for the 2009-2010 fiscal year to implement the Spay/Neuter Program are transferred to the Department of Agriculture and Consumer Services.

SECTION 1.(b) G.S. 19A-61 reads as rewritten:

"**§ 19A-61. Spay/Neuter Program established.**

There is established in the Department of ~~Health and Human Services~~Agriculture and Consumer Services a voluntary statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State. The program shall consist of the following components:

(1) Education Program. – The Department shall establish a statewide program to educate the public about the benefits of having cats and dogs spayed and neutered. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine, other State agencies and departments, county and city health departments and animal control agencies, and statewide and local humane organizations. The Department may employ outside consultants to assist with the education program.

(2) Local Spay/Neuter Assistance Program. – The Department shall administer the Spay/Neuter Account established in G.S. 19A-62. Monies deposited in the account shall be available to reimburse eligible counties and cities for the direct costs of spay/neuter surgeries for cats and dogs made available to low-income persons."

SECTION 1.(c) G.S. 19A-62 reads as rewritten:

"**§ 19A-62. Spay/Neuter Account established.**

(a) Creation. – The Spay/Neuter Account is established as a nonreverting special revenue account in the Department of ~~Health and Human Services.~~Agriculture and Consumer Services. The Account consists of the following:

~~(1) The portion of the fee imposed under G.S. 130A-190(b)(4) for obtaining a rabies vaccination tag from the Department of Health and Human Services.~~

(2) ~~Ten dollars ($10.00)~~Twenty dollars ($20.00) of the additional fee imposed by G.S. 20-79.7 for an Animal Lovers special license plate.

(3) Any other funds available from appropriations by the General Assembly or from contributions and grants from public or private sources.

(b) Use. – The revenue in the Account shall be used by the Department of ~~Health and Human Services~~Agriculture and Consumer Services as follows:

~~(1) If the revenue generated by the portion of the fee imposed under G.S. 130A-190(b)(3) is less than forty-seven thousand five hundred dollars ($47,500) for the fiscal year, then funds up to the difference between forty-seven thousand five hundred dollars ($47,500) and the amount of revenue generated may be used from this Account to fund rabies education and prevention programs.~~

(2) Up to ~~Twenty~~ twenty percent (20%) ~~shall~~ may be used to develop and implement the statewide education program component of the Spay/Neuter Program established in G.S. 19A-61(a).

(3) Up to twenty percent (20%) of the money in the Account may be used to defray the costs of administering the Spay/Neuter Program established in this Article.

(4) Funds remaining after deductions for the education program and administrative expenses shall be distributed quarterly to eligible counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed during the previous calendar year. A county or city is ineligible to receive funds under this subdivision unless it requires the owner to show proof of rabies vaccination at the time of the procedure or, if none, require vaccination at the time of the procedure.

(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

SECTION 1.(d) G.S. 19A-63 reads as rewritten:

"**§ 19A-63. Eligibility for distributions from Spay/Neuter Account.**

(a) A county or city is eligible for reimbursement from the Spay/Neuter Account if it meets the following condition:

(1) The county or city offers one or more of the following programs to low-income persons on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

a. A spay/neuter clinic operated by the county or city.

b. A spay/neuter clinic operated by a private organization under contract or other arrangement with the county or city.

c. A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

d. Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spaying or neutering procedure fixed by a participating veterinarian or other provider.

e. Subvention of the spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with the county or city.

(2) Reserved for future codification purposes.

(b) For purposes of this Article, the term "low-income person" shall mean an individual who qualifies for one or more of the programs of public assistance administered by the Department of Health and Human Services pursuant to Chapter 108A of the General ~~Statutes.~~ Statutes or whose annual household income is under three hundred percent (300%) of the federal poverty level guidelines published by the United States Department of Health and Human Services.

(c) Each county shall make rules or publish guidelines that designate what proof a low-income person must submit to establish that the person qualifies for public assistance under subsection (b) of this section or has an annual household income lower than three hundred percent (300%) of the federal poverty level guidelines published by the United States Department of Health and Human Services."

SECTION 1.(e) Section 19A-64 reads as rewritten:

"**§ 19A-64. Distributions to counties and cities from Spay/Neuter Account.**

(a) Reimbursable Costs. – Counties and cities eligible for distributions from the Spay/Neuter Account may receive reimbursement for the direct costs of a spay/neuter surgical procedure for a dog or cat owned by a low-income person ~~meeting the Department's eligibility requirements for spay/neuter services.~~as defined in G.S. 19A-63(b). Reimbursable costs shall include anesthesia, medication, and veterinary services. Counties and cities shall not be reimbursed for the administrative costs of providing reduced-cost spay/neuter services or capital expenditures for facilities and equipment associated with the provision of such services.

(b) Application. – A county or city eligible for reimbursement of spaying and neutering costs from the Spay/Neuter Account shall apply to the Department of ~~Health and Human Services~~Agriculture and Consumer Services by the last day of January, April, July, and October of each year to receive a distribution from the Account for that quarter. The application shall be submitted in the form required by the Department and shall include an itemized listing of the costs for which reimbursement is sought.

(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within development tier one areas as defined in G.S. 143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in development tier two and three areas as defined in G.S. 143B-437.08.

(2) Among the eligible counties and cities in development tier one areas, reimbursement shall be made to each eligible county or city ~~in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in development tier one areas.~~ pursuant to rules adopted by the Department.

(3) Among the eligible counties and cities in development tier two and three areas, reimbursement shall be made to each eligible county or city ~~in proportion to the number of dogs and cats that have received rabies~~

~~vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in development tier two and three areas.~~pursuant to rules adopted by the Department.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in development tier two and three areas."

SECTION 1.(f) Section 19A-65 reads as rewritten:

"**§ 19A-65. Annual Report Required From Every Animal Shelter in Receipt of State or Local Funding.**

Every county or city animal shelter, or animal shelter operated under contract with a county or city or otherwise in receipt of State or local funding shall prepare an annual report in the form required by the Department setting forth the numbers, by species, of animals received into the shelter, the number adopted out, the number returned to owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled. The report shall be filed with the Department of ~~Health and Human Services~~Agriculture and Consumer Services by ~~August 1~~ March 1 of each year. A city or county that does not timely file the report required by this section is not eligible to receive reimbursement payments under G.S. 19A-64 during the calendar year in which the report was to be filed."

SECTION 2. Article 5 of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-66. Notification of available funding.**

Prior to January 1 of each year, the Department shall notify counties and cities that have, prior to that notification deadline, established eligibility for distribution of funds from the Spay/Neuter Account pursuant to G.S. 19A-63, of the following:

(1) The amount of funding in the Spay/Neuter Account the Department will have available for distribution to each county or city receiving notification to pay reimbursement requests submitted by the county or city during the calendar year following the notification deadline; and

(2) The amount of additional funding, if any, the Department estimates, but does not guarantee, may be available to pay reimbursement requests submitted by the notified county or city to the Department during the calendar year following the notification deadline."

SECTION 3. G.S. 130A-190(b) reads as rewritten:

"(b) Fee. – Rabies vaccination tags, links, and rivets may be obtained from the ~~Department.~~Department of Health and Human Services. The Secretary is authorized to collect ~~establish by rule~~ a fee for the rabies tags, links, and rivets in accordance with this subsection. The fee for each tag is the sum of the following:

(1) The actual cost of the rabies tag, links, and rivets.

(2) Transportation costs.

(3) ~~Five cents (5¢).~~Fifteen cents (15¢). This portion of the fee shall be used to fund rabies education and prevention programs.

~~(4) Twenty cents (20¢). This portion of the fee shall be credited to the Spay/Neuter Account established in G.S. 19A-62 and used to fund statewide spay/neuter programs. This portion of the fee shall not be imposed for tags provided to persons who operate establishments primarily for the purpose of~~

~~boarding or training hunting dogs or who own and vaccinate 10 or more dogs per year.~~"

SECTION 4.(a) G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Animal Lovers	$30.00
Back Country Horsemen of NC	$30.00
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00
In God We Trust	$30.00
Maggie Valley Trout Festival	$30.00
National Kidney Foundation	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
AIDS Awareness	$25.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$30.00
Nurses	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
~~Animal Lovers~~	~~$20.00~~
ARC of North Carolina	$20.00

Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
Juvenile Diabetes Research Foundation	$20.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4.(b) G.S. 20-97.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
AIDS Awareness	$10	$15	0	0

1	Alpha Phi Alpha Fraternity	$10	$10	0	0
2	ALS Association, Jim "Catfish"				
3	Hunter Chapter	$10	$10	0	0
4	Animal Lovers	$10	~~$10~~$20	0	0
5	ARC of North Carolina	$10	$10	0	0
6	Audubon North Carolina	$10	$10	0	0
7	Autism Society of North				
8	Carolina	$10	$10	0	0
9	Back Country Horsemen of NC	$10	$20	0	0
10	Be Active NC	$10	$10	0	0
11	Brain Injury Awareness	$10	$10	0	0
12	Breast Cancer Earlier Detection	$10	$10	0	0
13	Buddy Pelletier Surfing				
14	Foundation	$10	$10	0	0
15	Buffalo Soldiers	$10	$15	0	0
16	Carolina's Aviation Museum	$10	$5	0	0
17	Coastal Conservation				
18	Association	$10	$20	0	0
19	Crystal Coast	$10	$20	0	0
20	Daughters of the American				
21	Revolution	$10	$10	0	0
22	Ducks Unlimited	$10	$10	0	0
23	El Pueblo	$10	$20	0	0
24	First in Forestry	$10	$10	$10	0
25	Goodness Grows	$10	$15	0	0
26	Greyhound Friends of North				
27	Carolina	$10	$10	0	0
28	Guilford Battleground				
29	Company	$10	$10	0	0
30	Harley Owners' Group	$10	$10	0	0
31	High School Insignia	$10	$15	0	0
32	Historical Attraction	$10	$20	0	0
33	Home Care and Hospice	$10	$20	0	0
34	HOMES4NC	$10	$20	0	0
35	Hospice Care	$10	$20	0	0
36	In God We Trust	$10	$20	0	0
37	In-State Collegiate Insignia	$10	$15	0	0
38	Juvenile Diabetes Research				
39	Foundation	$10	$10	0	0
40	Kids First	$10	$15	0	0
41	Leukemia & Lymphoma Society	$10	$5	0	0
42	Litter Prevention	$10	$10	0	0
43	Lung Cancer Research	$10	$5	0	0
44	Maggie Valley Trout Festival	$10	$20	0	0
45	March of Dimes	$10	$10	0	0
46	National Kidney Foundation	$10	$20	0	0
47	National Multiple Sclerosis				
48	Society	$10	$15	0	0
49	National Wild Turkey				
50	Federation	$10	$15	0	0
51	NC Agribusiness	$10	$15	0	0

NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$20	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Tennis Foundation	$10	$10	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5.(a) The Department of Agriculture and Consumer Services may study the State's role in reducing the number of unwanted dogs and cats and in ensuring the humane treatment of dogs and cats by breeders, shelters, and other facilities that house dogs and cats. As part of this study, the Department may do the following:

(1) Conduct a comprehensive evaluation of the need for revisions of or additions to existing regulatory authority designed to address animal welfare issues in the State including a review of existing State and federal law.

(2) Evaluate the existing needs among county and State agencies for improving responses to animal welfare incidents.

(3) Consider the extent to which the existing infrastructure of the State Animal Response Team may be expanded to handle animal emergencies that involve companion animals and the feasibility and needs for such an expansion.

(4) Survey local government to determine the total fiscal demand for a voluntary Statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals.

(5) Review data regarding the economic impact of animal sheltering and other animal welfare programs, including the costs of such programs to counties and the State and identify ways that State might reduce the number of animals being sent to animal shelters and whether more cost-effective means exist to control the pet population without compromising animal welfare.

(6) Evaluate the needs of the Animal Welfare program within the Department, specifically with regard to dealing with inquiries from the public, inspection capability and frequency, and staff development and training for Department personnel and others in the State that conduct animal welfare work.

(7) Consult with other organizations and entities it deems appropriate.

(8) Examine any other issues the Department deems pertinent to its charge under this act.

SECTION 5.(b) The Department of Agriculture and Consumer Services shall conduct the study set out in Section 5(a) of this act within funds available for the 2010-2011 fiscal year. The Department may make interim reports as it deems necessary and shall report its findings and recommendations to the Chairs of the House Agriculture Committee, the Senate Agriculture, Environment, and Natural Resources Committee, and the House and Senate Appropriations Subcommittees on Natural and Economic Resources, on or before May 1, 2011.

SECTION 6. This act becomes October 1, 2010.

SENATE BILL 1332:
Spay/Neuter Program Funding

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2010
Introduced by:	Sen. McKissick	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S1332-CSTDf-92		Committee Counsel

SUMMARY: ***The proposed committee substitute to Senate Bill 1332 would move the Spay/Neuter Program from the Department of Health and Human Services to the Department of Agriculture and Consumer Services and changes the source of funding for the program.***

CURRENT LAW: Dogs and cats are required to be vaccinated against rabies. Issued by a licensed veterinarian or a certified rabies vaccinator, a rabies tag represents proof of vaccination and must be worn at all times by the animal. Veterinarians and other vaccinators may obtain the tags from either the Department of Health and Human Services or the private market. The fee for tags provided by the Department may not exceed the actual cost of the tag, links, and rivets, transportation costs, plus the following:

- 5¢ to fund rabies education and prevention programs.
- 20¢ to fund the Spay/Neuter Program.

The Spay/Neuter Program is operated by the Department of Health and Human Services. The voluntary statewide program fosters the spaying and neutering of dogs and cats in the state. Cities and counties that offer programs to reduce the costs of spaying and neutering for the pets of low income individuals may apply for reimbursement from the Program. The Spay/Neuter Account is also funded by the additional fee charged for the Animal Lovers special license plate and any other funds available from appropriations or from contributions or grants from public or private sources.

The funds in the Account may be used as follows:

- 20% is used to develop and implement the statewide education component of the Spay/Neuter Program.
- Up to 20% may be used to defray costs of administering the Spay/Neuter Program.
- Remaining funds are distributed quarterly to eligible counties and cities seeking reimbursement for the reduced-costs spay/neuter surgeries performed during the previous year.

BILL ANALYSIS:

Administration: The PCS to Senate Bill 1332 moves the Spay/Neuter Program from the Department of Health and Human Services to the Department of Agriculture and Consumer Services. The bill would also make the following administrative changes to the Program:

- Authorizes the Department of Agriculture to develop rules for the distribution of funds between the Counties. Previously, the distribution of funds was based on the proportion of dogs and cats vaccinated against rabies in each counties as compared to other counties in the same development tier.

- Provides that counties or cities that fail to provide required reports on each animal shelter operated under contract by the city or county would be ineligible to receive funding under the Spay/Neuter Program for the calendar year the report is due.
- Requires the Department of Agriculture to notify cities and counties of the amount of funds available for distribution in the Spay/Neuter Account.

Funding: The PCS to Senate Bill 1332 changes the funding for the Spay/Neuter Program and the Rabies Education Program in the following ways:

- Raises the rabies tag fee for rabies education to 15¢ from 5¢.
- Eliminates authority to use funds from the Spay/ Neuter Account for rabies education and prevention programs.
- Eliminates the 20¢ rabies tag fee for the Spay/Neuter Program.
- Increases the fee for the "Animal Lovers" special plate to $30 from $20.

Study: The PCS to Senate Bill 1332 directs the Department of Agriculture to conduct a study of the State's role in reducing the number of unwanted dogs and cats and ensuring the humane treatment of dogs and cats by breeders, shelters, and other facilities that house dogs and cats.

EFFECTIVE DATE: This act is effective October 1, 2010.

S1332-SMTD-170(CSTDf-92) v4

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 16, 2010

TO: Senate Finance
FROM: Lanier McRee
Fiscal Research Division (FRD)
RE: Senate Bill 1332 (PCS)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2010-11	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
REVENUES:	** See Assumptions and Methodology for allocation by agency **				
General Fund	$0	$0	$0	$0	$0
Special Fund	$22,460	$24,930	$27,480	$30,125	$32,862
EXPENDITURES:					
General Fund	$0	$0	$0	$0	$0
Special Fund	** See Assumptions and Methodology for estimated expenses by agency **				
POSITIONS (cumulative):					
DACS	0.5	0.5	0.5	0.5	0.5
DPH	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Department of Agriculture & Consumer Services (DACS)

Division of Public Health (DPH), Department of Health & Human Services(DHHS)

BILL SUMMARY:

The PCS for Senate Bill 1332 (SB 1332) transfers the Spay/ Neuter portion of the existing Spay/ Neuter/ Rabies Program from the Division of Public Health (DPH) within the Department of Health and Human Services (DHHS) to the Department of Agriculture and Consumer Services (DACS). S1332 also changes the funding mechanism for the Spay/ Neuter and Rabies programs and authorizes DACS to use up to 20% of spay/ neuter funds for education and another 20% for program administration. SB 1332 allows individuals whose annual household income is under 300% of the federal poverty guideline to be eligible for low cost spay/ neuter programs. Under the current program, an individual must qualify for at least one public assistance program administered by DHHS. To be eligible, SB 1332 requires that each county make rules or publish guidelines to designate what evidence is required to prove eligibility.

Fifty percent of reimbursements for low-cost spay/ neuter is distributed to Tier 1 counties and 50% is distributed to Tier 2 and 3 counties. SB 1332 directs DACS to develop rules to distribute funding within these categories. Presently, funding is distributed by proportion of rabies vaccinations in a given city or county relative to total vaccinations by all eligible applicants. In addition, unlike the existing program, DACS must provide guidance on the amount of funding available (and expected) for reimbursement to each city or county.

Lastly, Section 5(a) requires DACS to study the State's role in reducing the number of unwanted dogs and cats and ensuring the humane treatment of dogs and cats by breeders, shelters, and other facilities. This study must be conducted from funds available to the department; DACS must report the finding of this study on or before May 1, 2011.

ASSUMPTIONS AND METHODOLOGY:

SB 1332 transfers the Spay/ Neuter program to DACS and leaves the Rabies program at DPH. Currently, the Spay/ Neuter/ Rabies program is completely funded by fees and under SB 1332 the programs will remain receipt-supported. However, SB 1332 will result in both new revenue and new operating costs for the Spay/ Neuter program at DACS; the source and amount of revenues for the Rabies program will change but expected operating expenses will not. Reimbursements costs will transfer from DPH to DACS.

Revenue

The Spay/ Neuter/ Rabies program is currently funded both by a fee on the sale of rabies vaccination tags and by the sale of Animal Lovers license plates. SB 1332 changes the funding mechanism for these programs. The bill becomes effective October 1, 2010. Thus, revenues will continue to be collected at their current level for three months of FY 2010-11 and at the new rate for nine months of FY 2011-12. Table 1 provides actual rabies tag and license plate revenue for FY 2008-09 as well as an estimate of program revenues under SB 1332.

Table 1: Spay/ Neuter Program Funding Mechanisms

	Actual Revenue FY 2008-09		S1332 Proposed Funding	
	Rabies	Spay/ Neuter	Rabies	Spay/ Neuter
Rabies Tag				
Per Item Revenue	$0.05	$0.20	$0.15	$0.00
Est. Tags Sold*	N/A	N/A	1,026,000	N/A
Rabies Tag Revenue	$65,312	$150,060	$153,900	$0
Animal Lovers License Plate				
Per Item Revenue	$0.00	$10.00	$0.00	$20.00
License Plates Sold	N/A	8,734	N/A	8,000
License Plate Revenue	$0	$87,340	$0	$160,000
Total Program Revenue	*$65,312*	*$237,400*	*$153,900*	*$160,000*
Total Revenue	**$302,712**		**$313,900**	

* DPH was unable to provide the actual number of tags sold. Revenue received does not tie exactly to number of tags due to budgeting discrepancies such as carry forwards.

Rabies Vaccination Tags

Currently, a 25 cent fee is applied to rabies vaccination tags sold by DHHS; of this, 5 cents goes to the Rabies program and 20 cents to Spay/ Neuter. In calendar year 2009, DHHS sold over 800,000 rabies tags for a total of just over $219,000 in revenue -- $43,500 for Rabies and $175,500 for Spay/ Neuter. SB 1332 eliminates the 20 cent spay/ neuter fee but increases the rabies fee to15 cents per tag with all revenues dedicated to the Rabies Program. DHHS provided historical data on the revenue from rabies tags but was unable to provide the actual number of tags sold. Due to budgeting discrepancies such as carry forwards, revenue received do not tie exactly to actual number of tags sold. Based on the revenue data, Table 2 shows FRD's estimate of the number of tags sold over the last three fiscal years.

Table 2: Approximate Number of Rabies Tags Sold by Fiscal Year

	FY 2006-07	FY 2007-08	FY 2008-09
Number of Rabies Tags Sold	1,056,960	1,044,830	816,400

DPH experienced a significant decline in the purchase of rabies tags due to the addition of the 20 cent spay/ neuter fee in FY 2008-09. Since both DPH and private companies sell rabies tags, sales are sensitive to price changes. SB 1332 lowers the fee on DPH tags by 10 cents, and due to this lower fee, DPH believes that sales of their rabies tags will increase to close to FY 2007-08 levels. Accordingly, DPH recommended that FRD assume that they will sell 1,026,000 rabies tags and that number of rabies tags sold will remain constant over the next five years, resulting in annual revenue of $153,900.

Animal Lovers License Plates

The Animal Lovers license plate costs $20, with $10 deposited in the Special Registration Plate Account and $10 going to the Spay/ Neuter Account. In FY 2008-09, 8,734 license plates were sold for total revenue of $87,340. SB 1332 increases the cost of the license plate to $30, allocating the additional $10 per plate to the Spay/ Neuter Account. DACS estimates that demand for the special licenses plates will decrease slightly to 8,000 plates due to the price increase, resulting in an estimated $160,000 for the Spay/ Neuter account.

Based on historical data showing strong demand for the Animal Lovers license plate (See Table 3), FRD maintains that the sale of Animal Lovers license plates will continue to increase over the next five years. To account for the increase in price, FRD agrees that fewer license plates will be sold in FY 2010-11 but that growth over the next five years will be 3.4% annually, which is the annual growth between December 2008 and 2009.

Table 3: Active Animal Lovers License Plates

	Dec 2005	Dec 2006	Dec 2007	Dec 2008	Dec 2009
Number of Animal Lovers Plates	5,240	6,054	7,235	8,159	8,435
Year over year growth		15.5%	19.5%	12.8%	3.4%

Under SB 1332, total revenues dedicated to Spay/ Neuter and Rabies programs are expected to be closer to $313,900 -- $153,900 for Rabies and $160,000 for Spay/ Neuter. Table 4 provides expected annual revenue by funding source under SB 1332 and under current law.

Table 4: Expected Revenue by Funding Source

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Under SB 1332					
Animal Lovers License Plates	8,000	8,272	8,553	8,844	9,145
Spay/ Neuter Program Revenue	$160,000	$165,440	$171,060	$176,880	$182,900
Rabies Tags	1,026,000	1,026,000	1,026,000	1,026,000	1,026,000
Rabies Program Revenue	$153,900	$153,900	$153,900	$153,900	$153,900
Total Both Programs	**$313,900**	**$319,340**	**$324,960**	**$330,780**	**$336,800**
Current Law					
Animal Lovers License Plates	8,734	9,031	9,338	9,656	9,984
License Plate Revenue	$87,340	$90,310	$93,380	$96,555	$99,838
Rabies Tags	816,400	816,400	816,400	816,400	816,400
Rabies Tags Revenue	$204,100	$204,100	$204,100	$204,100	$204,100
Spay/Neuter/ Rabies Program	**$291,440**	**$294,410**	**$297,480**	**$300,655**	**$303,938**

Operating Expenses

All operations of both the Spay/ Neuter and Rabies programs are receipt-supported and do not impact the General Fund. However, SB1332 will impact receipt-supported operations at DACS and DPH.

Division of Public Health, DHHS

The current Spay/ Neuter/ Rabies program includes educational efforts for spay/ neuter and rabies as well as the spay/ neuter reimbursement program. Eighty percent of one full-time equivalent (FTE) runs these programs. Program costs, not including reimbursements to cities and counties, are $103,000 per year, leaving approximately $199,000 for reimbursements annually. According to DPH, the majority of this FTE's time is spent on the Rabies portion of the Spay/ Neuter/ Rabies program. SB 1332 does not transfer this position to DACS and Rabies program expenses are expected to remain constant. The position will be entirely dedicated to the Rabies Program. However, Spay/ Neuter funds partially pay for this position and Rabies program operations. To account for this loss of revenue, SB 1332 increases the fee on rabies tags from 5 cents to 15 cents to cover Rabies operating expenses. DPH will no longer be responsible for the reimbursement of cities and counties. This expense will be eliminated from DPH and undertaken by DACS. Over the last four quarters, DPH spent $172,751 in reimbursements.

Department of Agriculture and Consumer Services

SB 1332 allows DACS to use 20% of spay/ neuter revenues for administration and 20% for education. At least 60% of revenues credited to the Spay/ Neuter Account must be used for reimbursement of cities and counties that provide low-cost spay/ neuter programs. In FY 2010-11 $64,000 is expected to be available for administration and education and $96,000 for reimbursements, assuming no other sources of revenue support the spay/ neuter program.

Reimbursements

DACS will distribute funds to cities and counties that have low-cost spay/ neuter programs for eligible residents. Approximately 28% of these funds were distributed to Tier 1, 22% to Tier 2 counties, and 49.5% to Tier 3 counties. Demand for the program is not expected to change significantly due to SB 1332; the changes to the actual spay/ neuter program are minimal and should have little impact on local programs. DACS must develop rules for distributing funding among Tier 1 counties and among Tier 2 and 3 counties. This responsibility is within the scope of duties for existing staff within DACS and will not result in increased operating costs.

Education

According to DACS, currently, there is little outreach or education conducted regarding the Spay/ Neuter program. DACS would like to implement an educational campaign that both advertizes the license plate and increases awareness of the importance of spaying and neutering pets. Advertising the license tag should increase funds available for reimbursement. DACS indicates that they are consistently contacted by individuals and nonprofits asking why the Department does not "push" spay/neuter rather than euthanasia. The Department would like to develop a program that provides materials to these organizations assuming they meet certain criteria (such as having an education/ outreach plan and being able to provide follow-up information on outreach activities). DACS estimates that this materials and supplies for this education program would cost $50,000 annually. SB 1332 authorizes DACS to use up to 20% of spay/ neuter funds for education. Given current revenue assumptions ($160,000), DACS could spend at most $32,000 on an education program.

DACS estimates that they will need one Administrative Officer 1, salary grade 67, to administer the Spay/ Neuter reimbursement and education program. The minimum salary for this pay grade is $34,065. The current Spay/ Neuter/ Rabies program operates with 80% of one FTE. Therefore, FRD assumes that DACS could operate the Spay/ Neuter program with half of one FTE. Table 5 provides FRD's expected personnel and operating costs to administer the Spay/ Neuter program. FRD has assumed that DACS will spend the maximum allowable, up to 20% each, on administration and on education.

Table 5: Spay/ Neuter Program Operating Expenses

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 20-14-15
Personnel Expenses	$19,236	$23,994	$25,835	$27,433	$28,650
# of FTE	*0.5*	*0.5*	*0.5*	*0.5*	*0.5*
Salary	*$14,194*	*$18,436*	*$20,277*	*$21,875*	*$23,092*
Benefits	*$5,043*	*$5,558*	*$5,558*	*$5,558*	*$5,558*
Travel	$13,700	$9,700	$9,700	$9,700	$9,700
Communications Equip	$1,100	$1,129	$1,158	$1,184	$1,209
General Admin Supplies	$700	$600	$616	$629	$642
Furniture, Computer, etc	$1,500	$0	$0	$0	$1,648
Education Program	$32,000	$33,088	$34,212	$35,376	$36,580
Total Operating Expenditures	**$63,194**	**$62,953**	**$65,963**	**$68,765**	**$72,871**
Total Reimbursement Funds	**$96,806**	**$102,487**	**$105,097**	**$108,115**	**$110,029**

SOURCES OF DATA:
Department of Agriculture and Consumer Services
Department of Health and Human Services

TECHNICAL CONSIDERATIONS:
1. SB 1332 requires that each county make rules or publish guidelines to designate what evidence is required to prove eligibility. DACS notes that counties and cities are not required to submit these rules/ guidelines, which could make ensuring compliance with this requirement difficult.
2. Section 4.(b) amends G.S. 20-97.7(b); G.S. 20-97.7(b) does not exist. This section should amend G.S. 20-79.7(b).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1210

Short Title:	Increase Licensure Fees/Athletic Trainers.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF ATHLETIC TRAINER EXAMINERS TO INCREASE LICENSURE FEES UNDER THE ATHLETIC TRAINERS LICENSING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-534(b) reads as rewritten:

"(b) The schedule of fees shall not exceed the following:

(1) Issuance of a license ..... ~~$100.00~~ 200.00
(2) License renewal ..... ~~50.00~~ 75.00
(3) Reinstatement of lapsed license ..... ~~75.00~~ 100.00
(4) Reasonable charges for duplication services and material."

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

SENATE BILL 1210:
Increase Licensure Fees/Athletic Trainers

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2010
Introduced by:	Sen. Hoyle	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 1210 would authorize the Board of Athletic Trainer Examiners to increase licensure fees.

CURRENT LAW: The North Carolina Board of Athletic Trainer Examiners was established in 1997 to promote the health, safety and welfare of the North Carolina public through the licensure and regulation of Athletic Trainers. The Board consists of 4 certified athletic trainers with at least 5 years experience as a trainer, an orthopedic surgeon, a family practice physician or pediatrician, and one public member. Applicants for licensure must apply to the Board and pass an exam administered by the National Athletic Trainers' Association Board of Certification. Each license must be renewed yearly. The fees charged by the Board are used to pay all expenses incurred by the Board in carrying out its duties.

BILL ANALYSIS: Senate Bill 1210 would authorize the Board to increase the fees it charges as follows:

	Current Fee	Proposed Fee
New License	$100	$200
License Renewal	$50	$75
Reinstatement of Lapsed License	$75	$100

The fees have not been increased since the formation of the Board in 1997.

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

BACKGROUND: The Board would like to increase the fees to make up for lost revenues due to a drop in the number of licensees, and to increase funds available for hiring a full-time investigator, disciplinary hearings, management fees, and attorney fees.

S1210-SMTD-168(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1210 (First Edition)

SHORT TITLE: Increase Licensure Fees/Athletic Trainers.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2010-11	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
REVENUES **Board of Athletic Trainer Account**	**$28,125**	**$28,125**	**$28,125**	**$28,125**	**$28,125**
EXPENDITURES					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Board of Athletic Trainer Examiners

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
This bill would authorize the North Carolina Board of Athletic Trainer Examiners (the "Board") to increase licensure fees as follows:

	Current Fee	Proposed Fee
Issuance of a License	$100	$200
License Renewal	$50	$75
Reinstatement of Lapsed License	$75	$100

BACKGROUND:
The Athletic Trainers Licensing Act (the "Act") requires that every athletic trainer in North Carolina must be licensed by the Board. Qualifications for licensure in North Carolina include good moral character and graduation from a 4 year college in a course of study approved by the Board. In addition, a candidate must pass the examination administered by the National Athletics Trainers' Association Board of Certification. Candidates must then file a written application with the Board and pay an application fee to receive licensure. Athletic trainers must then renew their license annually and pay a renewal fee.

The Board determines the standards for both receiving and renewing licenses. In addition, the Board is authorized to take disciplinary action against a licensee. Disciplinary matters often require investigation by the Board.

All fees payable to the Board are deposited in the Board's account and are used to pay for all of the expenses incurred in carrying out the Act. The fees set forth in the Act have not changed since the Act became law in 1997.

ASSUMPTIONS AND METHODOLOGY:

I. Current Situation

In 2009, the Board received approximately $60,000 in revenue from fees. In addition, it currently spends approximately $60,000 per year in administering the Act. In calendar year 2009, it had the following expenditures:

Attorney Fees	$25,143
Management Fees	$25,000
Board Reimbursements and Expenses	$4,719
Accounting Fees	$2,095
Other Expenditures	$4,605
Total	**$61,563**

At the end of calendar year 2009, the Board had approximately $90,000 of assets which were composed primarily of bank deposits and $30,000 of liabilities composed of accounts payable and deferred revenue.

The number of licensees has recently fallen which is expected to result in a $10,000 reduction in fee collection. The number of athletic trainers has fallen statewide primarily due to budget reductions at educational institutions. The Board is currently projecting license fees and associated revenue for 2010 as follows:

	Number	Fee	Total
License Issuance	70	$100	$7,000
License Renewals	840	$50	$42,000
Reinstatements	5	$75	$375
Expected 2010 Revenue			**$49,375**

II. Increase in Revenue.

We expect that the proposed fee increase will increase revenue as follows:

	Number	Fee Increase	Total
License Issuance	70	$100	$7,000
License Renewals	840	$25	$21,000
Reinstatements	5	$25	$125
Total			**$28,125**

III. Expected Use of Additional Revenue

The Board is seeking the fee increase primarily to fund the following items:

Mitigation Due to Reduction in Number of Licensees	$10,000
Management Fees	$7,000
Attorney Fees	$7,000
Board Reimbursements and Expenses	$1,500
Hearings Expenses	$2,000
Total	**$27,500**

Approximately $10,000 of the fee increase will be used to mitigate the reduction in revenue brought about by the reduction in the number of licensees.

The Board would also like to increase the fees paid to its management provider and attorney. Each received a $5,000 reduction in pay last year and did not receive an increase in the two preceding years. The Board is seeking to increase their compensation by $7,000 each next year. The Board is also seeking to increase their face-to-face meetings and is seeking an additional $1,500 of reimbursements and expenses to hold such meetings. In addition, the Board would like to allocate $2,000 to formal hearings related to disciplinary matters.

In addition to the above expenses, the Board would also like to contract with an independent investigator to assist in its investigations of licensees with any funds remaining. Board members currently investigate all disciplinary matters. The cost associated with an independent investigator will vary depending on the caseload, but could run as high as $8,000 per year if the Board becomes involved with especially difficult disciplinary matters. In addition, if funds permit, the Board is seeking to increase their mailings which would lead to an increase in postage, supplies and printing fees.

SOURCES OF DATA: North Carolina Board of Athletic Trainer Examiners

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Nachman

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 16, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1389*
PROPOSED COMMITTEE SUBSTITUTE S1389-CSTDx-90 [v.1]

6/11/2010 11:55:41 AM

Short Title: Graham Deannexation. (Local)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF GRAHAM.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Graham:

AREA #1.

Beginning at a point in the center of Jim Minor Road S.R. # 2135, said point also being the Southwestern most corner of Micheal and Carolyn White Trustee as recorded in Deed Book 1035 page 0627, thence with the center of Jim Minor Road S.R. # 2135 North 72 degrees 18 minutes 50 seconds West distance being 185.39 feet to a point, thence North 68 degrees 14 minutes 46 seconds West distance being 409.29 feet to a point in the Southeastern most corner of John A. and wife Darleen J. Church as recorded in Deed Book 1314 page 0633, thence with the Eastern line of said John A., and wife Darleen J. Church as recorded in Deed Book 1314 page 0633 North 22 degrees. 03 minutes. 52 seconds. East distance being 280.21 feet to a point, thence North 09 degrees. 43 minutes. 57 seconds. East distance being 206.98 feet to a point, thence North 81 degrees. 19 minutes. 26 seconds. West distance being 341.40 feet to a point, thence South 08 degrees. 19 minutes. 20 seconds. West distance being 414.51 feet to a point in the center of Jim Minor Road SR# 2135, thence with the centerline of Jim Minor Road SR 2135 North 66 degrees. 48 minutes. 50 seconds. West distance being 247.45 feet to a point, thence North 74 degrees. 31 minutes. 12 seconds. West distance being 138.49 feet to a point, thence North 85 degrees. 00 minutes. 47 seconds. West distance being 142.54 feet to a point, thence South 85 degrees. 22 minutes. 32 seconds. West distance being 153.88 feet to a point, thence South 81 degrees. 25 minutes. 01 second West distance being 694.17 feet to a point, said point being the Southeastern most corner of Ralph H. Scott III and wife Heide W. Scott as recorded in Deed Book 0669 page 0778, thence with the Eastern line of said Ralph H. Scott III and wife Heide W. Scott as recorded in Deed Book 0669 page 0778 North 31 degrees. 45 minutes. 59 seconds. West distance being 924.92 feet to a point, thence with the Northern line of Ralph H. Scott III and wife Heide W. Scott as recorded in Deed Book 0669 page 0778 South 63 degrees. 01 minute. 41 seconds. West distance being 747.98 feet to a point, said point being on the Eastern line Jack A. Shrader and Reva A. as recorded in Deed Book 0719 page 0086, thence North 11 degrees. 03 minutes. 52 seconds. West distance being 311.99 feet to a point, thence North 24 degrees. 35 minutes. 17 seconds. West distance being 205.78 feet to a point, said point being the Northern most corner of D.T. Wiggins as recorded in Deed Book 0227

page 0488, said point also being in the Southern line of Newton W. Scott III and wife Sandra Y. Scott as recorded in Deed Book 0558 page 0506, thence with the Southern line of said Newton W. Scott III and wife Sandra Y. Scott North 69 degrees. 24 minutes. 02 seconds. East distance being 366.29 feet to a point, said point being the Southwestern most corner of Christen S. Wood A/H James Craig Wood as recorded in Deed Book 1791 page 0749, Thence North 70 degrees. 24 minutes. 48 seconds. East distance being 422.84 feet to a point, Thence North 44 degrees 02 minutes. 23 seconds. East distance being 297.95 feet to a point, Thence North 15 degrees. 14 minutes. 32 seconds. East distance being 271.49 feet to a point, Thence North 15 degrees. 16 minutes. 05 seconds. East distance being 169.94 feet to a point, said point being in the Southern line of Mary Scott Cagle as recorded in Deed Book 0870, page 0633, thence North 84 degrees. 38 minutes. 41 seconds. East distance being 298.55 feet to a point, said point being the Southwestern most corner of Robert W. Scott as recorded in Deed Book 0323 page 0513, thence North 87 degrees. 24 minutes. 11 seconds. East distance being 703.72 feet to a point, thence North 66 degrees. 25 minutes. 05 seconds. East distance being 1,222.41 feet to a point, said point being in the Southern line of Mary Scott Lowdermilk Trustee as recorded in Deed Book 0903 page 0679, Thence with the Southern line of said Mary Scott Lowdermilk Trustee as recorded in Deed Book 903 page 679 South 46 degrees. 59 minutes. 27 seconds. East distance being 67.10 feet to a point, thence North 68 degrees. 40 minutes. 28 seconds. East distance being 194.20 feet to a point, thence North 75 degrees. 31 minutes. 28 seconds. East distance being 170.00 feet to a point, thence South 83 degrees. 06 minutes. 32 seconds. East distance being 212.20 feet to a point, thence South 44 degrees. 49 minutes. 32 seconds. East distance being 225.40 feet to a point, thence North 76 degrees. 22 minutes. 28 seconds. East distance being 134.18 feet to a point, thence South 53 degrees. 09 minutes. 38 seconds. East distance being 1011.64 feet to a point, said point also being The Northern most corner of Edward K. And Iva G. Freshwater as recorded in Deed Book 904 page 218, thence with the Western line of said Edward K. And Iva G. Freshwater as recorded in Deed Book 0904 page 0218 South 69 degrees. 59 minutes. 20 seconds w distance being 481.04 feet to a point, thence South 01 degree. 30 minutes. 24 seconds. East distance being 960.39 feet to a point said point also being the Northeastern most corner of Micheal and Carolyn White Trustee as recorded in Deed Book 1035 page 627, thence with the Northern line of said Micheal and Carolyn white Trustee as recorded in Deed Book 1035 page 627 South 89 degrees. 01 minute, 23 seconds. West distance being 905.38 feet to a point, thence South 06 degrees. 21 minutes. 32 seconds. West distance being 916.34 feet to the point and place of beginning, and containing 167.92 acres, more or less. Ralph and Heide Scott legal description.

AREA #2.

Beginning at an existing iron pipe, said pipe being a point on the Northern property line of R. H. Scott, Jr. As described in Deed Book 676 Page 931 in the Alamance County Register of Deeds, thence departing said point North 25 degrees 27 minutes 44 seconds West a distance of 232.51 feet to an existing iron pipe, said pipe being a point on the Eastern property line of R.J. Brown and D.W. Brown as described in Deed Book 1286 page 268 in the Alamance County Register of Deeds thence departing North 25 degrees 31 minutes 07 seconds West a distance of 253.64 feet to an existing iron pipe, said pipe being a point on the Northern property line of C.M. Brown and P.M. Bunting as described in Deed Book 1536 page 259 as described in the Alamance County Register of Deeds thence North 25 degrees 31 minutes 07 seconds West a distance of 143.59 feet to an existing iron pipe, said pipe being on the Southern property line of Jack A. And Reva A. Schrader as described in Deed Book 719 page 86 in the Alamance County Register of Deeds thence departing said iron the following two courses: 1.) North 25 degrees 31 minutes 07 seconds West a distance of 39.72 feet 2.) North 63 degrees 00 minutes 49 seconds East a distance of 38.01 feet To an existing iron pipe, said pipe being on the property line of Scott Associates as described in Deed Book 1044 page 467 as described in the Alamance County Register of Deeds thence along said Scott Associates property line the

following two courses: 1.) North 63 degrees 01 minute 41 seconds East a distance of 747.98 feet 2.) South 31 degrees 45 minutes 59 seconds East a distance of 245.74 feet To an existing iron pipe, said pipe being on the property line of Ralph H. Scott III and wife Heide W. Scott as described in Book 669 page 778 in The Alamance County Register of Deeds, thence departing said pipe along Ralph H. Scott III Western line the following eight courses: 1.) South 43 degrees 20 minutes 50 seconds West a distance of 49.44 feet 2.) South 73 degrees 46 minutes 51 seconds West a distance of 160.79 feet 3.) South 55 degrees 06 minutes 31 seconds West a distance of 122.92 feet 4.) South 37 degrees 54 minutes 31 seconds West a distance of 111.18 feet 5.) South 28 degrees 26 minutes 46 seconds West a distance of 184.05 feet 6.) South 15 degrees 36 minutes 45 seconds West a distance of 118.11 feet 7.) South 08 degrees 01 minute 21 seconds West a distance of 154.27 feet 8.) South 27 degrees 04 minutes 20 seconds West a distance of 94.98 feet To the point of being having 6.55 acres more or less. C.M. Brown and P.M. Bunting Legal Description.

AREA #3.

Beginning at an existing iron pipe, said pipe being on the Eastern right of way of Jimmy Kerr Road, said pipe also being a point on the Southern property line of J.D. Payne as recorded in Deed Book 1855 Page 497 found in the Alamance County Register of Deeds thence following said Southern property line North 66 degrees 50 minutes 35 seconds West a distance of 235.57 feet to an existing iron pipe thence North 25 degrees 31 minutes 07 seconds West a distance of 143.59 feet to an existing iron pipe, said pipe being on the Southern property line of Jack A. And Reva A. Schrader as described in Deed Book 719 page 86 found in the Alamance County Register of Deeds thence departing said pipe along said Schrader Southern property line South 65 degrees 15 minutes 22 seconds West a distance of 238.10 feet to an existing Iron pipe, said pipe being on said Schrader Southern property line, said point also being on the Eastern right of way of Jimmy Kerr Road thence continuing along said Eastern property line South 26 degree 38 minutes 49 seconds East a distance of 137.13 feet to the point of beginning containing 0.76 acres more or less.

SECTION 2. This act has no effect upon the validity of any liens of the City of Graham for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Graham.

SECTION 3. This act is effective June 30, 2010.

SENATE BILL 1389: Graham Deannexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2010
Introduced by:	Sen. Foriest	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1389-CSTDx-90		

SUMMARY: ***Senate Bill 1389 is a local bill that would deannex 234 acres from the corporate limits of the City of Graham, as requested by the City and evidenced by a resolution adopted by the City Council on May 4, 2010. The proposed committee substitute for the bill changes the effective date.***

[As introduced, this bill was identical to H1960, as introduced by Reps. Bordsen, Ingle, which is currently in House Local Government II, if favorable, Finance.]

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill 1389 would deannex 234 acres from the corporate limits of the City of Graham. The area was annexed in order to provide city sewer and water to a planned large scale development. The Developer of the property responsible for extending city sewer and water lines to the development closed in 2009 before installing the lines. The City estimates the cost of extending the water and sewer lines to this area to be $1.5 million. The large scale development originally planned for the area is not economically feasible at this time. In order to allow the area to be sold in smaller lots for development, the City would like to deannex the area.

EFFECTIVE DATE: This act is effective June 30, 2010.

S1389-SMTD-167(CSTDx-90) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1444*
PROPOSED COMMITTEE SUBSTITUTE S1444-CSRBx-89 [v.1]

6/15/2010 12:56:06 PM

Short Title: Kannapolis/Concord Doughnut Hole Annexations. (Local)

Sponsors:

Referred to:

May 27, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITIES OF CONCORD AND KANNAPOLIS TO ANNEX CERTAIN PROPERTIES CURRENTLY TOTALLY SURROUNDED BY THE CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 160A-48, a municipality to which that section applies may adopt ordinances annexing property completely enclosed on May 1, 2010, by the corporate limits of the municipality, if the ordinance makes a finding that the total acreage being annexed is less than five percent (5%) of the total acreage within the corporate limits of the municipality prior to the annexation and also either:

(1) Makes a finding based upon circumstances and evidence satisfactory to the municipality that the annexation is necessary for the orderly growth and development of the municipality; or

(2) Makes a finding based upon circumstances and evidence satisfactory to the municipality that the annexation improves the ability to provide public safety services.

SECTION 2. The municipality shall fix a date for a public hearing on the annexation and publish notice of the public hearing at least 10 days before the day of the hearing.

SECTION 3. The procedure for recording any annexation under this act is as provided in G.S. 160A-51.

SECTION 4. Any annexation ordinance adopted under this act shall be adopted before December 31, 2020.

SECTION 5. This act applies only to the Cities of Concord and Kannapolis.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 1444: Kannapolis/Concord Doughnut Hole Annexations

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 15, 2010
Introduced by:	Sen. Hartsell	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S1444-CSRBx-89		

SUMMARY: ***Senate Bill 1444[1] would authorize Kannapolis to annex certain properties that are surrounded by its municipal boundaries. The proposed committee substitute would give the City of Concord the same ability to annex 'doughnut holes' within its corporate limits.***

CURRENT LAW: Under G.S. 160A-48, a municipal governing body may annex property that meets statutory requirements. The requirements generally ensure that the property is contiguous or adjacent to the municipality's boundaries, is not located within the corporate limits of another municipality, and is urban in nature.

Sometimes, as a result of a series of annexations, there may be parcels of property surrounded by the boundaries of a municipality but lying outside the municipality's jurisdiction. These so called 'doughnut holes' often fall outside the statutory requirements for annexation because they may be vacant lots or property that is not developed. Also, these parcels may be serviced by the city for police and fire protection even though the property owners do not have to pay city taxes for these services.

BILL ANALYSIS: In the City of Kannapolis, there are several parcels of land that lie outside the municipal boundaries of the town, but are surrounded by property within the municipal limits. The doughnut holes have existed for about 15 years. They were created through a series of annexations over the years. Most of the property is vacant. Senate Bill 1444 would give the City of Kannapolis the authority to annex the property, after notice and public hearing, if the city council adopts an ordinance finding the following:

- The property was completed surrounded by the municipal limits on May 1, 2010.
- The total acreage of the property being annexed is less than 5% of the total acreage within the corporate limits prior to the annexation.
- The annexation is necessary for the orderly growth and development of the municipality or the annexation improves the ability to provide public safety services.

The proposed committee substitute gives the same authority to the City of Concord.

EFFECTIVE DATE: The act becomes effective when it becomes law. An annexation ordinance adopted under this act must be adopted before December 31, 2020.

S1444-SMRB-85(CSRBx-89) v1

[1] As introduced, this bill was identical to H2061, as introduced by Reps. Barnhart, Johnson, which is currently in House Local Government II, if favorable, Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1215*
PROPOSED COMMITTEE SUBSTITUTE S1215-CSMC-34 [v.1]

6/15/2010 1:30:16 PM

Short Title: Economic Incentives Alignment & Changes. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO INCREASE UNIFORMITY IN SUNSET AND REPORTING REQUIREMENTS OF ECONOMIC INCENTIVES TOOLS AND TO ELIMINATE NONUTILIZED ECONOMIC INCENTIVES.

The General Assembly of North Carolina enacts:

PART I: ECONOMIC INCENTIVES REPORTING AND SUNSETS

SECTION 1.1. G.S. 105-129.6(b) reads as rewritten:

"(b) ~~Reports.~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of credits taken for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were taken.

(4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.

(5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were taken.

(6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were taken.

(7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were taken."

SECTION 1.2. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by credit and by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The cost of ~~business property and~~ renewable energy property with respect to which credits were taken.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.3. G.S. 105-129.26(e) reads as rewritten:

"(e) ~~Reports.~~ Report. – The ~~Department of Commerce and the~~ Department ~~of Revenue shall jointly publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article."

SECTION 1.4. G.S. 105-129.38 reads as rewritten:

"**§ 105-129.38. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.5. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.39. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2014."

SECTION 1.6. G.S. 105-129.44 reads as rewritten:

"**§ 105-129.44. Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.7. G.S. 105-129.54 reads as rewritten:

"**§ 105-129.54. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that took a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.

(2) The amount of each credit taken in each category.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.8. Article 3H of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.75A. Report.**

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.9. G.S. 105-129.85(b) reads as rewritten:

"(b) ~~Reports.~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken."

SECTION 1.10. G.S. 105-129.98 reads as rewritten:

"**§ 105-129.98. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer, for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 1.11. G.S. 105-130.41(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges assessed for the taxable year.

(2a) The amount of the charges attributable to imports.

(2b) The amount of the charges attributable to exports.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.12. G.S. 105-130.45(f) reads as rewritten:

"(f) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of exports with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.13. G.S. 105-130.46(k) reads as rewritten:

"(k) ~~Reports. Any corporation that takes a credit under this section must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports required under this section are due by May 1, 2006.~~Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this section.

(2) The amount of cigarettes and other tobacco products exported through the North Carolina State Ports with respect to which credits were taken.
(3) The percentage of domestic leaf content in cigarettes produced during the previous year, as reported by the taxpayer.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.14. G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information, itemized by ~~taxpayer for the 12-month period ending the preceding December 31~~:taxpayer:
(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.15. G.S. 105-151.22(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31~~:taxpayer:
(1) The number of taxpayers taking a credit allowed in this section.
(2) The total amount of charges assessed for the taxable year.
(2a) The amount of the charges attributable to imports.
(2b) The amount of the charges attributable to exports.
(3) The total cost to the General Fund of the credits taken."

SECTION 1.16. G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer for the 12-month period ending the preceding December 31~~:taxpayer:
(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.17. G.S. 105-164.14(a1), (f), (g), (h), (j), (k), (*l*), (m), (n), and (o) are repealed.

SECTION 1.18. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:
(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, 2011.
(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of

the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) Motorsports team or sanctioning body. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2011.

(5) Professional motorsports team. – A professional motorsports racing team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after January 1, 2013. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038.

(b) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(c) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and by taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 1.19. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14B. Certain industrial facilities refunds.**

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

(1) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Aircraft manufacturing. – The manufacturing or assembling of complete aircraft or of aircraft engines, blisks, fuselage sections, flight decks, flight deck systems or components, wings, fuselage fairings, fins, moving leading and trailing wing edges, wing boxes, nose sections, tailplanes, passenger doors, nacelles, thrust reversers, landing gear, braking systems, or any combination of these.

(3) Bioprocessing. – Biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

(4) Reserved.

(5) Reserved.

(6) Facility. – A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

(7) Financial services, securities operations, and related systems development. – One or both of the following functions:

a. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio or mutual fund management, retirement services, or employee benefit administration.

b. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio or mutual fund management, retirement services, or employee benefit administration.

(8) Reserved.

(9) Reserved.

(10) Reserved.

(11) Motor vehicle manufacturing. – Any of the following:

a. Manufacturing complete automobiles and light-duty motor vehicles.

b. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.

c. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

(12) Reserved.

(13) Reserved.

(14) Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. – Any of the following:

a. Manufacturing biological and medicinal products. For purposes of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.

b. Processing botanical drugs and herbs by grading, grinding, and milling.

c. Isolating active medicinal principals from botanical drugs and herbs.

d. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

(15) Reserved.

(16) Reserved.

(17) Related entity. – An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.

(18) Semiconductor manufacturing. – The development and production of semiconductor material, devices, or components.

(19) Solar electricity generating materials manufacturing. – The development and production of one or more of the following:

a. Photovoltaic materials or modules used in producing electricity.

b. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity.

(20) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

(b) Refund. – An owner of an industrial facility that meets the business, minimum investment, and industry-specific requirements of this section is allowed an annual refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that are installed in the construction of the facility and that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on those items is considered tax paid by the owner. The requirements are:

(1) Business requirement. – The facility is primarily engaged in one or more of the following:

a. Air courier services.

b. Aircraft manufacturing.

c. Bioprocessing.

d. Financial services, securities operations, and related systems development.

e. Motor vehicle manufacturing.
f. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.
g. Semiconductor manufacturing.
h. Solar electricity generating materials manufacturing.

(2) Minimum investment requirement. – The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in a development tier one area, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner.

(3) Industry-specific requirements:

a. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:

1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
2. No part of it is leased to a third-party tenant that is not a related entity of the business.

b. If the facility is primarily engaged in solar electricity generating materials manufacturing, the business satisfies a wage standard at the facility. The wage standard is equal to one hundred five percent (105%) of the lesser of the average weekly wage for all insured private employers in the State and the average weekly wage for all insured private employers in the county. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to the amount required by this sub-subdivision. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.

(c) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this section with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this section, plus interest at the rate established in G.S. 105-241.21, computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(e) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.
(2) The total amount of purchases with respect to which refunds were claimed.
(3) The location of facilities with respect to which refunds were claimed.

(4) The total cost to the General Fund of the refunds claimed.

(f) Sunset. – This section is repealed for sales made on or after January 1, 2013."

SECTION 1.20. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.29B. Information to counties and cities.**

The Secretary must give information on refunds of tax made under this Article to a designated county or city official within 30 days after the official makes a written request to the Secretary for the information. For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list must include the name and address of each of these claimants and the amount of the refund received from each county covered by the request.

A claimant that has received a refund under this Article of tax paid to a county must give information on the refund to a designated official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the official to verify the request. If a claimant determines that a refund it has received under this Article is incorrect, the claimant must file an amended request for a refund.

For purposes of this section, a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information given to a county or city official under this section is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 1.21. G.S. 105-256(a) is amended by inserting a new subdivision between subdivisions (2) and (3) to read:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

(2a) By May 1 of each year, an economic incentives report that contains information on tax credits and tax refunds, itemized by credit or refund and by taxpayer, for the previous calendar year.

....."

PART II: OBSOLETE ECONOMIC INCENTIVES

SECTION 2.1. Article 3C of Chapter 105 of the General Statutes reads as rewritten:

"Article 3C.

"Tax Incentives For Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

...

~~(3) Large recycling facility. – A recycling facility that qualifies under G.S. 105-129.26(b).~~

...

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

~~(b) Large Recycling Facility. – A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:~~

~~(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.~~

~~(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.~~

~~(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.~~

...

(e) Reports. – The Department of Commerce and the Department of Revenue shall jointly publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number and location of ~~large and~~ major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article.

"**§ 105-129.27. Credit for investing in ~~large or~~ major recycling facility.**

(a) Credit. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. ~~An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.~~"

...."

SECTION 2.2. Article 3G of Chapter 105 of the General Statutes is repealed.

PART III: CONFORMING CHANGES

SECTION 3.1. G.S. 75-29(a) reads as rewritten:

"(a) No person, firm or corporation shall advertise the sale of its merchandise using the term "wholesale" with regard to its sale prices, except as such word may appear in the company or firm name, unless such advertised sale or sales is, or are, to a customer or customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as

required by G.S. 105-164.25 or unless the wholesale price is established by an independent agency not engaged in the manufacture, distribution or sale of such merchandise.

No person, firm or corporation shall utilize in any commercial transaction a company or firm name which contains the word "wholesale" unless such person, firm or corporation is engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of determining whether sales are made principally at wholesale or retail, all sales to employees of any such person, firm or corporation, all sales to organizations subject to refunds pursuant to ~~G.S. 105-164.14~~,G.S. 105-164.14 through G.S. 105-164.14B and all exempt sales pursuant to G.S. 105-164.13 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business shall be considered sales at wholesale for the purposes of this section."

SECTION 3.2. G.S. 105-129.28a reads as rewritten:

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

...

(8a) Eligible major industry. – A taxpayer is an eligible major industry for the purposes of this Article if the taxpayer is primarily engaged in one of the industries listed in ~~G.S. 105-164.14(j)(3)~~G.S. 105-164.14B and the Secretary of Commerce has certified that the owner of the facility will invest at least one hundred million dollars ($100,000,000) of private funds to acquire, construct, and equip a facility in this State to engage in one or more of those industries."

...."

SECTION 3.3. G.S. 105-164.3 is amended by adding a new subsection to read:

"(6a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08."

SECTION 3.4. G.S. 105-187.18(b) reads as rewritten:

"(b) Except for the exemption for sales a state cannot constitutionally tax, the exemptions ~~in G.S. 105-164.13~~ and ~~the~~ refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article."

SECTION 3.5. G.S. 105-187.23 reads as rewritten:

"**§ 105-187.23. Exemptions and refunds.**

(a) Exemptions. – Except for the exemption for sales a state cannot constitutionally tax, the exemptions allowed in ~~G.S. 105-164.13~~ Article 5 of this Chapter do not apply to the taxes imposed by this Article.

(b) Refunds. – The refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary."

SECTION 3.6. G.S. 105-187.33 reads as rewritten:

"**§ 105-187.33. Exemptions and refunds.**

Except for the exemption for sales a state cannot constitutionally tax, the exemptions and refunds allowed in ~~G.S. 105-164.13~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. ~~The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.~~"

SECTION 3.7. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(6a) To furnish the county or city official designated under ~~G.S. 105-164.14(f)~~G.S. 105-164.29B a list of claimants that have received a refund of the county sales or use tax to the extent authorized in ~~G.S. 105-164.14(f).~~that statute.

...

~~(31) To verify with a related entity or strategic partner information relating to that entity provided by a taxpayer claiming a credit under Article 3G of this Chapter.~~

...

~~(35) To furnish to a taxpayer claiming a credit under Article 3G of this Chapter information from a related entity or strategic partner to the extent that information was used by the Secretary to adjust the amount of tax credit claimed by the taxpayer.~~

...

(37) To furnish the Department of Commerce with the information needed to complete the ~~studies~~ study required under ~~G.S. 105-129.2A and~~ G.S. 105-129.82."

...

SECTION 3.8. G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holidays contained in G.S. 105-164.13C and G.S. 105-164.13D, and the State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

PART IV: EFFECTIVE DATE

SECTION 4. This act becomes effective July 1, 2010. The first economic incentives report required by G.S. 105-256, as amended by this act, is due by May 1, 2011. The first claim for refund by a taxpayer whose sales tax refund period is changed by this act is due within six months after July 1, 2010, and applies to purchases during the time period not covered by the taxpayer's last claim for refund.

SENATE BILL 1215:
Economic Incentives Alignment & Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 16, 2010
Introduced by:	Sen. Jenkins	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	PCS to First Edition S1215-CSMC-34		

SUMMARY: ***This bill would (1) harmonize sunset and reporting features and requirements across the State's various economic incentives, (2) create a single, unified economic incentives report that contains the information currently reported separately for each economic incentive, and (3) delete obsolete credits under Articles 3C and 3G. This bill was a recommendation of the Revenue Laws Study Committee.***

[As introduced, this bill was identical to H1880, as introduced by Rep. McComas, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

CURRENT LAW: Under current law, many of the economic incentives enacted as the Article 3 credits, the income tax credits, and the sales and use tax benefits have some combination of reporting requirements[1] and sunset provisions; however, those requirements are not uniformly set out in each incentive. Where reporting requirements are set out, there are inconsistencies with respect to itemization by taxpayer,[2] itemization by credit,[3] the reporting entity,[4] and other miscellaneous differences.

Under current law, there are two economic incentives that are not utilized. The first is the credit in Article 3C for large recycling facilities. This credit was intended for Wisconsin Tissue; however, that company never located in North Carolina. The second credit is the credit for major computer manufacturing facilities in Article 3G. Other than the Dell facility for which the credit was enacted, no other taxpayer has utilized that credit.

BILL ANALYSIS: Part I of the bill requires data on each of the State's economic incentives to be reported in a single economic incentives report and establishes sunsets for various economic incentives, as provided in the chart below. Part II of the bill eliminates obsolete economic incentives. Part III of the bill makes conforming changes to various statutory provisions.

Section Number(s)	Effect
1.2	Adds requirement of itemization by taxpayer and by credit to the Art. 3B (business and energy tax credits) report
1.4, 1.6	Adds requirement of itemization by taxpayer to Arts. 3D (historic structure rehab) and 3E (low-income housing) report, respectively

[1] Currently, there is no reporting requirement for Article 3H or for sales and use tax refunds for analytical services, for railroad intermodal facilities, or for vehicle parts for motorsports racing teams.

[2] While itemization by taxpayer for economic incentives credits is generally required, it is not currently required by the reporting requirements of Articles 3B, 3D, or 3E.

[3] Both Articles 3B and 3J contain multiple credits. While Article 3J's reporting provisions require itemization by credit, Article 3C's reporting provisions do not.

[4] Generally speaking, the reporting entity for each economic incentives report required is the Department of Revenue; however, Article 3C (in which Revenue and Commerce jointly report) and for the credit for utilizing State ports to export cigarettes while increasing employment (in which the corporation claiming the credit is the reporting entity) differ.

1.8	Creates reporting requirement for Art. 3H (mill property rehab)
1.13	Transfers reporting requirement for G.S. 105-130.46 (credit for exporting cigarettes and increasing employment) from the corporation claiming the credit to DOR and harmonizes reporting requirements
1.17, 1.18, 1.19, 1.20	Separates and categorizes the current sales and use tax refunds, all of which are currently found in G.S. 105-164.14, into three types of refunds: (1) refunds that were enacted for non-industrial facilities for economic incentives purposes (found in the newly created G.S. 105-164.14A), (2) refunds that were enacted for industrial facilities for economic incentives purposes (found in the newly created G.S. 105-164.14B), and (3) refunds that were not enacted for economic incentives purposes (remaining in G.S. 105-164.14)
1.21	Creates the economic incentives report
1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16	Makes conforming and technical changes to the reporting requirement necessary to transfer the current, separate reports into a new, unified annual report.
1.5, 1.18	Proposes sunsets for Art. 3D historic structure rehab (2014), and for the sales and use tax refund for low-tier machinery (aligns sunset to Art. 3J), motorsports racing vehicle parts (2014), analytical services supplies (2013), and railroad intermodal facilities (2038).
2.1	Eliminates credit for large recycling facilities
2.2	Repeals Art. 3G (computer manufacturing)
Part III	Conforming changes

EFFECTIVE DATE: This act would become effective July 1, 2010, and includes effective date language that would ensure that sales and use tax refund eligibility would not be affected.

S1215-SMMC-18(CSMC-34) v1

SENATE FINANCE COMMITTEE
Tuesday, June 22, 2010 at 4:19 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 4:19 PM on June 22, 2010, in Room 544 of the Legislative Office Building. Thirty members of the committee were present. Senator Jenkins presided. Kelly Anderson of Charlotte, Rebecca Connor and Philip James of Raleigh, Jennifer Polvino of Cary, Edward Woodall of Four Oaks, Andrew Dinwiddie of Waynesville , John Lineberger of Winston-Salem, Will White of New Bern and Brandon Hughes of Garner served as pages.

H.B. 961 – Pay to Play Regulation

Erica Churchill, a staff attorney with the Research Division, was recognized to explain the bill and answer any questions. Senator Clodfelter moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS would make various changes to the campaign finance laws, public records laws, ethics laws, and lobbying laws. Senator Clodfelter was recognized to offer a technical amendment. Senator Hoyle moved to adopt the amendment and the motion carried. Senator Goss moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

The meeting adjourned at 4:30 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 22, 2010

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **961** Pay to Play Regulation.

Draft Number:	30532
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 22, 2010	15 minutes after Senate adjourns	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 961	Pay to Play Regulation.	Representative Ross Representative Goodwin Representative Stam Representative Glazier

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

PAGES ATTENDING

Date: 6-22

Committee: Finance **Room:** 544 LOB

15 mins. after Senate adjourns

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Kelly Anderson	Charlotte	Rucho
2 Rebecca Connor	Raleigh	Hunt
3 Jennifer Polvino	Cary	Preston
4 Edward Woodall	Four Oaks	Hunt
5 Andrew Dinwiddie	Waynesville	Queen
6 JOHN LINEBERGER	WINSTON-SALEM	GARROU
7 Will White	New Bern	Preston
8 Brandon Hughes	Garner	Rouzar
9 Philip James	Raleigh	Hunt

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 22, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	NMRS
	"
	WCBS
	NCASA
	NCDA
	NCDA&CS
	NC Dept of Agr.
	"
	Hunton Williams

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 22, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDA&CS
Kent Yelverton	NCDA+CS
Mia Bailey	Electricities of NC, Inc
John Hoomani	NCDoL
Jennifer Haigwood	"
Art Britt	"
L. Andrews	NCFB
Bryan Beinson	NC Cattlemen's Assoc
Jessy Hardesty	NRPC / NCCA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Democracy NC
Damon Circosta	NC vote ED.
Connie Wilson	CWC
Rebecca Troutman	NCACC
Kevin Quinn	NCACC

Senate Finance Committee
Tuesday, June 22, 2010
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 961	Pay to Play Regulation.	Rep. Ross Rep. Goodwin Rep. Stam Rep. Glazier

Adjournment

H 4

HOUSE BILL 961

Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary I Committee Substitute Adopted 6/22/10

Short Title: Gov't Ethics and Campaign Reform Act of 2010. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for that public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption within regulatory or investigatory offices overseen by elected officials is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who

voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter; to candidates for the Council of State office of Secretary of State and Treasurer, and to candidates for the offices of Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter; and to candidates for the Council of State office of Attorney General in elections to be held in 2016 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(6) Money collected pursuant to G.S. 55A-1-22, 57C-1-22, 58-33-125, 78A-35, 95-110.5(20), 95-69.11(11), 106-22, and 147-69.2(e).

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle ~~and make recommendations about the feasibility of expanding its provisions to include other candidates for State office~~ based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent

shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted

by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For

accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. – ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of ~~funds, rounded to the nearest one hundred dollars ($100.00),~~ funds to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent

expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.99B. Matching funds.**

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled

to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"**§ 163-278.99C. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.99D. Enforcement by the Board; civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"**§ 163-278.99D.1. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing clear and convincing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adopt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"§ 163-278.99E. Voter education.

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. – Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written

confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."

(7) Candidate ~~statement, limited to 150 words.~~ Statement. – Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. – ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 1.(b) G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	~~$60.00~~$65.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$ 5.00
(24a)	Designation of Principal Office Address	$ 5.00

(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization (paper)	$15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00
(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(c) G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	~~$125.00~~$130.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee

(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization (paper)	15.00
(24a)	Application for certificate of existence or authorization (electronic)	10.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 8(c).	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(d) G.S. 58-33-125(c) reads as rewritten:

"(c) Any person who is not licensed and who is required by law or administrative rule to secure a license shall, upon application for licensing, pay to the Commissioner a fee of ~~fifty dollars ($50.00).~~ fifty-five dollars ($55.00). If additional licensing for other kinds of insurance is requested, a fee of ~~fifty dollars ($50.00)~~ fifty-five dollars ($55.00) shall be paid to the Commissioner upon application for licensing for each additional kind of insurance. Of the fifty-five dollar ($55.00) fee charged, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund or distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifty dollars ($50.00) upon application for licensing for those kinds of insurance."

SECTION 1.(e) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~three hundred dollars ($300.00)~~ three hundred five dollars ($305.00) in the case of a dealer and ~~one hundred twenty-five dollars ($125.00)~~ one hundred thirty dollars ($130.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year. Of a fee charged pursuant to this subsection, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(f) G.S. 95-110.5(20) reads as rewritten:

"(20) To establish fees not to exceed two hundred dollars ($200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. Of the fee charged pursuant to this subdivision, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(g) G.S. 95-69.11(11) reads as rewritten:

"(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. Of any fee charged pursuant to this subdivision, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(h) G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Rental agreements. – For every rental agreement where the Board or the Commissioner is the lessor, the Board or Commissioner shall pay five percent (5%) of the rental agreement into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(i) G.S. 147-69.2 is amended by adding a new subsection to read:

"(e) There shall be charged a fee of two one-hundredths of a percent (.02%) on each fund held by the Treasurer that consists of nontax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(j) For the period January 1, 2011, through December 31, 2012, two dollars and fifty cents ($2.50) of each three dollar ($3.00) allocation under G.S. 105-159.2 shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund for distribution under Article 22J of Chapter 163 of the General Statutes in the 2012 election.

SECTION 1.(k) The State Board of Elections shall make the determination of available funds required by G.S. 163-278.99(b), as enacted by this section, on October 1, 2010, or within 30 days of receiving preclearance under section 5 of the Voting Rights Act of 1965, whichever date occurs first.

SECTION 1.(l) This section becomes effective October 1, 2010.

SECTION 2.(a) G.S. 163-278.96(12), as amended by Section 1 of this act, reads as rewritten:

"(12) Office. – The Council of State offices of Attorney General, Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

SECTION 2.(b) This section becomes effective July 1, 2015.

SECTION 3.(a) G.S. 126-14 reads as rewritten:

"§ 126-14. Promise or threat to obtain political contribution or support.

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of ~~his~~ the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to ~~a person~~ an individual listed in subdivisions (1) through (4).

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline

or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

SECTION 3.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 4.(a) G.S. 14-234(a) reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of ~~reward~~ reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

SECTION 4.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 120C-304(a) reads as rewritten:

"(a) No legislator or former legislator may register as a lobbyist under this ~~Chapter:~~Chapter

~~(1)~~ ~~While~~while in ~~office.~~office or

~~(2)~~ ~~Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months~~ within one year after leaving office."

SECTION 5.(b) G.S. 120C-304(b) reads as rewritten:

"(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist under this Chapter while in office or within ~~six months~~ one year after leaving office."

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No ~~public servant or former public servant as defined in G.S. 138A-3(30)c.~~ employee of any State agency may ~~register as a lobbyist under this Chapter~~ lobby the State agency that previously employed the former employee within ~~six months~~ one year after voluntary or for cause separation from employment ~~as a public servant.~~with that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after voluntary or for cause separation from employment with the State agency shall also indicate which State agency was employed."

SECTION 5.(e) This section becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

SECTION 6. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The Board has the authority to hire or contract with a special investigator, if needed, for this purpose."

SECTION 7.(a) G.S. 163-278.27 reads as rewritten:

"**§ 163-278.27. Criminal penalties; duty to report and prosecute.**

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars ($10,000) per election is guilty of a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge."

SECTION 7.(b) G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina. This subsection shall not apply to any contribution by an individual with the lawful authority to act on behalf of another individual, whether through power of attorney, trustee, or other lawful authority."

SECTION 7.(c) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 8. In order to foster and facilitate transparency of information relating to political campaigns, the State Board of Elections shall create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

SECTION 9. Article 2 of Chapter 143C of the General Statutes is amended to add new sections to read:

"**§ 143C-2-5. Grants and contracts database.**

(a) The Director of the Budget shall require the Office of State Budget and Management, with the support of Information Technology Services, to build and maintain a database and Web site for providing a single, searchable Web site on State spending for grants and contracts.

(b) Heads of the principal departments as listed in G.S. 143B-6 shall monthly conduct a review of all State contracts and grants administered by the principal department.

(c) All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Director of the Budget that maintain a Web site shall be required to include an access link to the NC OpenBook Web site on the home page of the agency Web site. Each agency shall also prominently display a search engine on the agency Web site home page to allow for ease of searching for information, including contracts and grants, on the agency's Web site.

"**§ 143C-2-6. Contents of database and Web site.**

(a) The Office of State Controller, the Department of Administration, and Information Technology Services shall provide the Office of State Budget and Management with the statewide information on State contracts necessary for the development and maintenance of the database and Web site required by this Article, with the information updated at least every 30 days.

(b) The Office of State Budget and Management shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the database and Web site required by this Article. All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes for grants and contracts to ensure the goals of this Article are met.

(c) All State contracts and grants awarded in amounts in excess of ten thousand dollars ($10,000) shall be included in the database and Web site required by this Article. The following information shall be provided for each contract or grant:

(1) The name of the entity receiving the award.
(2) The amount of the award or estimated award.
(3) Information on the award, including transaction type, funding agency, duration of contract, or grant award.
(4) The location of the entity receiving the award.
(5) Background information on the entity receiving the award.
(6) Time lines for anticipated completion of the work required.
(7) Expected outcomes of the contract or grant and specific deliverables required.
(8) Contact information for the responsible State government officer or administrator of the contract or grant."

SECTION 10. G.S. 138A-3(30) reads as rewritten:

"(30) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.
b. Employees of the Office of the Governor.
c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.
f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
h. Judicial employees.
i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the ~~Commission.~~Commission, the executive director, and the assistant executive director of the Commission.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.

p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology.
q. The director of the State Museum of Art.
r. The executive director of the Agency for Public Telecommunication.
s. The Commissioner of Motor Vehicles.
t. The Commissioner of Banks and the chief deputy commissioners of the Banking Commission.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority."

SECTION 11. G.S. 143B-478 is amended by adding a new subsection to read:

"(f) The Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 12. G.S. 138A-22 is amended by adding a new subsection to read:

"(d1) In addition to subsections (a) and (d) of this section, a covered person holding elected office or a former covered person who held elected office subject to this Article shall file a statement of economic interest in all of the following instances, as specified:

(1) Filed on or before April 15 of the year following the year a covered person elects not to continue in the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day of December of the preceding year.
(2) Filed on or before April 15 of the year following the year the covered person resigns from the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day in the position.
(3) Filed on or before April 15 of the year following the year the covered person dies while holding the position that made the deceased a covered person, with all information provided in the statement of economic interest current as of the day of death. The statement of economic interest shall be filed by the personal representative of the estate."

SECTION 13.(a) G.S. 138A-24(a) reads as rewritten:

"**§ 138A-24. Contents of statement.**

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the ~~Commission and sworn to by the filing person.~~ Commission. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

b. Real estate that is currently leased or rented to or from the State.

c. Personal property sold to or bought from the State within the preceding two years.

d. Personal property currently leased or rented to or from the State.

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

1. The filing person or a member of the filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

2. The fund is publicly traded, or the fund's assets are widely diversified.

f. The name of each nonpublicly owned company or business entity, including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

~~h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.~~

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.

l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.

m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(13) The name of each business with which associated that the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager."

SECTION 13.(b) G.S. 138A-24(c) reads as rewritten:

"(c) Each statement of economic interest shall contain ~~sworn~~ a certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's ~~sworn~~ certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property ~~for the purpose of concealing~~ with the intent to conceal it from disclosure while retaining an equitable interest therein."

SECTION 13.(c) G.S. 138A-24(a)(2)i. is recodified as G.S. 138A-24(a)(14).

SECTION 13.(d) G.S. 138A-24(a)(14), as enacted by Section 13(c) of this act, reads as rewritten:

"(14) For any company or business entity listed under subdivision (13) of this subsection and sub-subdivisions ~~f., g., and h.~~ f. and g. of subdivision (2) of this ~~subdivision,~~ subsection, if known, a statement whether ~~any~~ that company or business entity ~~that~~ has any material business ~~dealings, contracts, or other involvement~~ business contracts with the State, or is regulated by the State, including a brief description of the business activity."

SECTION 13.(e) This section becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

SECTION 14. G.S. 138A-41 reads as rewritten:

"**§ 138A-41. Other ethics standards.**

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor

to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or non-advisory in authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards."

SECTION 15.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be ~~the~~ an ultimate recipient."

SECTION 15.(b) G.S. 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for ~~the~~ an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 15.(c) G.S. 138A-32(d1) reads as rewritten:

"(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for ~~the~~ an ultimate recipient of the gift to be a public servant."

SECTION 15.(d) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 16. G.S. 120C-101(c) reads as rewritten:

"(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative ~~Code.~~Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission."

SECTION 17.(a) G.S. 120C-100(a)(9) reads as rewritten:

"(9) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The ~~term~~ terms "lobby" or "lobbying" ~~does~~ do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both."

SECTION 17.(b) G.S. 120C-100(a)(10) reads as rewritten:

"(10) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental ~~unit, and receives payment for services.~~ unit.~~For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.~~

c. Contracts for ~~economic consideration~~ payment for ~~the purpose of~~ lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 17.(c) G.S. 120C-100(a)(11) reads as rewritten:

"(11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist ~~lobbies.~~ lobbies and who makes payment for the lobbying. In the case where a lobbyist is ~~compensated~~ paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit who makes payment and whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization,

the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter."

SECTION 17.(d) G.S. 120C-100(a)(11k) reads as rewritten:

"(11k) ~~Payment for services.~~Payment. – Any money, thing of value, or economic benefit ~~paid~~ conveyed to ~~a~~ the lobbyist for ~~the purpose of lobbying~~ lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence."

SECTION 17.(e) G.S. 120C-100(a)(13) reads as rewritten:

"(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals ~~for the purpose of influencing or attempting~~ to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices."

SECTION 17.(f) G.S. 120C-300 reads as rewritten:

"§ 120C-300. Contingency fees prohibited.

(a) No individual shall act as a lobbyist ~~for~~ and receive payment for ~~services~~ lobbying that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment ~~for services~~ to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund."

SECTION 17.(g) G.S. 120C-305 reads as rewritten:

"§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall ~~permit~~ lobby by permitting a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist ~~for the purpose of lobbying~~ unless the lobbyist is in attendance at the time of the reportable expenditure. G.S. 120C-303 applies to this section."

SECTION 17.(h) G.S. 120C-400(a) reads as rewritten:

"§ 120C-400. Reporting of reportable expenditures.

(a) For purposes of this Chapter, all reportable expenditures made for ~~the purpose of~~ lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer."

SECTION 17.(i) G.S. 120C-402(b) reads as rewritten:

"(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00)."

SECTION 17.(k) G.S. 120C-403 reads as rewritten:

"**§ 120C-403. Lobbyist principal's reports.**

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due ~~10~~ 15 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Recodified as G.S. 120C-403(d).

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(6) With respect to each lobbyist registered under G.S. 120C-206, the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for payment or not.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) In addition to the reports required by this section, each lobbyist principal shall annually, in the last report of the registration period under G.S. 120C-200(d), report the total of all payments for lobbying and other activities described in subdivision (2) of subsection (e) of this section made during the registration period, as applicable:

(1) If a lobbyist represents the lobbyist principal, but is not directly employed by that lobbyist principal, the portion of the payment that is for lobbying and to whom it was paid.

(2) If a lobbyist is under contract with the lobbyist principal for lobbying, the portion of the contract that is reasonably allocated for lobbying.

(3) If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer salary that is reasonably allocated for lobbying.

(e) For purposes of subsection (d) of this section, the following shall apply:

(1) A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary or other payment that is reasonably allocated for lobbying.

(2) In addition to reporting any payment to a lobbyist for lobbying under subsection (d) of this section, a lobbyist principal shall report any payment to a lobbyist for any of the following communications and activities that were used to lobby within the registration period under G.S. 120C-200(d):

a. Research.

b. Drafting of written communications.

c. Monitoring of proposed or pending legislative action or executive action, including time spent preparing communications with the lobbyist principal to relate information on proposed or pending legislative action or executive action.

d. Time spent advising and rendering opinions to the lobbyist principal as to the construction and effect of proposed or pending legislative action or executive action.

(3) A lobbyist principal is required to report any payment to a lobbyist for any of the following:

a. Direct lobbying communications or direct lobbying activities with a designated individual or that designated individual's immediate family.

b. Communications or activities to develop goodwill, including the building or relationships, with a designated individual or that designated individual's immediate family member."

SECTION 17.(l) G.S. 120C-404(b)(1) reads as rewritten:

"(1) All reportable expenditures made for ~~the purpose of~~ lobbying during the reporting period."

SECTION 17.(m) G.S. 120C-501(e) reads as rewritten:

"(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for ~~the purpose of~~ lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students."

SECTION 17.(n) G.S. 120C-800(a) reads as rewritten:

"(a) If a designated individual accepts a reportable expenditure made for ~~the purpose of~~ lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a

description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure."

SECTION 17.(o) G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for ~~the purpose of~~ divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets."

SECTION 17.(p) G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for ~~the purpose of~~ lobbying.

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for ~~the purpose of~~ lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor."

SECTION 17.(q) G.S. 138A-13(f) reads as rewritten:

"(f) This section shall apply to judicial officers only for ~~the purpose of~~ advice related to Article 3 of this Chapter."

SECTION 17.(r) G.S. 138A-24(a)(8) reads as rewritten:

"(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for ~~the purpose of~~ lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person."

SECTION 17.(s) G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given ~~for the purpose of lobbying.~~ to lobby."

SECTION 17.(t) This section is effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

SECTION 18.(a) G.S. 126-23 reads as rewritten:

"**§ 126-23. Certain records to be kept by State agencies open to inspection.**

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or appointment to the State ~~service,~~service.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~ Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~salary with that department, agency, institution, commission, or bureau.

(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.

(10) ~~and the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(b) G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~Current position.
(6) ~~title,~~Title.
(7) ~~current salary,~~Current salary.
(8) ~~date~~Date and amount of ~~most recent~~ each increase or decrease in ~~salary,~~ salary.
(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(c) G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

(a) Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~ Current position.
(6) ~~title,~~ Title.
(7) ~~current salary,~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~ salary.
(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(d) G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record:

(1) ~~name;~~ Name.

(2) ~~age;~~ Age.

(3) ~~date~~Date of original employment or appointment to the area ~~authority;~~authority.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession;~~possession.

(5) ~~current position~~ Current position.

(6) ~~title;~~ Title.

(7) ~~current salary;~~ Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary;~~ salary.

(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.

(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 18.(f) G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record:

(1) ~~name;~~ Name.

(2) ~~age;~~ Age.

(3) ~~date~~—Date of original employment or appointment to the county ~~service;~~service.

(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its ~~possession;~~possession.

(5) ~~current position~~ Current position.

(6) ~~title;~~ Title.

(7) ~~current salary;~~ Current salary.

(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.

(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation or other change in position ~~classification; and~~classification.

(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to

such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(g) G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession;
(5) ~~current position~~ Current position.
(6) ~~title;~~Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.
(9) ~~date~~Date of ~~the most~~each recent promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(h) G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.
(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(i) This section becomes effective October 1, 2010.

SECTION 19.(a) G.S. 120C-600 is amended by adding a new subsection to read:

"(d) The Secretary shall publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of complaints dismissed, and the number and age of complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a)."

SECTION 19.(b) G.S. 120C-601 is amended by adding a new subsection to read:

"(d) The Commission shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending."

SECTION 20.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3E. Mediation of public records disputes.**

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at anytime prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) Nothing in this section shall be construed to limit any party's authority to seek, or the timing of seeking, injunctive or other relief, pursuant to Chapter 132 of the General Statutes."

SECTION 20.(b) G.S. 7A-38.2(a) reads as rewritten:

"(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 20.(c) G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such ~~orders.~~ orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow ~~the prevailing~~ a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 20.(d) This section becomes effective October 1, 2010, and applies to actions filed on or after that date.

SECTION 21.(a) G.S. 138A-14(b) reads as rewritten:

"(b) The Commission shall ~~make~~ offer basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 21.(b) G.S. 138A-24(c2) is recodified as G.S. 138A-22(c2).

SECTION 21.(c) The catch line to G.S. 138A-37 of the General Statutes reads as rewritten:

"§ 138A-37. Legislator participation in ~~official~~ legislative actions."

SECTION 21.(d) G.S. 138A-38(a)(6) and (7) read as rewritten:

"§ 138A-38. Permitted participation exception.

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

...

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under ~~G.S. 130-36,~~ G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public ~~servant judicial employee,~~ servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest."

SECTION 21.(e) G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(b).~~ G.S. 138A-13(b1)."

SECTION 21.(f) G.S. 120C-800(b) reads as rewritten:

"(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be

responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with ~~G.S. 138A-24(a)(2).~~G.S. 138A-24(a)(8)."

SECTION 22. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 961:
Gov't Ethics and Campaign Reform Act of 2010

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 22, 2010
Introduced by:	Reps. Glazier, Stam, Ross, Goodwin	**Prepared by:**	R. Erika Churchill Committee Co-counsel Denise Huntley Adams Research Staff
Analysis of:	Fourth Edition		

SUMMARY: The proposed committee substitute for House Bill 961 would make various changes to the campaign finance laws, public records laws, ethics laws, and lobbying laws.

CURRENT LAW & BILL ANALYSIS:

North Carolina has two public campaign financing programs:

- A program that covers all nonpartisan elections for State Supreme Court and Court of Appeals, which was enacted in 2002 and used in the elections of 2004, 2006, and 2008.
- A program that covers partisan elections for three Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction, which was used in the 2008 election.

In brief, both programs work as follows: Qualified candidates who agree to limits on private fundraising are eligible to receive public money to fund their camapgins. Candidates qualify for the program by pledging to abide by contribution and spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If participating candidates are faced with opponents, in primary or general election, who spend more than the participating candidates can match, or independent expenditures or electioneering communications targeted at them beyond what they can spend, the Fund provides "matching funds" which are additional funds to match an opponent's expenditures and can be used by participating candidates to defend themselves. Candidates may opt out at any time, and repay the monies received from the Fund.

Both programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Voter Guide contains information about the affected elections and space for candidates to present themselves without cost.

Section 1 would add the Offices of Agriculture, Labor, Secretary of State, and State Treasurer to the Council of State offices eligible to participate in the Voter-Owned Elections program, effective 2012 and Section 2 would add the office of Attorney General effective for the 2016 election. Section 1(b) would impose various fees on certain activities of these offices, with the funds collected to be transferred to the Voter-Owned Election Fund. Section 1 becomes effective October 1, 2010 and Section 2 becomes effective July 1, 2015.

Sections 3 and 4. Revisions to criminal provisions

Section 3: Currently, it is unlawful for a State employee or a person appointed to non-elected State office to coerce political contributions or support from a State employee or applicant subject to the State Personnel Act by threatening discipline or promising preferential personnel treatment.

Section 3 would expand this provision by making it unlawful for a member of the Council of State to coerce political contributions or support by threatening discipline or promising preferential treatment to the following groups of people:

- Persons doing or seeking to do business with the Council of State member's department.
- Persons engaged in activities that are regulated or controlled by the Council of State member's department.
- Persons who have financial interests that may be substantially affected by the performance or nonperformance of the Council of State member's official duties.

A violation of this section is a Class 2 misdemeanor. Section 3 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Section 4: Currently under G.S. 14-234, no public officer or employee involved in making or administering a contract on behalf of a public agency may solicit or receive a gift, reward, or promise of a reward in exchange for recommending, influencing, or attempting to influence the award of the contract. Section 4 would expand this by also prohibiting public officers and employees from soliciting or receiving favors, services, and promises of future employment.

Section 4 becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 5. Revolving Door (House Bill 1136, Representatives Ross & Stam)

All agencies and constitutional officers of the State with staff must designate *liaison personnel* to lobby for legislative action. G.S. 120C-500(a). Liaison personnel, by definition, are employees of the State whose principal duties include lobbying legislators or legislative employees. G.S. 120C-100(a)(8). Liaison personnel must register and make reports with the Secretary of State and are subject to the gift ban. G.S. 120C-501.

Currently, the lobbying laws limit when certain people may register as a lobbyist.

- **Legislators-** No legislator or former legislator may register as a lobbyist:
    - While in office
    - Before the later of the close of session in which the legislator served or six months after leaving office. G.S. 120C-304 (a).
- **Constitutional Officers of the State-** Members of the Council of State may not register as a lobbyist while in office or within six months after leaving office. G.S. 120C-304 (b).
- **Heads of Principal State Departments-** Heads of all principal State departments who are appointed by the governor may not register as a lobbyist within six months after separation from employment as a public servant. G.S. 120C-304 (c). The principal departments include: Cultural Resources, Health and Human Services, Revenue, Crime Control and Public Safety, Correction, Environment and Natural Resources, Transportation,

Administration, Commerce, Community Colleges System Office, and Juvenile Justice and Delinquency Prevention. G.S. 143B-6.

Section 5 would increase the revolving door time frame from the current six months to one year for legislators, Council of State members and principal department heads. The bill would limit all State agency employees from registering to lobby the State agency that previously employed the former employee within one year after separation from that State agency.

Section 5 becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

Sections 6, 7, 8. Campaign Finance

Section 6: The State Board of Elections has the authority to prescribe and furnish certain statements required to be filed by candidates, committees, and county boards. Section 6 would authorize the State Board of Elections to hire or contract with a private investigator to investigate alleged violations of incorrect or unfiled statements filed by candidates, committees, and county boards.

Section 7: It is currently unlawful for an individual, political committee, or other entity to make a contribution anonymously or in the name of another. G.S. 163-278.14(a). It is also unlawful for corporations, business entities, labor unions, professional associations and insurance companies to make campaign contributions to candidates or political committees or to compensate, reimburse or indemnify an individual for money or property for making contributions or expenditures. G.S. 163-278.19(a). A violation of this section is a Class 2 misdemeanor.

Section 7 provides that a person who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a), and the unlawful contributions total more than $10,000 per election, is guilty of a Class I felony. This prohibition shall not apply to contributions by individuals with the lawful authority to act on behalf of another individual. This section becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 8: Section 8 mandates that the State Board of Elections create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

Section 9. NC OpenBook

Section 9 codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of $10,000. The following information provided for each contract or grant shall include: The name of the entity receiving the award; the amount of the award; the location of the entity receiving the award; expected outcomes of the contract or grant and specific deliverables required; and contact information for the responsible state government officer or administrator of the contract or grant.

Section 10 -14. Ethics Act revisions

Sections 10 and 11: Under current law, public servants include the Council of State, department heads, chief deputies, employees of the Office of the Governor, judicial employees, members of non-advisory boards, members of the Board of Governors, University boards of trustees, State Board of Community

Colleges, and members of the boards of trustees of each community college. Public servants are covered by the State Government Ethics Act and are subject to the gift ban and are required to file an annual statement of economic interest.

Section 10 adds the following as public servants: the Executive Director and Assistant Executive Director of the State Ethics Commission; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information offices, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

Section 11 adds the Governor's Crime Commission as a covered board, which means its members are public servants under the State Government Ethics Act.

Section 12: Currently, legislators, judicial officers and public servants are required to file a statement of economic interest upon election, appointment, or employment and annually thereafter. Candidates for legislative or constitutional offices are also required to file a statement of economic interest when filing for candidacy. Section 12 would also require a statement of economic interest to be filed on or before April 15th of the year following the year a covered person leaves office or dies in office.

Section 13: Section 13 makes various changes to the annual statement of economic interest required to be filed by covered persons.

- Removes the requirement that statements of economic interest be sworn.
- Adds sole proprietorships to the list of business entities that must be listed on the statement of economic interest.
- Clarifies that the statement of economic interest should include the name of each business with which the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager, and identifies which of these businesses do business with the State.

Section 13 becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

Section 14: Section 14 authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. It also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a State agency. The Governor is required to publish the standards in the North Carolina Register and make them available to each appointee or employee subject to the standards.

Section 15 Gift Ban Clarification (Senate Bill 1255, Senator Goss)

Under current law, unless an exception to the gift ban applies, no lobbyist or lobbyist principal may knowingly give a gift to a legislator, legislative employee or public servant or give a gift with the intent that a legislator, legislative employee, or public servant be the ultimate recipient of the gift. Section 15 clarifies that an indirect gift can include gifts where a designated individual is not the sole recipient.

Section 15 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Section 16 Rule making for SEC (Senate Bill 1380, Senator Clodfelter)

Under current law, the State Ethics Commission is required to follow a truncated rule-making procedure when adopting a rule. At least 30 business days prior to adopting a rule, the Commission shall publish the proposed rule and notice of the hearing in the North Carolina Register, notify interested parties, accept comments, and hold a public hearing.

Section 16 states that a rule adopted by the Commission that does not comply with the above mentioned procedural requirements is null, void, and without effect. It also defines a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission.

Section 17 Lobbyist Principal Reporting (Senate Bill 1299, Senator Goss)

Currently, the term 'lobbying' is defined as influencing or attempting to influence legislative or executive action, or both, through direct communications and activities with a designated individual or developing goodwill through communications or activities with designated individuals with the intention of influencing current or future legislative or executive action, or both. A lobbyist is currently defined as an individual who is hired to engage in lobbying and meets certain criterion and a lobbyist principal is currently defined as a person or governmental unit on whose behalf a lobbyist lobbies.

Section 17 clarifies the definition of lobbyist so that the relationship between a lobbyist and a lobbyist principal is triggered only when the relationship includes payment. Section 17 changes the definition of a lobbyist to an individual who engages in lobbying **for payment** and meets certain criterion. Section 17 also makes corresponding changes to the definition of lobbyist principal to clarify that a lobbyist principal is a person or governmental unit on whose behalf a lobbyist lobbies **and who makes payment for that lobbying.** Section 17 also sets out what information about the payment is to be reported by the lobbyist principal annually.

Section 17 becomes effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

Section 18 Personnel Records

Personnel files of State and local government employees are confidential and cannot be released, except for certain items of information which must be maintained as separate public records. Generally, the items that may be released as public records are: name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and office or station to which the employee is currently assigned. Similar statutes govern the personnel records of: local boards of education, community colleges, area mental health authorities, State employees, public health authorities, counties, cities, and water and sewer authorities.
Section 18 would also require release of the date and amount of each salary change, and the date of each promotion, demotion, transfer, suspension, separation or other change in position classification.

Section 18 becomes effective October 1, 2010.

Section 19 Penalties of SEC and SOS published

Under current law, the Legislative Ethics Committee is required to publish annually statistics on the number of complaints filed, considered, dismissed, resulting in admonishment, referred to the appropriate house for appropriate action, referred for criminal prosecution and the number and age of complaints pending action by the Legislative Ethics Committee.

Section 19 requires the Secretary of State and the State Ethics Commission to publish similar annual statistics for complaints of violations of the lobbying law.

All civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be public record.

Section 20 Mediation of public records disputes.

Section 20 amends the access to public records law by requiring mediation of public records disputes. Mediation may be initiated prior to suit being filed, or within 30 days from the filing of responsive pleadings with the clerk.

Mediation is initiated by filing a request for mediation with the clerk of court in a county in which the action may be brought. The mediation shall be conducted in accordance with the standards for mediated settlements of civil cases. Mediation may be waived if all parties agree and the mediator is so informed in writing. At the conclusion of mediation, the mediator shall prepare and file a certification stating the date on which the mediation was concluded and the general results of the mediation.

If a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees. The court may not assess attorneys' fees against a governmental body or governmental unit if the court finds the governmental body or governmental unit acted in reasonable reliance on a court order, appellate decision, or opinion of the Attorney General. Nothing in this section limits any party's authority to seek, or the timing of seeking, injunctive or other relief pursuant to Chapter 132 of the General Statutes.

Section 20 becomes effective October 1, 2010, and applies to actions filed on or after that date.

Section 21 Technical corrections (Senate Bill 1239, Senator Goss)

Section 21 makes various technical and clarifying changes to the State Government Ethics Act and Lobbying laws.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

H961-SMTB-16(e4) v3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-ASTx-139 [v.1]

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

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 2, line 4 by deleting "office" and substituting "offices";

and on page 3, line 34 by deleting "78A-35" and "78A-37";

and on page12, line 5 by rewriting that line to read:

"(25) Annual report ~~200.00~~205.00";

and on page 12, line 29 by deleting "or" and substituting "for";

and on page 12, line 48 by inserting "an additional" before "five" on that line;

and on page 13, line 3 by inserting " an additional" before "five" on that line;

and on page 13, lines 7-11 by rewriting those lines to read:

""(18) Rental agreements. – For every rental agreement for real property where the Board or the Commissioner is the lessor, the Board or Commissioner shall charge an additional three percent (3%), which shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.";

and on page 14, lines 28-47 by rewriting those lines to read:

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months one year after separation from employment as a public servant. No other employee of any State agency may register as a lobbyist under this Chapter to lobby the State agency that previously employed the former employee within one year after voluntary separation or separation for cause from that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after

voluntary separation or separation for cause from employment with a State agency shall also indicate which State agency with which the former employee was employed.";

and on page 23, lines 49-50 by deleting the phrase "who makes payment and";

and on page 25, line 44 by deleting "payment" and substituting "pay";

and on page 29, line 11 by rewriting that line to read:

"salary with that local board of education."

and on page 29, line 13 by deleting "classification." and substituting "classification with that local board of education";

and on page 29, line 40 by rewriting that line to read:
"salary with that community college.";

and on page 29, line 42 by deleting "classification." and substituting "classification with that community college.";

and on page 30, line 15 by rewriting that line to read:
"salary with that area authority.";

and on page 30, line 17 by deleting "classification." and substituting "classification with that area authority.";

and on page 30, line 42 by rewriting that line to read:
"salary with that county.";

and on page 30, line 44 by deleting "classification." and substituting "classification with that county.";

and on page 31, line 13 by deleting "possession;" and substituting "~~possession;~~possession.";

and on page 31, line 18 by rewriting that line to read:
" salary with that municipality.";

and on page 31, line 20 by deleting "classification." and substituting "classification with that municipality.";

and on page 31, line 45 by rewriting that line to read:
"salary with that authority.";

and on page 31, line 47 by deleting ""classification." and substituting "classification with that authority.";

and on page 28, line 35 and page 29, line 12, and page 29, line 41, and page 30, line 16, and page 30, line 43, and page 31, line 19, and page 31, line 46 by adding the phrase "and type" after the phrase "Date" on each of those lines;

and on page 33, lines 16-18 by rewriting those lines to read:

"(h) Nothing in this section shall be prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Wednesday, June 23, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 23, 2010, in Room 544 of the Legislative Office Building. Twenty-nine members of the committee were present. Senator Clodfelter presided. Edward Woodall of Four Oaks, John Lineberger of Winston-Salem, Will White of New Bern and Jake Lamers of Raleigh served as pages.

H.B. 337 – Statesville Deannexation

Representative Howard was recognized to explain the bill which would move certain described property from the corporate limits of the City of Statesville. Senators Tillman, Apodaca and Soles moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1673 – Municipal Tax Certification

Representative Tucker was recognized to explain the bill. It is a local bill that applies to Duplin County only. The bill would modify the current law to address the circumstances where the county tax collector is not charged with collecting ad valorem municipal taxes. In those circumstances, the resolution would need to direct how the county tax collector is to receive confirmation from the tax collector charged with collecting ad valorem municipal taxes. Senators Stevens and Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 1445 Goldsboro/Wayne Airport Authority Changes

Senator Davis was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS authorizes the city of Goldsboro to convey its interest in the Goldsboro-Wayne Municipal Airport to Wayne County by private negotiation and sale. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1687 – Caswell Beach Sewer Treatment Fee

Senator Soles was recognized to explain the bill which allows the Town of Caswell Beach to impose a sewer treatment fee. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 76 – Honor Wishes of Members of Military/Remains

Representative Martin was recognized to explain the bill. Senator Purcell moved to adopt the PCS for discussion and the motion carried. The PCS would allow a service

member to designate the disposition of his or her remains through forms required by military service. Senator Stein moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1143 – Military Wartime Veteran Special Plate Change

Representative Martin explained the bill amends the requirements for the issuance of a special plate based upon wartime service in the military. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 1184 – Equal Tax on Cigars That Look Like Cigarettes

Senator Stein was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would tax little cigars as cigarettes. Bill Scoggins, a lobbyist for Swedish Match, was recognized to speak in opposition to the bill and to answer questions. He was concerned about the weight definition. Gene Ainsworth, a lobbyist for Reynolds America and Swisher, was also concerned about defining by weight and urged more study. Larry Bewley, a lobbyist for the American Cigar Association, explained how the ATF defined the differences between cigars and cigarettes (wrapper type, filler and packaging/labelling. Heather Fennell, a staff attorney with the Research Division, was recognized to answer questions. No vote was taken. A copy of the PCS, the summary and the fiscal note is attached.

S1197 – Reinstate Cigarette Tax Stamps

Senator Hartsell was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would require a tax stamp be attached to packages of cigarettes sold in North Carolina as evidence of payment of the tax on cigarettes and would create a criminal penalty for counterfeiting stamps or stamp impression devices. A WRAL video describing the problems of untaxed cigarettes, uncollected revenue and the criminals involved was shown. Sonny Wooten, a lobbyist for the NC Wholesalers Association, was recognized to speak in opposition to the bill due to the cost of stamping. Peg O'Connell, Coalition for Fire Safe Cigarettes, was recognized to speak in favor of the bill, since stamps might help fire investigators studying cigarette related fires. Michael Thorne-Begland, an Altria spokesman, spoke in favor of the bill. Andy Ellen, the NC Retailers Association lobbyist, was recognized to speak in opposition to the bill. No vote was taken. A copy of the WRAL video, the PCS, the summary and the fiscal note is attached.

S.B. 1196 – Align Cigarette Discount with costs

Senator Hartsell explained the bill and moved to adopt the PCS for discussion. The motion carried. The PCS would decrease the discount cigarette distributors receive on payments of cigarette excise taxes and makes technical changes to the historical information in Section 1 of the bill. No vote was taken on the PCS. A copy of the PCS and the summary is attached.

A financial of summary of **H.B. 961 – Pay to Play** was distributed. It had been requested at the June 22 meeting where the bill was voted favorably out of committee. A copy of the summary is attached.

The meeting adjourned at 1:58 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	June 23, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1184	Equal Tax on Cigars That Look Like Cigarette.	Senator Stein
SB 1196	Align Cigarette Discount with Costs.	Senator Hartsell
SB 1197	Reinstate Cigarette Tax Stamps.	Senator Hartsell
SB 1445	Goldsboro-Wayne Airport Authority/Changes.	Senator Davis
HB 76	School Board Candidate Filing Fee.	Representative Yongue Representative Glazier
HB 337	Statesville Deannexation.	Representative Howard
HB 1143	Military Wartime Veteran Special Plate Change.	Representative Martin Representative Dickson Representative McLawhorn
HB 1673	Municipal Tax Certification.	Representative Tucker
HB 1687	Caswell Beach Sewer Treatment Fee.	Representative Iler

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 23, 2010

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

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

S.B. **1445** Goldsboro-Wayne Airport Authority/Changes.

Draft Number:	65085
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 23, 2010

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

FAVORABLE

H.B. **337** Statesville Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1143** Military Wartime Veteran Special Plate Change.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1673** Municipal Tax Certification.
Sequential Referral: None
Recommended Referral: None

H.B. **1687** Caswell Beach Sewer Treatment Fee.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **76** School Board Candidate Filing Fee.
Draft Number: 50949
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comments:

H76 – Sen. Dickson
H337 – Sen. Forrester

H1143 – Sen. Dickson
H1673 – Sen. Albertson
H1687 – Sen. Soles

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 23, 2010

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

FAVORABLE

H.B. **337** Statesville Deannexation.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1143** Military Wartime Veteran Special Plate Change.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1673** Municipal Tax Certification.
Sequential Referral: None
Recommended Referral: None

H.B. **1687** Caswell Beach Sewer Treatment Fee.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **76** School Board Candidate Filing Fee.
Draft Number: 50949
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comments:

H76 – Sen. Dickson
H337 – Sen. Forrester

H1143 – Sen. Dickson
H1673 – Sen. Albertson
H1687 – Sen. Soles

Senate Finance Committee
Wednesday, June 23, 2010, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 76	School Board Candidate Filing Fee.	Rep. Yongue Rep. Glazier
HB 337	Statesville Deannexation.	Rep. Howard
HB 1143	Military Wartime Veteran Special Plate Change.	Rep. Martin Rep. Dickson Rep. McLawhorn
HB 1673	Municipal Tax Certification.	Rep. Tucker
HB 1687	Caswell Beach Sewer Treatment Fee.	Rep. Iler
SB 1184	Equal Tax on Cigars That Look Like Cigarette.	Sen. Stein
SB 1196	Align Cigarette Discount with Costs.	Sen. Hartsell
SB 1197	Reinstate Cigarette Tax Stamps.	Sen. Hartsell
SB 1445	Goldsboro-Wayne Airport Authority/Changes.	Sen. Davis

Adjournment

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 23, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Ransdell	NCDOT-OSFM
Mia Bailey	Electricities of NC, Inc.
Kevin Bruce	DoD State Liaison Office
Elizabeth Robinson	NCRMA
[signature]	NRC
Rick Gaskins	Catawba Riverkeeper Fdt.
Cam Cover	BPMHC
Penny Burke	School of Gov.
Joe Lanier	NELSON MULLINS

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 23, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Elle	NCMA
Rebecca Trawick	NCACC
Jay Peters	JP Assoc
Allison Wiltler	Charlotte Chamber
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
W. Gardner Colpoys III	NCNA
Todd Ingram	CRH & Assoc
Brian Dempsey	MWC
Travis Cogbill	Altria
Rose Williams	NCDOI
Reg O'Connell	FIRESafe Cis Consulting

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 23, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Channing Carter	
Jim Martin	NCDPH / TPCB
Pam Seamans	NC Alliance for Health
Ruth Petersen	NC DHHS / NC DPH / CDIS
Allison Lidbury	Moore + van Allen
Kim Wittig	City of Rocky Mt. Fire Dept.
Jan Parker	NC Dept of Insurance / OSFM
Elizabeth Ireland	Covenant With NC's Children
David Anders	PFFPNC
MaryBe McMillan	NC AFL-CIO
Tom Bean	NCEDF, NCSEA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 23, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Larry Stanford	Raleigh Fire Dept PO Box 590 Raleigh, NC 27601
Roy Byrd	Raleigh Fire Dept 3605 Highland Creek Dr. Apex, NC 27539
KILE ENGLISH	RALEIGH FIRE, PO BOX 590, RALEIGH, NC 2760
DAVID RITCHIE	CITY OF RALEIGH FIRE DEPT PO Box 590 Raleigh NC 27601
Michael Kimbrell	City of Raleigh Fire Dept. P.O. Box 590 Raleigh, N.C. 27601
BRIAN TIRICO	CITY OF RALEIGH FIRE DEPT PO: BOX 590 RALEIGH, NC 27601
AL MILAIC	NCDOR
Sonny Wasta	Southern Dist. Co
	JD. AL, PA
Amy Whited	NC med Society
Joanne Stevens	Stevens & Associates

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 23, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chip Killian	Nelson Mullins
Conf Regan	"

HOUSE BILL 337

Short Title:	Statesville Deannexation.	(Local)
Sponsors:	Representative Howard.	
Referred to:	Local Government II, if favorable, Finance.	

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF STATESVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Statesville are reduced by removing the following described territory:

PARCEL 1:

ALL that certain piece and parcel of land as described in Deed Book 834, Page 527, LESS and EXCEPTING that certain 17.88 ac as described in Deed Book 847 Page 906, Iredell County Registry.

PARCEL 2:

BEGINNING at an existing iron, Twin Oaks Golf Course corner in the line of Anne Pornce, and runs from the beginning with the line of said Pornce and continuing with the line of Gillespie, North 83 deg. 30 min. 35 sec. West 921.36 feet to an existing iron, Gillespie's corner; thence with the line of said Gillespie, South 2 deg. 30 min. West 209.58 feet to an existing iron, common corners of Gillespie and Willie Belle Corry; thence with the new line of Willie Belle Corry, South 06 deg. 59 min. 40 sec. West 40.62 feet to the Northwestern corner of a 5.23 acre tract being conveyed to Charles Y. Corry and wife, by deed dated June 10, 1977; thence with the line of said Charles Y. Corry and wife, South 83 deg. 30 min. 35 sec. East 905.48 feet to the Northeastern corner of said Charles Y. Corry and wife in the line of the Twin Oaks Golf Course Property; thence with the line of said Golf Course Property; North 06 deg. 52 min. 10 sec. East 249.70 feet to the point of Beginning, containing 5.23 acres, more or less, and being the identical property described as SECOND TRACT in the deed from Willie Belle Corry, Widow, to Ethel Corry Holiday, dated June 10, 1977, and recorded in Deed Book 614, page 175, Iredell County Registry.

PARCEL 3:

BEGINNING at a point in the line of the Twin Oaks Golf Course Property, which point is located South 06 deg. 52 min. 10 sec. West 249.70 feet from an existing iron marking the Twin Oaks Golf Course corner in the line of Anne Pornce, which beginning point is also the Southwestern corner of a 5.23 acre tract being conveyed to Ethel Corry Holiday by deed dated June 10, 1977, and runs thence from the beginning with the line of said Twin Oaks Golf Course Property, South 06 deg. 52 min. 10 sec. West 251.60 feet to a point in said line, which point is located North 06 deg. 51 min. 10 sec. East 547.27 feet from the Northeastern corner of James McCombs as described in Deed Book 574, Page 546, Iredell County Registry, N.C.; thence North 83 deg. 30 min. 35 sec. West 906.03 feet to a stake; thence North 06 deg. 59 min. 40 sec. East 251.60 feet to the Southwestern corner of the 5.23 acre tract being conveyed to Ethel Corry Holiday; thence with the line of said Holiday, South 83 deg. 30 min. 35 sec. East 905.48 feet to the point BEGINNING, containing 5.23 acres, more or less, and being the second tract

in the deed from Willie Belle Corry, Widow, to Charles Y. Corry, and wife, Carolyn I. Corry, by deed dated June 10, 1977, and recorded in Book 651, page 362, Deed Records for Iredell County.

Parcel 4:

BEGINNING at the Northwestern corner of James McCombs as described in Deed Book 574, at page 546, in the line of William Stevenson and runs from the beginning with the line of William Stevenson and continuing with a new line of Willie Belle Corry, North 06 deg. 59 min. 40 sec. East 460.20 feet to the Southwestern corner of a 5.23 acre tract being conveyed to Charles Y. Corry and wife by deed of even date; thence with the line of said 5.23 acre tract, South 83 deg. 30 min. 35 sec. East 906.03 feet to the Southeastern corner of said 5.23 acre tract in the line of the Twin Oaks Golf Course Property; thence with the line of said Golf Course Property, South 06 deg. 52 min. 10 sec. West 547.27 feet to the Northeastern corner of James McCombs; thence with the line of said McCombs North 78 deg. 01 min. 20 sec. West 910.63 feet to the point of BEGINNING, containing 10.48 acres, more or less, according to a survey by R. B. Kestler, Jr., Registered Surveyor, dated December 5, 1967, and being the identical property described as Tract Two in the deed from Willie Belle Corry to Berthaline Corry Danner, dated June 10, 1977, and recorded in Deed Book 608, page 608, Iredell County Registry. For further back title see deed from Berthaline Corry Danner to George Costella Danner dated April 14, 1987, recorded in Book 747, page 377, Iredell County Registry, and deed from Donald L. Corry and wife to George Costella Danner dated October 16, 1987 and recorded in Deed Book 757, page 14, Iredell County Registry.

Parcel 5:

Being all that tract of land containing 17.879 acres by coordinate geometry lying and being in Chambersburg Township, Iredell County, North Carolina bounded by natural boundaries and/or lands owned by and/or in possession of persons as follows: on the east and north by the Woodridge Corporation (formerly Vernon C. Neall, Inc., Deed Book 756, Page 09, Tract III); on the east by NCSR #2319, commonly known as Twin Oaks Road; and on the south by Iredell County (Deed Book 744, Page 570 and Deed Book 816, Page 155); and being more particularly described by courses and distances according to a survey performed in September, 1991 by Municipal Engineering Services Co., P.A., under the direction and supervision of C. Neal Bare, RLS L-2425 as follows:

BEGINNING on an iron found at the northeast corner of Iredell County property (Deed Book 744, Page 570) at North 34 degrees 17 minutes 05 seconds East (NC Grid) 4859.19 feet (Horizontal Surface) from USGS Control Monument "Third" N.A.D. 1983 X=443,954.051m Y=224,594.659m; thence from the point of BEGINNING and along the dividing boundary line between said county and the aforesaid Woodridge Corporation properties the following six (6) courses and distances: (1) South 65 degrees 42 minutes 34 seconds West 226.09 feet to an iron found; (2) South 36 degrees 29 minutes 07 seconds East 17.44 feet to an iron found; (3) South 71 degrees 37 minutes 09 seconds West 613.56 feet to an iron found; (4) North 84 degrees 33 minutes 36 seconds West 1475.82 feet to an iron found in the eastern boundary of the Iredell County property (Deed Book 816, Page 155); (5) North 04 degrees 47 minutes 49 seconds East 153.67 feet to an iron found: and (6) South 85 degrees 10 minutes 10 seconds West 143.53 feet to an iron found at North 75 degrees 53 minutes 06 seconds East 127.05 feet from an iron rebar found; thence along a new line North 74 degrees 50 minutes 30 seconds West 16.30 feet to a point in the centerline of a branch, a tributary to Fourth Creek: thence down and along the center of said branch the following 44 courses and distances:

(1) North 30 degrees 05' 20" East 68.93'
(2) North 49 degrees 48' 58" East 95.27'
(3) North 54 degrees 56' 35" East 32.82'
(4) North 29 degrees 36' 14" West 36.47'
(5) North 69 degrees 01' 50" East 48.97'

(6) North 44 degrees 50' 34" East 66.31'
(7) North 74 degrees 01' 10" East 47.39'
(8) North 18 degrees 18' 37" East 40.62'
(9) North 76 degrees 25' 34" East 26.35'
(10) South 84 degrees 53' 34" East 70.55'
(11) North 37 degrees 55' 43" East 39.37'
(12) South 83 degrees 45' 27" East 43.11'
(13) South 60 degrees 31' 40" East 58.70'
(14) South 68 degrees 45' 37" East 84.89'
(15) South 63 degrees 41' 34" East 50.71'
(16) South 56 degrees 36' 07" East 79.24'
(17) South 74 degrees 27' 26" East 26.65'
(18) South 05 degrees 45' 55" East 18.46'
(19) South 68 degrees 16' 58" East 39.45'
(20) North 05 degrees 11' 38" East 17.28'
(21) North 77 degrees 02' 41" East 68.68'
(22) North 61 degrees 36' 18" East 73.20'
(23) South 78 degrees 08' 23" East 94.64'
(24) South 81 degrees 39' 16" East 63.60'
(25) North 87 degrees 22' 49" East 92.50'
(26) South 47 degrees 27' 07" East 31.12'
(27) South 85 degrees 32' 39" East 63.50'
(28) South 74 degrees 30' 37" East 81.08'
(29) South 68 degrees 02' 43" East 46.47'
(30) South 78 degrees 14' 03" East 85.81'
(31) South 88 degrees 33' 01" East 14.86'
(32) South 83 degrees 20' 10" East 73.94'
(33) South 59 degrees 22' 07" East 104.35'
(34) South 62 degrees 48' 13" East 32.53'
(35) South 63 degrees 57' 32" East 117.55'
(36) South 72 degrees 47' 30" East 82.60'
(37) North 63 degrees 14' 58" East 34.48'
(38) North 63 degrees 04' 52" East 78.04'
(39) North 40 degrees 45' 50" East 103.59'
(40) North 87 degrees 43' 58" East 24.62'
(41) North 25 degrees 58' 17" East 45.02'
(42) North 76 degrees 39' 57" East 110.44'
(43) North 77 degrees 47' 04" East 40.61'
(44) North 51 degrees 12' 29" East 63.73' to an iron set near the end of triple arch culverts carrying said branch under NCSR #2319; thence South 44 degrees 50 minutes 20 seconds East 261.13 feet to the point of BEGINNING.

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

HOUSE BILL 337:
Statesville Deannexation

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Rep. Howard	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 337 is a local bill that would remove certain described property from the corporate limits of the City of Statesville.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: House Bill 337 would remove certain property, which is described in the bill by metes and bounds, from the jurisdiction of the City of Statesville. The property described consists of a small public golf course and several small adjacent parcels. The property adjoins the Iredell County landfill. The City voluntarily annexed the property, at the request of a developer, to provide urban services to a housing development. However, the developer subsequently sold the property to Iredell County to use as an addition to its landfill. The necessity for the urban services, which prompted the voluntarily annexation, no longer exist. Both Iredell County and the City of Statesville support the deannexation of the property because it would simplify the County's permitting and operation of the property as part of its landfill and it would remove the City of Statesville from the burden of regulating and permitting a landfill.

EFFECTIVE DATE: House Bill 337 would become effective when it becomes law.

H337-SMRB-89(e1) v1

HOUSE BILL 1673
Committee Substitute Favorable 5/25/10
Third Edition Engrossed 6/10/10

Short Title: Municipal Tax Certification. (Local)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO HELP MUNICIPALITIES COLLECT DELINQUENT PROPERTY TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31 reads as rewritten:

"**§ 161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified ~~that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed.~~ all of the following:

(1) That no delinquent ad valorem county taxes are a lien on the property described in the deed.

(2) That no delinquent ad valorem municipal taxes are a lien on the property described in the deed. If a county tax collector is not charged with collecting ad valorem municipal taxes for a municipality in the county, then the resolution shall direct how the county tax collector is to receive the certification from the tax collector charged with collecting ad valorem municipal taxes.

(3) That no other taxes with which the collector is charged are a lien on the property described in the deed.

The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

(b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

SECTION 2. This act applies to Duplin County only.

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

HOUSE BILL 1673:
Municipal Tax Certification

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 22, 2010
Introduced by:	Rep. Tucker	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1673[1] is a local bill that applies to Duplin County only. The bill would modify the current law to address the circumstances where the county tax collector is not charged with collecting ad valorem municipal taxes. In those circumstances, the resolution would need to direct how the county tax collector is to receive certification from the tax collector charged with collecting ad valorem municipal taxes.

CURRENT LAW: G.S. 161-31(a) provides that the board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property unless the county tax collector has certified that there are no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. In the resolution, the county commissioners may describe the form the certification must take.

G.S. 161-31(a1) provides an exception. It requires that the register of deeds must accept, without certification, a deed that contains the following statement: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

BILL ANALYSIS: House Bill 1673 would clarify that the county tax collector must certify that all three categories of taxes in the current law are not a lien on the property described in the deed. It would also address the situation in Duplin County where the county tax collector is not charged with collecting ad valorem municipal taxes for a municipality in the county. In that instance, the resolution passed by the board of commissioners shall direct how the county tax collector is to receive certification from the tax collector charged with collecting ad valorem municipal taxes.

The act applies to Duplin County only.

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

Brad Krehely, counsel to House Judiciary II, and Martha Walston, counsel to House Finance, substantially contributed to this summary.

H1673-SMRB-87(e3) v2

[1] As introduced, this bill was identical to S1133, as introduced by Sen. Albertson, which is currently in Senate Finance. The bill has not been changed substantively.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1445*
PROPOSED COMMITTEE SUBSTITUTE S1445-CSLM-24 [v.2]

6/15/2010 3:06:52 PM

Short Title: Goldsboro-Wayne Municipal Airport/Changes. (Local)

Sponsors:

Referred to:

May 27, 2010

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF GOLDSBORO AND THE GOLDSBORO-WAYNE AIRPORT AUTHORITY TO CONVEY BY PRIVATE NEGOTIATION AND SALE ITS RIGHT, TITLE, AND INTEREST IN THE GOLDSBORO-WAYNE MUNICIPAL AIRPORT TO WAYNE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Goldsboro may convey by private negotiation and sale, with or without monetary consideration, under the terms and conditions it deems proper, any or all of its right, title, and interest in the following described property, known as the Goldsboro-Wayne Municipal Airport, to Wayne County:

BEGINNING at a point on the western right-of-way of Mt. Carmel Church Road and running southwesterly a distance of approximately 162 feet to the northwestern corner of 06-3612-17-7907; thence proceeding in a southwesterly direction a distance of approximately 612 feet to a point on the northern property line of 06-3612-07-5438; thence continuing along this line a distance of approximately 1,301 feet to the northwestern corner of 06-3612-06-0547; thence continuing along the line of 06-3612-06-0547 a distance of approximately 939 feet to a point on the northeastern corner of 06-3602-85-1420; thence from that point, continuing in a northwesterly direction a distance of approximately 783 feet to the northwestern corner of 06-3602-85-1420; thence continuing in a southwesterly direction a distance of approximately 1,051 feet to the northeastern property line of 06-3602-75-1582; thence extending in a northwesterly direction a distance of approximately 835 feet to the northwestern property line of 06-3602-75-1582; thence continuing in a southwesterly direction a distance of approximately 229 feet to the southwestern corner of 06-3602-75-1582; thence continuing in a southeasterly direction a distance of approximately 842 feet to a point near the northwestern corner of 06-3602-74-2736; thence extending in a southwesterly direction a distance of approximately 637 feet to a point on the property line of 06-3602-74-2736; thence turning and extending northwesterly a distance of approximately 1,003 feet to the northwestern corner of 06-3602-64-5889; thence extending in a southwesterly direction a distance of approximately 1,092 feet to the eastern right-of-way line of Airport Road; thence running in a southerly direction along the eastern right-of-way of Airport Road a distance of approximately 37 feet to the southwestern corner of 06-3602-64-5889; thence turning and extending northwesterly a distance of approximately 442 feet to a point on the southern property line of 06-3602-64-5889; then continuing in a southeasterly direction a distance of approximately 966 feet to a point on

the southern property line of 06-3602-64-5889; thence continuing in a southerly direction a distance of approximately 547 feet to a point on the northern right-of-way of Aviation Road; thence turning and extending in a northeasterly direction a distance of approximately 388 feet to the southeastern corner of 06-3602-74-2736; thence turning and extending along the right-of-way terminus for Aviation Road a distance of approximately 68 feet to the northeastern property line of 06-3602-63-5707; thence turning and extending in a southwesterly direction a distance of approximately 1,325 feet to a point on the northwestern corner of 06-3602-63-5707; thence turning and proceeding in southwesterly direction a distance of approximately 109 feet to the western property line of 06-3602-63-5707; thence proceeding southeasterly a distance of approximately 1,331 feet to a point on the southern line of 06-3602-63-5707; thence turning and extending in a southwesterly direction a distance of approximately 989 feet; thence turning and extending in a southeasterly direction a distance of approximately 48 feet; thence turning and extending in a southwesterly direction a distance of approximately 915 feet to the southwestern property corner of 06-3602-62-7208; thence turning and extending in a southeasterly direction a distance of approximately 930 feet; thence turning and extending in a northerly direction a distance of approximately 60 feet; thence turning and following the southern property line of 06-3602-62-7208 in a southeasterly direction a distance of approximately 343 feet; thence extending in a northeasterly direction a distance of approximately 1,976 feet to a point on the eastern property line of 06-3602-72-4566; thence extending in a southeasterly direction a distance of 548 ft. to the eastern property line of 06-3602-72-1121; then turning and extending in a northwesterly direction a distance of approximately 536 ft. to a point on the eastern property line of 06-3602-62-7208; thence turning and extending in a northeasterly direction a distance of approximately 821 feet to the northeastern corner of 06-3602-62-7208; thence turning and extending in a westerly direction a distance of approximately 70 ft. to a point at the southeastern corner of 06-3602-84-3207; thence continuing in a northerly direction a distance of approximately 2,255 ft. to the southeastern property corner of 06-3602-95-7457; thence continuing in a northeasterly direction a distance of approximately 1,918 ft. to a point in the eastern property line of 06-3612-06-0547; thence continuing in a northeasterly direction a distance of approximately 1,271 ft. to the southwestern property corner of 06-3612-17-7907; thence continuing on the line a distance of approximately 203 ft. to the western right-of-way of Mt. Carmel Church Road; thence turning and extending a distance of approximately 755 ft. to the point of beginning and containing approximately 12,605,392 sq. ft., or 289.38 acres, more or less.

SECTION 1.(b) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Goldsboro may convey by private negotiation and sale, with or without monetary consideration, under the terms and conditions it deems proper, any or all of its right, title, and interest in any property not included in subsection (a) of this section and owned by the City of Goldsboro for the operation of the Goldsboro-Wayne Municipal Airport to Wayne County.

SECTION 2. The Goldsboro-Wayne Airport Authority shall convey all real and personal property owned by the Goldsboro-Wayne Airport Authority to Wayne County no later than July 15, 2010.

SECTION 3. The Goldsboro-Wayne Airport Authority shall assign all of its leases and contracts to Wayne County and the assignment shall become effective July 15, 2010.

SECTION 4. Wayne County shall accept all liabilities of the Goldsboro-Wayne Airport Authority beginning July 15, 2010.

SECTION 5. Chapter 927 of the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws and S.L. 1998-20, reads as rewritten:

"Section 1. Airport or landing field, for the purposes of this and the Sections following, is defined as any plot of land or water formally set aside, and designated as a place where aircraft may land or take off.

"Sec. 2. The governing ~~bodies~~ body of the ~~City of Goldsboro, and of the~~ County of Wayne ~~are~~ is hereby authorized to ~~jointly~~ acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of ~~said~~ the County, and may use for such purpose or purposes any properties suitable therefor that are now or may at any time hereafter be ~~jointly~~ owned or controlled by ~~said City~~the County.

"Sec. 3. Any lands acquired, owned, controlled, or occupied by ~~said City and~~the County for the purposes enumerated in Section 2 hereof shall and are hereby declared to be acquired, owned, controlled and occupied for public purpose, and ~~said City and~~the County shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public purpose.

"Sec. 4. Private property needed by the ~~said City and~~County for an airport or landing field may be acquired by gift or devise or shall be acquired by purchase if ~~said City and~~the County ~~are~~ is able to agree with the owners on the terms thereof, and otherwise by condemnation, in the manner provided by law under which the ~~said City and~~ County ~~are~~ is authorized to acquire real property for public purposes, other than street purposes, or if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price, or award, for property acquired for an airport or landing field may be paid for by appropriation of monies available therefor, or by the application of any funds derived by ~~said City or by said~~the County from the sale of any lands now or heretofore or hereafter owned for airport or landing field purposes or other purposes, or wholly or partly from the proceeds of the sale of bonds of ~~said City or of said~~the County as the governing bodies of ~~such City and~~the County shall determine.

"Sec. 5. The power to acquire lands by condemnation herein granted to the ~~said City and~~ County for the purpose of such airport or landing field shall embrace the power to acquire by condemnation any dwelling, yard, orchard, garden, kitchen, burial ground, graveyard or cemetery located or situate upon the lands found necessary to be acquired for such purpose; and in the event there are graves located upon such lands which may be necessary to be acquired by condemnation, it shall be lawful for ~~said City and~~the County, after thirty days' notice to the surviving husband or wife, or next of kin of the deceased buried therein, or the person in control of such graves, if any are known, and if not known, then after publishing a notice once a week for four (4) weeks in a newspaper published in Wayne County, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and reinter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the County or by the Clerk of the Superior Court of said County in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reinterring said remains. Due care shall also be taken to remove all tombstones and other markers from said graves, and to protect and replace all such tombstones or other markers so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the County, if one, or his representatives, but if there is no welfare officer, then under the supervision and direction of the Clerk of the Superior Court of said County, or his representatives. All the expense connected with said work, including the actual expense of one of "next of kin" in attending to same, if one does attend, shall be borne by the ~~said City and~~County doing or causing same to be done.

"Sec. 6. The governing ~~bodies of said City and County and each of them are~~body of the County is hereby authorized to appropriate and use from the net proceeds derived by the ~~said City or~~ County from the operation of any public utility, or from funds derived from any source other than ad valorem taxes, sums sufficient to carry out the provisions of this Act as to the establishment and maintenance of any ~~airport in such proportion and upon such equal basis as may be determined upon by a joint board to be appointed by the governing bodies of the said~~

~~City and County; provided~~ airport. However, nothing herein shall be construed to permit the governing ~~bodies of said City or~~body of the County to issue bonds under the provisions of this Act without a vote of the people.

"Sec. 7. The ~~joint~~ board to be appointed by the governing ~~bodies of the said City and~~body of the County shall be appointed as follows:

~~Said City shall be entitled to have three (3) representatives on said board and the representatives shall be appointed biennially by a majority of the governing body of the said City, at the first regular meeting in January. Said representatives shall hold office from their appointment until their successors are appointed and qualified and until the first regular meeting of the governing body in the second January thereafter, when successors shall be appointed.~~

~~Said~~ The County shall be entitled to have ~~three (3)~~six representatives on ~~said~~ the board and the representatives shall be appointed biennially by a majority of the board of county commissioners of said County at the first regular meeting in January. ~~Said~~ The representatives shall hold office from their appointment until their successors are appointed and qualified and until the first regular meeting of the board of county commissioners in the second January thereafter, when successors shall be appointed. The ~~said~~ board so appointed by the governing ~~bodies of the City and~~body of the County shall be known as the ~~"Goldsboro-Wayne Airport Authority".~~ "Wayne County Airport Authority." Upon the occurrence of any vacancy on ~~said~~ the board, ~~said~~ the vacancy shall be filled within sixty (60) days after notice thereof by a majority of the governing body of the ~~City or County which has a vacancy within its representation.~~ County.

"Sec. 8. ~~The board, appointed as herein provided by the governing bodies of said City and County,~~The County shall act in an administrative capacity and it is hereby authorized and empowered:

(a) To establish, construct, control, lease, maintain, improve, operate and regulate joint airports and landing fields established under the provisions of this Act; to have complete authority over any airport or landing field ~~jointly~~ acquired, established, or constructed by ~~said City and County represented on said board.~~the County.

(b) (1) To adopt, repeal, amend, readopt rules, regulations, laws and ordinances not inconsistent with this Act, for its own government, management and operation; and

(2) To adopt, repeal, amend and readopt rules, regulations and ordinances with respect to traffic on and use of streets, alleys, driveways, roadways, parking areas, crosswalks and safety areas (not included in the public road system of the State of North Carolina) located within the territorial limits of the lands comprising the ~~Goldsboro-Wayne Airport,~~Wayne County Airport, including by way of illustration but not in limitation of the authority herein granted, the establishment of routes of traffic, the regulation of speed, the location of parking areas, the regulation and prohibition of parking and standing in designated areas and on said streets, driveways, alleys and roadways, the prohibition of obstruction thereof, the prohibition of vehicles and pedestrians on the aprons, ramps, taxiways, runways and other designated parts of the Airport.

(3) To adopt, repeal, amend and readopt rules, regulations, and ordinances with respect to the use of the Airport and its facilities by the public, including by way of illustration but not in limitation of the authority granted, the Terminal Building, the ramps, aprons, hangars, taxiways, runways, water plants and shops, and to prohibit the use of, occupation of, or trespass upon any part thereof.

(c) To lease real or personal property under the supervision of or administered by the ~~Authority, without the joinder in the lease agreements of the owning units of local government, to wit, the County of Wayne and the City of Goldsboro,~~ County for purposes that the ~~board~~ County considers advantageous or conducive to the development of the Airport and that are not inconsistent with the grants and agreements under which the Airport is ~~held by the owning units of local government.~~held. The term of a lease to the City of ~~Goldsboro, Wayne County,~~ Goldsboro or Wayne Community College may not exceed 50 years. The term of a lease to any other lessee may not exceed 20 years.

(d) To contract with persons, firms or corporations for terms not to exceed twenty (20) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities, not inconsistent with said grant agreements under which the airport property is held by the owning municipal corporations, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(e) To operate, own, control, regulate, lease or grant to others the right to operate any airport premises, restaurants, apartments, hotels, motels, tracks, motion picture shows, cafes, soda fountains, or other businesses, amusements or concessions for a term not exceeding twenty (20) years, as may appear to said ~~Authority~~ County advantageous or conducive to the development of said Airport.

(f) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the Airport is held; to lease the same for a term or terms not to exceed twenty (20) years, to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized.

(g) To expend funds appropriated from time to time by ~~said City and County, jointly or severally, for joint airport~~the County for airport purposes, and to appropriate and expend for airport purposes funds received by it from fees, charges, rents and dues arriving out of the operation of said Airport, the facilities, improvements and concessions located thereat or operated thereon.

~~(h) To enter into contracts and to pledge the credit of the said Airport Authority to the extent herein authorized; provided, however, that neither said Airport Authority nor the individual members thereof shall have authority to pledge the credit of or contract for the City of Goldsboro or the County of Wayne.~~

(i) To contract and deal with the Federal Aviation Authority of the United States Government and any other representative or agency of said government relating to the grading, constructing, equipping, improving, maintaining and operation of airports and landing fields acquired under the authority of this Act.

"Sec. 9. A majority of the ~~Goldsboro-Wayne~~Wayne County Airport Authority members shall control its decisions. Each member of the Authority, including the chairman, shall have one vote. The Authority shall elect annually in April, from among its members, a chairman, a vice chairman, a secretary and treasurer. In the absence of rules of the Authority in respect thereof, the Authority shall meet at such places and times as the chairman shall designate. Each member of said Authority shall take an oath of office to faithfully perform his duties. All members of said Authority shall serve without compensation.

"Sec. 10. The ~~Goldsboro-Wayne~~ Wayne County Airport Authority shall in no case be liable for damages for injuries to persons or property caused by or growing out of fueling, refueling or servicing any airplane at said Airport, or from falling, exploding and burning airplanes. Members of said Authority shall not be personally liable in any manner for their acts as members of the Authority, except for misfeasance or malfeasance.

"Sec. 11. The Authority shall operate under a budget on a fiscal year basis from July 1 to June 30, and shall make its requests for appropriations from the ~~City of Goldsboro and the~~ County of Wayne in the same manner as that provided under the Fiscal Control Act, and shall maintain complete and adequate records of all receipts and disbursements to be audited and reported thereon at least annually to the ~~City of Goldsboro and~~ County of Wayne as required by the aforesaid Fiscal Control Act. The treasurer shall furnish bond in some surety company authorized to do business in North Carolina, in the amount to be fixed by the Wayne County Board of ~~Commissioners and the Board of Aldermen of the City of Goldsboro.~~Commissioners.

"Sec. 12. It is hereby declared to be the policy of the State of North Carolina to promote, encourage and develop air transportation, service and facilities in connection with the commerce of the United States and to foster and preserve air transportation; and the area including the County of Wayne ~~and the City of Goldsboro~~ is hereby declared to be an area which should be developed in connection with the interior of the State of North Carolina and other states and it is hereby declared to be necessary and desirable and in the public interest of the entire State that there shall be established air transportation facilities in such area in accordance with the provisions of the Acts of Congress and the laws of this State. The ~~joint~~ Authority established pursuant to the provisions of this Act shall be regarded as performing an essential governmental function in undertaking the construction, maintenance and operation of the facilities herein provided for and in carrying out the provisions of this Act, and shall be required to pay no taxes or assessments upon any of the property acquired or used by it for such purposes. Except as herein specifically otherwise provided, the provisions of Chapter 63 of the General Statutes of North Carolina shall be applicable to the ~~joint~~ Authority herein established. To the extent that G.S. 63-53 requires that the ~~Goldsboro-Wayne~~Wayne County Airport Authority follow the provisions of G.S. 160A-272, G.S. 160A-272 shall be applied by substituting 'the maximum term provided in Section 8 of this act' for '10 years' in each place those words and figures appear.

"Sec. 13. All rules, regulations and ordinances adopted pursuant to the authority of this Act shall be recorded in the proceedings of the ~~Goldsboro-Wayne~~Wayne County Airport Authority and Wayne County and a true copy of all such rules, regulations and ordinances, certified under the hand of the secretary and the seal of the ~~Authority,~~Authority or the clerk to the Board of County Commissioners of Wayne County, shall be filed with the Board of County Commissioners of Wayne ~~County and the Board of Aldermen of the City of Goldsboro.~~County.

The ~~Goldsboro-Wayne~~Wayne County Airport Authority and Wayne County shall cause to be posted at appropriate places on the ~~Goldsboro-Wayne~~Wayne County Airport, notice to the public of applicable rules, regulations and ordinances pertaining to the ~~Goldsboro-Wayne~~Wayne County Airport.

Any person violating any rule, regulation or ordinance adopted pursuant to Section 8 (b) (2) and (b) (3) shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty (30) days.

"Sec. 14. This Act shall apply only to ~~the City of Goldsboro and~~ the County of Wayne.

"Sec. 15. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The General Assembly expressly declares that it would have passed the remaining parts of this Act, if it had known that such part or parts thereof would be declared unconstitutional.

"Sec. 16. This Act shall take effect from and after its ratification."

SECTION 6. The terms of the three representatives appointed by the City of Goldsboro to serve on the Goldsboro-Wayne Airport Authority shall expire on July 15, 2010. Within 30 days after this act becomes law, the governing body of Wayne County shall appoint three representatives to the Wayne County Airport Authority, as enacted by Section 5 of this act, to hold office until their successors are appointed in the manner set forth in Chapter 972 of

the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws, S.L. 1998-20, and Section 5 of this act.

SECTION 7. The General Assembly hereby ratifies the action of the North Carolina Local Government Commission in approving the loan and financing agreement from Branch Banking & Trust to the Goldsboro-Wayne Airport Authority on December 4, 2007, and authorizes Wayne County to make payments pursuant to the financing agreement.

SECTION 8. Nothing in this act shall be deemed to affect any pending litigation involving the Goldsboro-Wayne Municipal Airport or the Goldsboro-Wayne Airport Authority.

SECTION 9. This act is effective when it becomes law.

SENATE BILL 1445:
Goldsboro-Wayne Airport Authority/Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 22, 2010
Introduced by:	Sen. Davis	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to First Edition S1445-CSLM-24		

SUMMARY: ***Senate Bill 1445[1] authorizes the City of Goldsboro to convey its interest in the Goldsboro-Wayne Municipal Airport to Wayne County by private negotiation and sale. The proposed committee substitute adds Sections 1(b), 2, 3, 4, and 7 to the bill. These sections would complete the transition of property, leases, liabilities, and financing agreements from the Goldsboro-Wayne Airport Authority to Wayne County. The PCS also changes the effective date from October 1, 2010, to when it becomes law.***

CURRENT LAW: The sale and disposition of municipal property is governed by Article 12 of Chapter 160A of the General Statutes. According to the procedures prescribed in that Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more may be exchanged, or may be sold by any method listed above *other than private negotiation and sale.* An exception (G.S. 160A-277) applies for the sale of land to a volunteer fire department or to a volunteer rescue squad for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city. Another exception (G.S. 160A-279) applies to the sale of property to entities that carry out a public purpose, provided no property acquired by the exercise of eminent domain may be conveyed under that provision.

BILL ANALYSIS: Senate Bill 1445 authorizes the City of Goldsboro to convey its interest in the Goldsboro-Wayne Municipal Airport to Wayne County by private negotiation and sale. The bill also amends the 1963 Session Law that authorized the City of Goldsboro and the County of Wayne to jointly establish an airport, making the county solely responsible for operation of the airport. The county commissioners will appoint a 6-member board that will constitute the Wayne Airport Authority. The terms of the three representatives currently serving on the joint Goldsboro-Wayne Airport Authority under appointment by the City of Goldsboro will expire on July 15, 2010.

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

Brenda Carter, counsel to the Senate Judiciary II Committee, substantially contributed to this summary.

S1445-SMRB-88(CSLM-24) v1

[1] As introduced, this bill was identical to H2057, as introduced by Rep. Sager, which is currently in House Local Government I, if favorable, Transportation.

H

HOUSE BILL 1687*

Short Title:	Caswell Beach Sewer Treatment Fee.	(Local)
Sponsors:	Representatives Iler; Hill and Hughes.	
Referred to:	Local Government I, if favorable, Finance.	

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF CASWELL BEACH TO IMPOSE A SEWER TREATMENT FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2004-96, as amended by S.L. 2006-54, reads as rewritten:

"**SECTION 8.** This act applies only within the Towns of Caswell Beach, Holden Beach and Oak Island."

SECTION 2. Section 4 of S.L. 2004-96 reads as rewritten:

"**SECTION 4.** Fees. – The fees imposed by the municipality may not exceed the cost of providing the sewer collection facility within the municipality and the cost of the contract with a county or other municipality to provide it with the facilities to transport, treat, and dispose of the municipality's effluent. Said fees shall be imposed on owners of each dwelling unit or parcel of property that could or does benefit from the availability of sewage treatment."

SECTION 3. Section 6 of S.L. 2004-96 reads as rewritten:

"**SECTION 6.** Use of Fees. – The Town shall credit the fees collected within the district to a separate fund to be used only to pay the debt service for the sewer system. The governing board of the municipality shall administer the fund to provide for the payment of said sewer services provided by the ~~county.~~county or other municipality."

SECTION 4. Sections 2 and 3 of this act apply only to the Town of Caswell Beach.

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

HOUSE BILL 1687:
Caswell Beach Sewer Treatment Fee

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Rep. Iler	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1687 authorizes the Town of Caswell Beach to create a fee-supported sewer treatment district.***

[As introduced, this bill was identical to S1123, as introduced by Sen. Soles, which is currently in Senate Finance.]

CURRENT LAW: Current general law authorizes municipalities to "acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of" a "public enterprise"(G.S. 160A-312), which includes "wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems" (G.S. 160A-311). Municipalities are authorized to establish a schedule of rates and fees for "the use of or the services furnished by any public enterprise" (G.S. 160A-314). For unconnected developed properties, a municipality may require payment of a periodic availability charge for water or sewer service. (G.S.160A-317).

BILL ANALYSIS: House Bill 1687, applicable to the Town of Caswell Beach:

- Authorizes the Town to create a fee-supported sewer district for all properties that are or can be served by the sewage collection and treatment plant serving properties within the Town.
- Authorizes the Town to impose annual fees for the availability of the sewer service.
- Provides that fees not exceed the cost of providing the sewer collection facility within the municipality, and the cost of the contract with a county to provide it with facilities to transport, treat, and dispose of the Town's sewage.
- Provides that fees shall be imposed on each dwelling unit or parcel that could or does benefit from the availability of sewage treatment.
- Provides that the fee may be included on the property tax bill, and collected in the same manner as the collection of property taxes.
- Provides that the fee is to be used only for debt service for the sewer system.
- Authorizes abolition of the district, if no longer needed.

The method of financing authorized by this bill would enable the Town to impose fees on the owners of vacant lots and use the fees for capital costs.

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

BACKGROUND: Similar authority has been granted to the Towns of Holden Beach (S.L. 2004-96) and Oak Island (S.L. 2006-54). The Town of Caswell Beach has contracted with the City of Oak Island to provide sewer treatment for the town.

Giles Perry, counsel to House Local Government I, substantially contributed to this summary.

H1687-SMTD-178(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 76
Committee Substitute Favorable 4/1/09
Committee Substitute #2 Favorable 4/8/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H76-CSTD-98 [v.3]

6/23/2010 11:48:50 AM

Short Title: Honor Wishes of Members of Military/Remains. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A MEMBER OF THE MILITARY TO DESIGNATE THE TYPE, PLACE, AND METHOD OF DISPOSITION OF THE INDIVIDUAL'S REMAINS BY COMPLETING THE UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA, DD FORM 93, OR ITS SUCCESSOR FORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-420(a) reads as rewritten:

"(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:

(1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.

(2) Pursuant to a written will.

(3) Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.

(4) Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

(a1) An individual at least 18 years of age may ~~also~~ delegate his or her right to dispose of his or her own dead human body to any person by one of the following methods:

(1) ~~any~~ Any means authorized in subdivisions (1) through (3) of ~~this subsection.~~ subsection (a) of this section.

(2) By completing United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form. A delegation made by filling out this form shall only be effective if the individual dies under the circumstances described in 10 U.S.C. § 1481(a)(1) through (8). A delegation under this subdivision takes precedence over any of the methods set forth in this section."

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

HOUSE BILL 76:
Honor Wishes of Members of Military/Remains.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Reps. Glazier, Yongue	**Prepared by:**	Heather Fennell
Analysis of:	PCS to Third Edition H76-CSTD-98		Committee Counsel

SUMMARY: The proposed committee substitute to House Bill 76 would allow a service member to designate the disposition of his or her remains through forms required by military service.

CURRENT LAW: G.S. 130A-420 provides the manner in which an individual may authorize the disposition of his or her body after death. Individuals may authorize the disposition in a health care power of attorney, or may authorize or delegate the authorization to another through a preneed funeral contract, a will, or a written statement witnessed by two individuals. If an individual does not authorize a method of disposal, the statute lists the individuals who may authorize the disposition, including surviving spouse, surviving children that have reached maturity, surviving parents,

Service members may designate individuals to direct the disposition of the service member's body after death on DD Form 93, the Record of Emergency Data. 10 U.S.C.1482 provides that only a surviving spouse, blood relative, adoptive relative, or person standing in loco parentis to the decedent may be designated to direct the disposition of the body. This form is not recognized in this State under G.S. 130A-420 as a legal designation for the disposition of remains.

BILL ANALYSIS: The PCS to House bill 76 would allow a service member's designation on DD Form 93 to be recognized under G.S. 130A-420 as an authorized designation. The delegation on this form is only effective if the individual dies while on duty status as provided in 10 U.S.C. 1481.

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

H76-SMTD-173(CSTD-98) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1143
Committee Substitute Favorable 4/30/09

Short Title: Military Wartime Veteran Special Plate Change. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO PRODUCE ALL MILITARY WARTIME VETERAN SPECIAL PLATES BASED ON DEFINED PERIODS OF WAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(76) reads as rewritten:

"(76) Military Wartime Veteran. – Issuable to either a member or veteran of the armed services of the United States who served during a period of ~~war.~~ war who received a campaign or expeditionary ribbon or medal for their service. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. ~~Except for World War II and Korean Conflict plates, the~~The Division may not issue ~~a~~ the plate authorized by this subdivision unless it receives ~~at least~~a total of 300 applications for ~~that~~ all periods of war, combined, to be represented on this plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.
b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.
c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
f. Operation Enduring Freedom, meaning the period beginning October 24, 2001, and ending at a date to be determined.
g. Operation Iraqi Freedom, meaning the period beginning March 19, 2003, and ending at a date to be determined.
h. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal."

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

HOUSE BILL 1143:
Military Wartime Veteran Special Plate Change

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Reps. Martin, Dickson, McLawhorn	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1143 amends the requirements for the issuance of a special plate based upon wartime service in the military. This act is effective when it becomes law.***

[As introduced, this bill was identical to S298, as introduced by Sen. Hunt, which is currently in Senate Finance.]

CURRENT LAW: Veterans who served honorably during periods of war, as specified by statute, are eligible for a special Military Wartime Veteran license plate. The Division of Motor Vehicles must receive at least 300 plates for a specific period of wartime service in order to begin issuing plates for that period.

BILL ANALYSIS: House Bill 1143 changes the requirements for issuance of Military Wartime Veteran license plates, as follows:

- Requires that an applicant for a Military Wartime Veteran license plate have received a campaign or expeditionary ribbon or medal for the applicable period of war service, in order to qualify for the special plate; and
- Provides that DMV is authorized to count applications relating to any of the periods of war listed in reaching the total of 300 applications necessary to issue the special plate.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1184
PROPOSED COMMITTEE SUBSTITUTE S1184-CSTDx-86 [v.2]

6/3/2010 5:27:25 PM

Short Title: Equal Tax on Cigars That Look Like Cigarette. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO TAX CIGARS THAT ARE DESIGNED TO LOOK LIKE CIGARETTES THE SAME AS CIGARETTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

...

(1a) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

c. A roll of tobacco wrapped in a substance containing tobacco that weighs less than 4.5 pounds per thousand and has an integrated filter.

...."

SECTION 2. This act becomes effective October 1, 2010.

SENATE BILL 1184:
Equal Tax on Cigars That Look Like Cigarette

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Sen. Stein	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1184-CSTDx-86		

SUMMARY: ***The proposed committee substitute to Senate Bill 1184 would tax little cigars as cigarettes.***

CURRENT LAW: Under G.S. 105-113.5 cigarettes are taxed at the rate of 45¢ per pack. Under G.S. 105-113.35 other tobacco products (OTP) are taxed at 12.8% of the cost price of the products. Little cigars are taxed as OTP.

BILL ANALYSIS: The PCS to Senate Bill 1184 would add to the definition of cigarettes the rolls of tobacco that are wrapped in a substance containing tobacco that weighs less than 4.5 pounds per thousand and has an integrated filter.

EFFECTIVE DATE: This bill would be effective October 1, 2010.

BACKGROUND: Little cigars are a fast growing segment of the tobacco industry. Most packages of little cigars cannot be distinguished from cigarettes and are marketed as cigarettes. Currently taxed as OTP in North Carolina, packages of little cigars are less expensive than cigarettes. The average tax on a pack of little cigars is 32¢, where cigarettes are taxed at 45¢ per pack.

Twelve states and the Federal government tax little cigars as cigarettes

S1184-SMTD-176(CSTDx-86) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 23, 2010

TO: Senate Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: Equal Tax on Cigars that Look Like Cigarettes, SB 1184 (PCS)

FISCAL IMPACT ($ In Millions)

Yes (X)	No ( )	No Estimate Available ( )		
FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES:	$2.67	$3.74	$3.93	$4.13
EXPENDITURES:				
POSITIONS (cumulative):				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: October 1, 2010

BILL SUMMARY: The bill clarifies that if a product fits the revised definition of a cigarette, such product will be treated for purposes of the excise tax law as a cigarette. The new cigarette definition now includes, "a roll of tobacco wrapped in a substance containing tobacco that weighs less than 4.5 pounds per thousand and has an integrated filter." This expanded definition of a cigarette includes products federally defined as little cigars. The SB 1184 definition also includes

a new type of large cigar, which developed as a result of the April 2009 Federal tax increase on cigarettes and little cigars.

Federal law defines little cigars as rolled tobacco products weighing less than three pounds per thousand. In April 2009, the Federal cigarette excise tax rate increased to $0.61 per pack. The new law also began to include little cigars, a product previously taxed as cigars, under the cigarette excise tax. In an effort to avoid the tax increase, producers developed a new cigarette-like product, increasing the product weight but still maintaining the look of a cigarette.

Under North Carolina law, little cigars as well as rolled tobacco products weighing between three pounds per thousand and 4.5 pounds per thousand are classified as Other Tobacco Products (OTP) and taxed at a rate of 12.8% of wholesale price. This proposal modifies the definition of cigarettes adding certain weight and size requirements. The change would also include products federally defined as little cigars and large cigars weighing between three and 4.5 pounds per thousand. The SB 1184 modification increases the tax rate on these products to 45-cents per pack.

ASSUMPTIONS AND METHODOLOGY:
Fiscal Research estimates that SB 1184 will generate roughly $2.67 million dollars in FY 10-11 and roughly $4.0 million in subsequent fiscal years. Fiscal Research used data from the Center for Disease Control, the United States Department of the Treasury: Alcohol and Tobacco Tax and Trade Bureau (TTB), the National Association of Attorneys General, and fiscal estimates in other states to calculate the fiscal impact of expanding the definition of cigarettes.

The fiscal estimate for expanding the definition of cigarettes includes a two-fold analysis: 1) estimating the number of little cigars, and 2) estimating the number of "newly-defined cigarettes," rolled tobacco products weighing between three and 4.5 pounds per thousand. As shown in Table 1, 2.1 billion little cigars were sold in the U.S. in 2009. Table 1, also highlights an emerging trend, a drastic increase in the volume of large cigars sold in the U.S. Industry experts as well as an analysis of similar legislation in Minnesota suggests that the growth in large, Class A-G cigars, reflects the production of cigarette-like products weighing between three and 4.5 pounds per thousand.[1]

Table 1: Number of Cigarettes and Cigars (Little and Class A-G) Imported to the U.S, 2005-2009, Quantity in Millions

	Dec-04	Dec-05	Dec-06	Dec-07	Dec-08	Dec-09
Cigarettes-Small	374,978	362,964	364,437	348,317	335,384	308,388
Cigars-Small	2,702	3,772	4,162	4,850	5,471	2,151
Cigars-Large, Class A-G	2,578	2,231	2,016	2,032	1,843	6,978
Total	380,258	368,967	370,616	355,199	342,698	317,517
Annual Change in Tobacco Consumption		**-3.0%**	**0.4%**	**-4.2%**	**-3.5%**	**-7.3%**

Source: 2004-2009 December Reports, Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Statistical Report

[1] Minnesota Department of Revenue. "Analysis of H.F. 3467 (Davnie)." Published April 27, 2010. Available at: http://www.taxes.state.mn.us/legal_policy/revenue_analysis/2009_2010/house_files/hf3467_sf3055__3.pdf.

Table 2 illustrates the percentage that each tobacco product—cigarettes (small), little cigars (cigars small), and cigars (large, class A-G)—represents of total annual sales between 2004 and 2009. As shown below, large cigars consistently represented between 0.7% and 0.5% of total cigarette and cigar sales for five years. In 2009, when the Federal cigarette and little cigar excise tax increased, large cigars sales increased by 1.7 percentage points. Assuming the increase in large cigars represents the development of a new product, 5.2 billion cigarette-like rolled tobacco products weighing between three and 4.5 pounds were sold in the U.S. in 2009.

Taxable Cigarettes and Cigars (Little and Class A-G) Imported to the U.S as a Share of the Total, 2005-2009						
	2004	**2005**	**2006**	**2007**	**2008**	**2009**
Cigarettes-Small	98.6%	98.4%	98.3%	98.1%	97.9%	97.1%
Cigars-Small	0.7%	1.0%	1.1%	1.4%	1.6%	0.7%
Cigars-Large Class A-G	0.7%	0.6%	0.5%	0.6%	0.5%	2.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Percentage Point Change in Large Cigars as a Share of Total		-0.07%	-0.06%	0.03%	-0.03%	1.66%
Number of SB 1184-Defined Cigarettes Potentially Classified as Cigars		-1,636,290	-1,222,146	567,476	-632,027	5,270,870,081
Source: 2004-2009 December Reports, Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Statistical Report						

Using the SB 1184 revised cigarette definition, 7.4 billion cigarettes were sold in the U.S. in 2009. North Carolina accounts for 3.4% of national cigarette sales according to the CDC. This figure serves as a proxy for the state's little cigar and other tobacco product market share. Multiplying North Carolina's market share for cigarettes (3.4%) by national little cigar sales and new potential cigarettes (7.4 billion packs) and then dividing the result by the number of cigarettes sold in a pack (20), Fiscal estimates that an additional 12.6 million packs would be defined as cigarettes in North Carolina each year.

If the 12.6 million pack sales were classified for purposes of the excise tax as cigarettes, the State would collect $4.8 million in cigarette excise taxes (12.6 million packs * percent change in quantity demanded*excise tax).[2] The $4.8 million in cigarette excise taxes less the $1.3 million in OTP taxes (little cigar wholesale price $0.85 cents per pack * 12.8%) associated with little cigars equals $3.4 million in FY 09-10. This figure earmarked by an annual five percent growth rate (a conservative estimate given the national annual growth in sales as noted by the American Legacy Foundation), equals roughly $4.0 million per full fiscal year.

[2] Percent change in quantity demanded = % change in price * price elasticity. In the case of little cigars the % change in quantity demanded equals (1 +(($0.45 excise tax rate on cigarettes -($1.65 price of little cigars *12.8% tax rate))/$0.45 excise tax rate on cigarettes)*-0.4)

The estimate of current OTP tax collections associated with SB 1184, $2.67 million in FY 10-11, utilizes information from the analysis of a similar bill from the Minnesota Department of Revenue. The Minnesota brief indicates that in 2009 the wholesale price for little cigars equaled $0.84 per pack. To be conservative, Fiscal utilized Minnesota's pricing information for little cigars. Examples from the National Association of Attorneys General assume a $0.72 per pack wholesale cost for little cigars. A lower wholesale price than the assumed $0.84 per pack would create a wider margin between the taxes North Carolina currently collects on little cigars creating a larger net gain for the General Fund than estimated.

Additional Revenue from SB 1184 Cigarette Definition, FY 09-10	
Current OTP GF Revenue (Little Cigars)	($1,356,538)
Classifying Little Cigars as Cigarettes	$4,751,561
Additional Revenue	**$3,395,023**

SB 1184 Fiscal Memo Assumptions	
Wholesale Price Per Pack	$0.84
Price elasticity	-0.4
Annual growth in consumption (National Trend)	10%
Annual consumption growth used in estimate	5.0%
Cigarette Tax Per Pack	$0.45
Number of Little Cigars Sold in U.S.	7,421,537,921
NC Share of US Cigarette Sales	3.4%
Number of Little Cigar Packs Sold in NC (20 per pack)	12,616,614

SOURCES OF DATA:

American Legacy Foundation. "Cigars, Cigarillos, and Little Cigars Fact Sheet." Available at: http://www.legacyforhealth.org/PDFPublications/Cigars-Cigarillos-and-Little-Cigars_Fact-Sheet.pdf

Government of the District of Columbia Office of the Chief Financial Officer. "Fiscal Impact Statement: 'Fiscal Year 2010 Budget Support Emergency Act of 2009.' " Available at: http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FY_2010_.pdf.

National Association of Attorneys General. "Petitioners seek the repeal of the definitions of 'Cigar' and 'Cigarette.'" Available at: http://www.naag.org/assets/files/pdf/20060519.FinalPetitionToTTBReLittleCigars.pdf

Minnesota Department of Revenue. "Analysis of H.F. 3467 (Davnie)." Published April 27, 2010. Available at: http://www.taxes.state.mn.us/legal_policy/revenue_analysis/2009_2010/house_files/hf3467_sf3055__3.pdf.

Tobacco Issues available at: http://www.tobaccoissues.com/listalerts.aspx?st=NC

United States Department of the Treasury. Alcohol and Tobacco Tax and Trade Bureau. Monthly Statistical Release October 2008-October 2009. Available at: http://www.ttb.gov/statistics/09tobstats.shtml

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1197
PROPOSED COMMITTEE SUBSTITUTE S1197-CSTDx-99 [v.10]

6/23/2010 11:41:20 AM

Short Title: Reinstate Cigarette Tax Stamps. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF THE CIGARETTE EXCISE TAX AND TO DETER THE UNLAWFUL SALE OF NON-TAX-PAID CIGARETTES BY REINSTATING THE REQUIREMENT THAT CIGARETTES BEAR A STAMP INDICATING PAYMENT OF THE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.8A. Stamps required on packages of cigarettes.**

(a) Requirement. – A package of cigarettes for sale or use in this State must be marked by a heat transfer stamp that indicates whether the package of cigarettes is taxable or nontaxable under this Article. A package of cigarettes that is subject to tax must be marked by a tax-paid stamp and a package of cigarettes that is not subject to tax must be marked by a tax-exempt stamp.

(b) Responsibility of Distributor. – It is unlawful for a person who is not a licensed distributor to receive or possess a package of unstamped cigarettes, to receive or possess an unaffixed stamp, or to place a stamp on a package of cigarettes. A licensed distributor that receives a package of unstamped cigarettes must place a stamp on the package within 48 hours of its receipt, exclusive of Saturdays, Sundays, and legal holidays. A licensed distributor may obtain a cigarette stamp from the Secretary or, with the approval of the Secretary, from the producer of the stamps. A licensed distributor must place a stamp on a package of cigarettes in a manner that ensures the stamp will be torn or mutilated if a person tries to remove the stamp from the package.

(c) Responsibility of Secretary. – The Secretary must prescribe the design, denominations, and other details of a cigarette stamp and must provide for the production of the stamp. A stamp must display a unique serial number that is visible at the point of sale or use. No charge applies to the purchase of a cigarette stamp. The Secretary must keep a record of the tax-paid and tax-exempt stamps transferred to a licensed distributor.

(d) Stamp limit. – When the Secretary sets the bond required in G.S. 105-113.13, the Secretary must set a limit on the number of stamps a licensed distributor may have on hand. The value of the stamps on hand must not exceed the value of the bond. A licensed distributor must not give, sell, or lend unaffixed stamps to any other person."

SECTION 2. G.S. 105-113.9 reads as rewritten:

"**§ 105-113.9. Out-of-state shipments.**

~~Any~~ A licensed distributor engaged in interstate business ~~shall be permitted to~~ may, with the approval of the Secretary, set aside ~~part of the stock as necessary~~ packages of cigarettes needed to conduct interstate business without paying the tax and stamping the packages as otherwise required by this ~~Part, but only if the distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this~~ Part.

"Interstate business" as used in this section ~~means:~~means any of the following:

(1) The sale to a nonresident of packages of cigarettes ~~to a nonresident where the cigarettes are delivered by~~ the distributor delivers to the business location of the nonresident purchaser in another ~~state; and~~state.

(2) The sale to a nonresident of packages of cigarettes ~~to a nonresident wholesaler or retailer registered through the Secretary who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser.~~the distributor delivers to another licensed distributor for subsequent sale outside the State."

SECTION 3. G.S. 105-113.10 reads as rewritten:

"**§ 105-113.10. ~~Manufacturers shipping to distributors exempt.~~In-state shipments of manufacturers and other distributors.**

~~Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.~~It is unlawful for a person that is not a licensed distributor to ship an unstamped package of cigarettes into this State or between locations in this State. A licensed distributor may ship a package of unstamped cigarettes in the following circumstances but may not otherwise ship a package of unstamped cigarettes:

(1) To a facility the distributor owns.

(2) To another licensed distributor.

(3) To a person in a transaction that is not subject to the federal excise tax on cigarettes.

(4) To an agency or an instrumentality of the United States."

SECTION 4. G.S. 105-113.18 reads as rewritten:

"**§ 105-113.18. Payment of tax; reports.**

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the ~~Secretary:~~Secretary. A report must be in the form required by the Secretary and contain the information required by the Secretary.

(1) Distributor's Report. – A distributor ~~shall~~ must file a monthly report ~~in the form prescribed by the Secretary. The report~~ that covers sales and other activities occurring in a calendar ~~month and~~ month. The report is due within 20 days after the end of the month covered by the report. The report ~~shall state the amount of tax due and shall identify any transactions to which the tax does not apply.~~must include the following information:

a. The number of cigarettes on hand on the first and last days of the month.

b. The number of tax-paid and tax-exempt cigarette stamps obtained during the month.

c. The number of tax-paid and tax-exempt cigarette stamps placed on packages of cigarettes during the month.

d. The number of packages of cigarettes the distributor transferred without charge after placing a tax-paid stamp on the packages.

e. The amount of tax due.

~~(1a) Report of Free Cigarettes. A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.~~

(2) Use Tax Report. ~~Every other person who has acquired non-tax-paid~~ A person that is not a distributor and that acquires a package of unstamped cigarettes for sale, use, or consumption subject to the tax imposed by this Part ~~shall,~~ must file a report within 96 hours after ~~receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report shall be accompanied by payment of the full amount of the tax.~~ receiving the package of cigarettes. The report must state the number of cigarettes acquired and the amount of tax due.

(3) Shipping Report. ~~Any person, except a licensed distributor, who~~ A person that is not a licensed distributor and that transports cigarettes upon the public highways, roads, or streets of this ~~State,~~ State must, upon notice from the Secretary, ~~shall~~ file a report ~~in the form prescribed by the Secretary and~~ containing the information required by the Secretary.

(4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

SECTION 5. G.S. 105-113.21 reads as rewritten:

"**§ 105-113.21. Discount; refund.**

(a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods beginning on or after August 1, 2003.

(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of ~~two percent (2%).~~ eighteen-tenths cents (.18¢) per individual cigarette, not to exceed eight thousand dollars ($8000.00) a month. This discount covers the distributor's expenses ~~incurred~~ in placing stamps on packages of cigarettes, preparing the ~~records and~~ reports required by this Part, maintaining the records required by this Part, and ~~the expense of~~ furnishing a bond.

(b) ~~Refund.~~ Refund for Stale Product. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which ~~the tax has been paid~~ a tax-paid stamp has been placed may return the cigarettes to the manufacturer and apply to the Secretary for a refund of the tax. The application ~~shall~~ must be in the form prescribed by the Secretary and ~~shall~~ be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary ~~shall~~ must refund the tax paid, less the discount allowed, on the unsalable cigarettes."

SECTION 6. G.S. 105-113.27 reads as rewritten:

"**§ 105-113.27. ~~Non-tax-paid~~ Restrictions and presumption concerning cigarettes.**

(a) Restrictions. – Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, loan, or exchange ~~non-tax-paid~~ unstamped cigarettes to, from, or with other licensed distributors.

~~(b) No person shall sell or offer for sale non-tax-paid cigarettes.~~

(c) Presumption. – The possession of more than six hundred cigarettes on which tax has been paid to another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of this Part."

SECTION 7. G.S. 105-113.33 reads as rewritten:

"**§ 105-113.33. Criminal penalties.**

Any person who violates ~~any of the provisions~~ a provision of this Article for which no other punishment is specifically prescribed ~~shall be~~ is guilty of a Class 1 misdemeanor. A person who forges a stamp required under this Article or who knowingly places a forged stamp on a package of cigarettes is guilty of a Class H felony."

SECTION 8. A distributor who has unstamped cigarettes on hand on the effective date of this act must stamp the cigarettes as required by this act within 48 hours of the effective date.

SECTION 9. This act becomes effective July 1, 2011.

SENATE BILL 1197:
Reinstate Cigarette Tax Stamps

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1197-CSTDx-99		

SUMMARY: ***The proposed committee substitute to Senate Bill 1197 would require a tax stamp be attached to packages of cigarettes sold in North Carolina as evidence of payment of the tax on cigarettes and would create a criminal penalty for counterfeiting stamps or stamp impression devices.***

CURRENT LAW: North Carolina first began taxing cigarettes in 1969. Tax stamps were required to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the tax stamp requirement was repealed and the payment of the cigarette tax was recorded by reports submitted by cigarette distributors. Currently, every state but North Carolina, North Dakota, and South Carolina requires cigarette tax stamps.[1] At the time North Carolina repealed its tax stamp requirement in 1993; four other states did not require tax stamps. Of those four states, three of those states have begun to require cigarette tax stamps: Alaska, Hawaii, and Michigan.

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps. This discount amount equated to approximately 2.9¢ per carton. When the tax stamp was eliminated, the General Assembly changed the discount amount to 4% of the tax due and provided that the purpose of the iscount is to cover a distributor's expenses associated with preparing the required tax reports. The General ssembly repealed the discount in 2003; then reinstated it in 2004 at its current rate of 2% of the tax due. With the recent increases in the cigarette tax rate, the 2% discount equates to approximately 9¢ per carton.

BILL ANALYSIS: The PCS to Senate Bill 1197 would reinstate cigarette tax stamps by requiring that a package of cigarettes for sale or use in this State must be marked by a tax-paid stamp. A person who forges a stamp or who knowingly places a forged stamp on a package of cigarettes is guilty of a Class H felony.

The Department of Revenue is required to arrange for the manufacture and sale of the stamps. Each stamp has a unique serial number. The Department may sell stamps directly to licensed distributors, or it may allow the manufacturer of the stamps to sell stamps directly to distributors. A distributor must affix the stamp to the package of cigarettes within 48 hours of its receipt, excluding Saturdays, Sundays, and State holidays. The stamps must be affixed to the package of cigarettes in a manner that ensures the stamp cannot be removed without being mutilated or destroyed. The Secretary must set a limit on the number of stamps a distributor may have on hand. The limit is based on the amount of the bond furnished by the distributor under G.S. 105-113.13.

The draft amends the monthly report distributors must file with the Department to require the following additional information:

- The quantity of cigarettes on hand on the first and last days of the preceding calendar month.
- The amount of stamps purchased, used, and on hand during the reporting period.
- The amount of tax due.

The discount is increased to 18¢ per carton of cigarettes with a monthly cap of $8,000, and specifies that the discount covers the distributor's expenses in placing the stamps on the packages of cigarettes and maintaining the records required by the Department.

EFFECTIVE DATE: This bill would be effective January 1, 2011.

1197-SMTD-180(CSTDx-99) v3

[1] South Carolina repealed its tax stamp requirement in 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 23, 2010

TO: Senate Finance Committee

FROM: Sandra Johnson and Claire Hester
Fiscal Research Division

RE: Reinstate Cigarette Tax Stamps (SB 1197 PCS)

FISCAL IMPACT ($ In Millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	* Potential revenue loss of $ 9.0 million annually* *Modifying the wholesaler's discount would be a revenue neutral change, but provides more financial assistance to 120 of the 130 licensed cigarette distributors.*				
EXPENDITURES:					
GENERAL FUND (Loss):					
POSITIONS (cumulative):	*The Department of Revenue also requested 14 additional positions in response to the proposal at a cost of roughly $ 1.0 million annually*				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 2011

BILL SUMMARY: This proposal would reinstate cigarette stamps. Under SB 1197, the tax required in G.S. 105-113.5, the cigarette tax, must be evidenced by a stamp placed on the package of cigarettes. The Department of Revenue (Department) must make arrangements for the manufacture and sale of the stamps. The Department may sell stamps directly to distributors, or may allow the manufacturer of the stamps to sell stamps directly to distributors. Full payment is required before stamps are given to distributors.

Effective January 1, 1994, North Carolina discontinued the cigarette stamp program by passing SB 1025 during the 1993-94 session. Prior to 1994, North Carolina law required all manufacturers to affix stamps to each package of cigarettes sold in the state indicating that the cigarette excise tax had been paid. North Carolina switched from the stamping program to a monthly reporting mechanism, eliminating the stamps and requiring manufacturers to report monthly sales. Coinciding with the elimination of the cigarette stamp program, the legislature also increased cigarette taxes by 3-cents per pack, raising the total tax to 5-cents per pack. Despite a three-cent per pack tax increase in 1994, removing the stamps resulted in an increase in cigarette sales. The volume of cigarettes sold increased by 18 percent between the 1993-94 and 1994-95 fiscal years from 721.8 million packs to 850.6 million packs generating an additional $64.4 million in tax revenue.

The national cigarette tax landscape in 1994 looked much like the scene North Carolina faces today. In 1994, the average cigarette per pack state excise tax for all 50 states equaled 30.5-cents, five times greater than North Carolina's cigarette tax of five cents per pack.[1] One of North Carolina's three neighboring states exhibited a lower per pack cigarette tax, South Carolina at seven cents per pack, Virginia at 2.5-cents per pack, and Tennessee at 13-cents per pack. The sales increase that coincided with the stamp removal suggests that out-of state purchases played a significant role in North Carolina cigarette sales. Historical tax rate information suggests that the increase in sales between the 1994 and 1995 fiscal years was influenced more by long distance smuggling than cross-border sales.

Today, six states in the U.S., two of which are in the Southeast, exhibit lower cigarette taxes than North Carolina's 45-cents per pack rate. Furthermore, North Carolina is one of three states that do not require cigarette stamps.

ASSUMPTIONS AND METHODOLOGY:

Tax Revenue

Fiscal Research estimates that an additional $9.0 million in tax revenue will be lost due per fiscal year to a decline in both cross border sales (in-state residents purchasing cigarettes out-of-state) and long distance smuggling (out-of -state residents purchasing cigarettes from in-state vendors).

This estimate assumes the worst fiscal scenario—that all cross-border sales and smuggling will decrease to zero. Fiscal leaned heavily on the Mackinac Center's 2008 study, "Cigarette Taxes and Smuggling," which estimates the lost tax revenue from cigarette smuggling for the contiguous

[1] The Tax Burden on Tobacco. Historical Compilation, Volume 37, 2002. Table 13B-1994 Cigarette Taxes as a Percentage of Retail Price Generic Brands Included in Average Calculation. Page 130.

United States. Mackinac researchers were unable to generate a figure for lost tax revenue in North Carolina because "the state plays a central role in the model as a major source of illicitly trafficked cigarettes."[2] The Mackinac study estimates that 28.6% of Virginia's and 9% of South Carolina's annual cigarette sales can be attributed to smuggling.[3]

The estimate is also based on research from a 2003 RTI study, *The Impact of Cigarette Excise Tax Increases in Low-Tax Southern States on Cigarette Sales, Cigarette Excise Tax Revenue, Tax Evasion, and Economic Activity.* North Carolina gains excise tax revenue from sales associated with smuggling. RTI researchers estimated that North Carolina, in 2003 with a 5-cent per pack cigarette tax, gained roughly 7% of sales or 105 million packs in cigarette packs per fiscal year due to long distance smuggling. The amount of revenue associated with smuggled cigarettes declines as the North Carolina cigarette tax approaches the national average. With recent tax increases across the nation, Fiscal Research estimates that roughly 3.3%, 18.1 million packs, are currently being smuggled from the state.[4] The state gains from smuggling roughly $8.1 million in cigarette tax revenue (18.1 million packs*$0.45 per pack tax) and $4.3 million in sales tax revenue (16.9 million* average price of a pack of cigarettes $4.13*5.75%).

The State also loses revenue from cross-border sales with purchasers in North Carolina seeking lower-tax cigarette options in South Carolina and Virginia. The original RTI report estimated that if North Carolina were to raise its cigarette tax rate to 70-cents per pack, the national average at the time, while rates in the surrounding Southern states remained constant, 29 million packs per fiscal year would be purchased by North Carolina residents seeking lower priced options in neighboring states. Given cigarette tax increases across the South and an annual decline of roughly 2% in cigarette consumption rates, Fiscal Research estimates that if North Carolina raised its cigarette tax to the national average roughly 7.85 million in cigarette packs would be lost due to cross border sales. North Carolina's current cross-border sales equal roughly 4.9 million packs per fiscal year, a loss of $3.4 million that would be reclaimed if stamping were instituted.

If stamping were implemented, the net effect of a decline in smuggling and the gain in revenue from decreased cross border sales would equal a net loss of 13.2 million packs in sales per fiscal year(-18.1 million packs + 4.9 million packs). The reduction in cigarette sales equals a loss of $9.1 million in revenue (45-cents per pack in lost tax revenue *13.2 million packs+ lost sales tax revenue).

The Campaign for Tobacco Free Kids has documented cases where high tax states, such as Michigan and California, have instituted stamping and experienced a gain in cigarette tax revenue. Michigan and California exhibit cigarette tax rates of $2.00 and 87-cents per pack, listed respectively.

Personnel and Administrative Costs

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[2] Lafaive, M., Fleenor, P., and Nesbitt, T. "A New Estimate of Interstate Cigarette Smuggling Rates." Published December 3, 2008. Available at: http://www.mackinac.org/10021..

[3] Ibid. "Graphic 7: Estimated Tax-Induced Smuggling as a Percentage of Total Cigarette Consumption (Legal and Illegal), 2006."

[4] This figure assumes that smuggled cigarettes = current cigarette sales*7%-current cigarette sales*(2010 tax rate/2010 U.S. average cigarette tax rate)*7%. From a numerical perspective, the number of smuggled cigarettes equals 544.4mill packs*7%-544.4 million packs*($0.45/$1.35)*7%.

The Department of Revenue (DOR) estimates that reinstatement of the cigarette tax stamp program would require the addition of 17 new positions in DOR. According to DOR, two Processing Assistant V positions in the Cigarette Excise Tax Unit would be needed to process stamp orders, and a Revenue Administrative Officer II would handle administration of the program. Ten Revenue Officer I positions would perform retail inspections, and four Revenue Tax Auditors would be needed to conduct due diligence audits for enforcement purposes.

Based on the number of inspections, audits, and enforcement that would be required by implementation of this program, as well as comparable staffing levels of tobacco tax programs in other states, Fiscal Research generally concurs with DOR's estimate. However, the current supervisor and assistant supervisor of the Cigarette Excise Tax Unit should be able to absorb any additional supervisory duties and thus an additional Revenue Administrative Officer II position would not be required. Furthermore, as DOR currently has three field auditors who conduct due diligence audits, only two additional auditors would be needed to conduct due diligence audits required by this program. Fiscal Research estimates that implementation of this program would require 14 additional positions, rather than 17.

The estimated recurring costs of the salaries and benefits of these 14 positions are shown below:

Position Title	Grade	Salary	Soc Sec	Ret	Health	FTEs	Total
Processing Assistant V	61	$34,732	$2,657	$3,650	$4,929	2	$91,937
Revenue Officer I	71	$52,040	$3,981	$5,469	$4,929	10	$664,195
Revenue Tax Auditors	Journey	$55,202	$4,223	$5,802	$4,929	2	$140,311
					TOTAL	***14***	***$896,443***

Additionally, the following recurring and non-recurring administrative expenses would be needed to support the 10 positions listed above during the next biennium:

ACCOUNT TITLE	FY 2001-11	FY 2011-12	
Maintenance Agreement - PC & Printer	$ 3,346		*NR*
Maintenance Agreement - PC Software	$ 1,610	$ 1,610	*R*
PC & Printer Purchases	$ 14,000		*NR*
PC Software Purchases	$ 8,400		*NR*
Travel - Ground In-State	$ 36,000	$ 36,000	*R*
Telephone Service	$ 4,900	$ 4,900	*R*
General Office Supplies	$ 7,000	$ 7,000	*R*
Furniture - Office	$ 63,000		*NR*
Office Equipment (calculator)	$ 1,400		*NR*
TOTAL	***$ 139,656***	***$ 49,510***	

Currently, DOR is in the preliminary stages of developing and implementing the State's new Tax Information Management System (TIMS). Over the next 36 months, TIMS will replace the State's integrated tax system as well as a host of other miscellaneous tax systems. In order to process the activities of a cigarette tax stamp program, DOR would need to initiate a change order with the TIMS project's contractor. Based on the contractor's estimated hours needed to make these

changes to the TIMS application, the additional nonrecurring costs for FY 2010-11 would be $16,000.

The total estimated impact of personnel costs, associated administrative costs, and technology costs needed to implement a cigarette tax stamp program in DOR would be $1,052,099 in FY 2010-11 and $945,953 in subsequent years.

SOURCES OF DATA:
North Carolina Department of Revenue

California Bureau of State Audits

Farrelly, Matthew C. "State Cigarette Excise Taxes: Implications for Revenue and Tax Evasion." RTI International. Published May 2003.

The Tax Burden on Tobacco. Historical Compilation, Volume 37, 2002. Table 13B-1994 Cigarette Taxes as a Percentage of Retail Price Generic Brands Included in Average Calculation. Page 130.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1196
PROPOSED COMMITTEE SUBSTITUTE S1196-CSTD-100 [v.4]

6/22/2010 6:00:00 PM

Short Title: Align Cigarette Discount With Costs. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE PORTION OF THE DISCOUNT ALLOWED CIGARETTE DISTRIBUTORS FOR THEIR EXPENSES IN STAMPING CIGARETTES IF THE DISTRIBUTORS ARE NO LONGER REQUIRED TO STAMP CIGARETTES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that cigarette distributors were required to stamp cigarettes when the cigarette tax was enacted in 1969 and were allowed a discount of approximately two and nine-tenths cents (2.9¢) per carton of cigarettes to cover their expenses in stamping the cigarettes. The General Assembly further finds that when the stamping requirement was repealed in 1993, the discount allowed distributors was subsequently reduced to approximately two cents (2¢) per carton of cigarettes. Finally, the General Assembly finds that the increase of the cigarette tax from five cents (5¢) per pack to forty-five cents (45¢) per pack with no adjustment in the distributors' discount has resulted in a discount of approximately nine cents (9¢) per carton and that this discount is more than three times the discount allowed when distributors were required to stamp cigarettes. The General Assembly concludes that the discount currently allowed distributors compensates them for costs they are not incurring and should be reduced to reflect the elimination of the stamping requirements and to neutralize the increase in the discount produced by the increase in the tax rate.

SECTION 2. G.S. 105-113.21(a1) reads as rewritten:

"(a1) Discount. – A distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of ~~two percent (2%).~~ twenty-five hundredths percent (0.25%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond."

SECTION 3. This act becomes effective January 1, 2011, unless the 2010 Session of the 2009 General Assembly enacts legislation entitled "AN ACT TO IMPROVE THE ENFORCEMENT OF THE CIGARETTE EXCISE TAX AND TO DETER THE UNLAWFUL SALE OF NON-TAX-PAID CIGARETTES BY REINSTATING THE REQUIREMENT THAT CIGARETTES BEAR A STAMP INDICATING PAYMENT OF THE TAX." If the 2010 Session of the 2009 General Assembly enacts the legislation reinstating the tax stamp on cigarettes, then this act does not become effective.

SENATE BILL 1196:
Align Cigarette Discount With Costs

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 23, 2010
Introduced by:	Sen. Hartsell	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1196-CSTD-100		

SUMMARY: ***The proposed committee substitute to Senate Bill 1196 would decrease the discount cigarette distributors receive on payments of cigarette excise taxes. The PCS makes technical changes to the historical information in Section 1 of the bill.***

[As introduced, this bill was identical to H1980, as introduced by Reps. Luebke, Insko, which is currently in House Finance.]

CURRENT LAW: North Carolina first began taxing cigarettes in 1969. Tax stamps were required to be attached to packages of cigarettes as evidence of payment of the tax. In 1993, the tax stamp requirement was repealed and the payment of the cigarette tax was recorded by reports submitted by cigarette distributors.

At the time of the original enactment, a discount of 7/24¢ per stamp was given for the expenses associated with the stamps. This discount amount equated to approximately 2.9¢ per carton. When the tax stamp was eliminated, the General Assembly changed the discount amount to 4% of the tax due and provided that the purpose of the discount is to cover a distributor's expenses associated with preparing the required tax reports. The General Assembly repealed the discount in 2003; then reinstated it in 2004 at its current rate of 2% of the tax due. With the recent increases in the cigarette tax rate, the 2% discount equals approximately 9¢ per carton.

BILL ANALYSIS: The PCS to Senate Bill decreases the discount cigarette distributors are allowed when making timely reports of their cigarette excise tax, from 2% to 0.25% of the total amount due. The new discount amount would be 1.125¢ per carton.

EFFECTIVE DATE: This act is effective January 1, 2011. If the General Assembly enacts legislative reinstating the tax stamps on cigarettes, this act does not become effective.

S1196-SMTD-177(CSTD-100) v2

TABLE 1. Expenses of Voter-Owned Elections (VOE) Program, 4-Years & Per Year						
Office	**Average over last three elections**	**Amount Candidate Receives**	**Cost of 2 Candidates in Program**	**Allow 20% Extra for Rescue Fund**	**Total Cost for Election Cycle**	**Annual Cost**
Current Law						
Auditor	$135,000	$300,000	$600,000	$120,000	$720,000	$180,000
Insurance Comm.	$280,000	$300,000	$600,000	$120,000	$720,000	$180,000
Supt. Public Instr.	$161,000	$300,000	$600,000	$120,000	$720,000	$180,000
HB 961 Additions						
Treasurer	$1,064,000	$1,064,000	$2,128,000	$425,600	$2,553,600	$638,400
Labor Comm.	$150,000	$300,000	$600,000	$120,000	$720,000	$180,000
Ag. Comm.	$365,000	$365,000	$730,000	$146,000	$876,000	$219,000
Attorney General	$1,759,000	$1,759,000	$3,518,000	$703,600	$4,221,600	$1,055,400
Secretary of State	$198,000	$300,000	$600,000	$120,000	$720,000	$180,000
TOTAL COST		**$4,688,000**	**$9,376,000**	**$1,875,200**	**$11,251,200**	**$2,812,800**

TABLE 1. ESTIMATED REVENUE GENERATED BY HB 961				
Agency	Revenue Generated in FY 2010-11	Revenue Generated in FY 2011-12	Revenue Generated in FY 2012-13	Revenue Generated in FY 2013-14
State	$1,695,985	$1,695,505	$1,695,035	$1,694,565
Insurance	$322,925	$322,925	$322,925	$322,925
Labor	$323,935	$323,935	$323,935	$323,935
Agriculture	$286,500	$286,500	$286,500	$286,500
Treasurer	$1,134,040	$1,134,040	$1,134,040	$1,134,040
Revenue	$1,098,919	$1,098,919		
TOTAL	**$4,538,369**	**$4,251,389**	**$3,152,000**	**$3,151,530**

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Ag. Comm.	$365,000	$365,000	$730,000	$146,000	$876,000	$219,000
Attorney General	$1,759,000	$1,759,000	$3,518,000	$703,600	$4,221,600	$1,055,400
Secretary of State	$198,000	$300,000	$600,000	$120,000	$720,000	$180,000
TOTAL COST		**$4,688,000**	**$9,376,000**	**$1,875,200**	**$11,251,200**	**$2,812,800**

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Labor	$323,935	$323,935	$323,935	$323,935
Agriculture	$286,500	$286,500	$286,500	$286,500
Treasurer	$1,134,040	$1,134,040	$1,134,040	$1,134,040
Revenue	$1,098,919	$1,098,919		
TOTAL	**$4,538,369**	**$4,251,389**	**$3,152,000**	**$3,151,530**

SENATE FINANCE COMMITTEE
Tuesday, June 29, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 29, 2010, in Room 544 of the Legislative Office Building. Twenty-five members of the committee were present. Senator Jenkins presided as chair. Zach Goldman and Tori Boddie of Cary, Cameron Castleberry of Raleigh, Katherine Selix of Marvin and Lillian Badgett of Statesville served as pages.

H.B. 1695 Repeal Waynesville Fireman's Supplemental Pension

Representative Rapp was recognized to explain the bill. The local bill would repeal the Waynesville Firemen's Supplemental Retirement Fund and transfer the monies in the Fund to the Board of Trustees of the Local Firemen's Relief Fund of the Town of Waynesville. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 1446 – Durham Stormwater Facilities Assessments

Senator McKissick was recognized to explain the bill. The bill would amend the charter for the City of Durham to authorize assessments against private or public properties served by stormwater facilities for the construction and repair of the facilities when such projects remediate a flooding or other public nuisance or enable compliance with State or federal requirements regarding water quality. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 710 – Archer Lodge Boundary Correction

Representative Rouzer was recognized to explain the bill which would correct the boundary of the Town of Archer Lodge by removing a parcel of land included in the original description. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1736 – Local Delinquent Sewer Fees

Representative Burr was recognized to explain the bill which authorizes the City of Locust and the Towns of New London and Stanfield, which are located in Stanly County, to collect delinquent fees for sewer services in the same manner that property taxes are collected. Senator Brock moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1741 – Animal Euthanasia Technicians

Representative Ross was recognized to bill. The bill, which is a recommendation of the General Statutes Commission, would allow animal shelters that are owned, operated, or maintained by a unit of local government or under contract with a unit of local government to register with the North Carolina Department of Health and Human Services in order to obtain euthanasia drugs directly from the manufacturer. Senator Clodfelter offered a technical amendment. Senator Hunt moved to favorably report the bill as amended and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 1754 – Tax Certification – Dare & McDowell

Representative Spear was recognized to explain the bill which authorizes Dare and McDowell Counties to require the payment of delinquent property taxes before recording deeds conveying property. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1953 – Delinquent Tax Deny Permits/Set Tax Discount

Representative Owens was recognized to explain the bill. It provides that Currituck County may prohibit the issuance of a land-use permit or a building permit to a delinquent taxpayer and allows Pasquotank County to set the tax prepayment discount by June 30, 2010. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1829 – Renewable Energy Incentives

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute for discussion. The motion carried. The PCS promotes the use of renewable energy by extending the credit for constructing renewable fuel facilities and the credit for biodiesel producers. It also revises the tax credit for investing in renewable energy property, reinstates and expands the tax credit for constructing a renewable energy property facility, clarifies the authority of local governments to finance energy programs, clarifies that real property donated for a conservation purpose can be used only for that purpose, and ensures that homeowners association restrictions do not prevent the use of solar energy systems. Sabra Faires, the Senate tax counsel, was recognized to answer questions. Senator Atwater moved for a favorable report and the motion carried. A copy of the PCS and the fiscal memo is attached.

In order to explain the next bill, Senator Jenkins turned the chair duties over to Senator Clodfelter.

S.B. 1214 – Highway Patrol Motor Carrier Fine/Local Fees

Senator Jenkins was recognized and moved to adopt the PCS for discussion. The motion carried. The PCS clarifies the vehicles that are regulated under the Motor Carrier Safety Regulation Unit. It also amends various laws pertaining to property hauling vehicles and allows local governments to refund assessments. Senator

Dannelly moved for a favorable report and the motion carried. A copy of the PCS, the summary, the fiscal memo, and the federal requirement certificate is attached.

The meeting adjourned at 1:28 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

Sen. Jenkins

adjourn 1:28p

Senate Finance Agenda
Tuesday, June 29, 2010

	Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
8	S1214	Highway Patrol Motor Carrier Fines and Fees	Jenkins	PCS Jenkins	Heather	Dannelly moves
2	~~S1446~~	Durham Stormwater Facilities Assessment	McKissick		Cindy	Tillman move
3	~~H710~~	Archer Lodge Boundary Corrections Rouzer	~~Daughtry~~ Rouzer		Cindy	Tillman moves Rouzer
1	~~H1695~~	Repeal Waynesville Fireman's Supplemental Pension	Rapp Haire		Cindy	Hoyle moves
4	~~H1736~~	Local Delinquent Sewer Fees ~~Rouzer~~ Purcell	Burr		Cindy	Brock moves
5	H1741	Animal Euthanasia Technicians Hartsell	Ross	PCS	Cindy	Clodfelter tech amend Hunt moves
6	~~H1754~~	Tax Certification - Dare & McDowell	Spear		Cindy	Hoyle
8	H1829	Economic Development and Tax Collection Changes Clodfelter	Clodfelter	Clodfelter PCS	Heather	Sabra Faires ans ?'s Atwater moves tech amendment Clodfelter moves
7	~~H1953~~	Delinquent Tax Deny Permits/Set Tax Discount	Owens		Cindy	Garrou

Sen. Swindell

put on today's calender — bring copies

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 29, 2010

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

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

S.B. **1214** Highway Patrol Motor Carrier Fines and Fees.

Draft Number:	75406
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1741** Animal Euthanasia Technicians.

Draft Number:	50956
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1829** Econ. Devpt. and Tax Collection Changes.

Draft Number:	30539
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
H1741 – Sen. Hartsell
H1829 – Sen. Clodfelter

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Tuesday, June 29, 2010

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

FAVORABLE

S.B.	**1446**	Durham Stormwater Facilities Assessments.
		Sequential Referral: None
		Recommended Referral: None
H.B.(SCS #1)	**710**	Archer Lodge Boundary Correction.
		Sequential Referral: None
		Recommended Referral: None
H.B.	**1695**	Repeal Waynesville Firemen's Supp. Pension.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #2)	**1736**	Local Delinquent Sewer Fees.
		Sequential Referral: None.
		Recommended Referral: None
H.B.(CS #1)	**1754**	Tax Certification-Dare & McDowell.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	**1953**	Delinquent Tax Deny Permits/Set Tax Discount.
		Sequential Referral: None
		Recommended Referral: None

TOTAL REPORTED: 6

Committee Clerk Comments:

H710 – Sen. Rouzer
H1695 – Sen. Queen
H1736 – Sen. Purcell
H1754 – Sen. Swindell
H1953 – Sen. Swindell

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 29, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 710	Archer Lodge Boundary Correction.	Representative Daughtry
HB 1695	Repeal Waynesville Firemen's Supp. Pension.	Representative Rapp Representative Haire
HB 1736	Local Delinquent Sewer Fees.	Representative Burr
HB 1741	Animal Euthanasia Technicians.	Representative Ross
HB 1754	Tax Certification-Dare & McDowell.	Representative Spear
HB 1829	Econ. Devpt. and Tax Collection Changes.	Representative Luebke
HB 1953	Delinquent Tax Deny Permits/Set Tax Discount.	Representative Owens, Jr.
SB 1214	Highway Patrol Motor Carrier Fines and Fees.	Senator Jenkins
SB 1446	Durham Stormwater Facilities Assessments.	Senator McKissick

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Whitney Campbell	Jordan Price
Weatherly Rose	Hunton + Williams
Elizabeth Ireland	Covenant w/NC's children
[signature]	JD: AL, PA
Susan Valeur	NCW
Cheick Satonzo	NW
Bill Crumpler	AARP
Paul Sherman	NCFB
[signature]	NCAPA
[signature]	NCAHA
[signature]	EFC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Kimberly Rankin	Sierra Club
Katherine Scott	Dept. of Commerce
Larry Shirley	Dept. of Commerce
P. Bly Hall	General Statutes Commission
Carl Mackensen	Sierra Club
Julie Stanback	NCDA+CS
Mia Bailey	Electricities of NC, Inc.
Cam Cowan	BPM HC
Ray Starling	NCDA+CS
Lee Hunter	NCDA+CS

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 29, 2010

Name of Committee — **Date**

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DAVID BARNES	Poyner Spruill
DANIEL RAUM	TROUTMAN SANDERS
Andrew Cagle	DLC + Assoc.
Lisa Piercy	Ragsdale Liggett
[illegible]	Bode Call & [illegible]
[illegible]	Kaplan Law Firm
Butch Gunnells	NC Beverage A
Nick Tosco	NCLM
Rita Harris	NC Commerce Dept.

VISITOR REGISTRATION SHEET

29

Senate Finance Committee
Name of Committee

June ~~23~~, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NC STA
Rick Zechini	NC Assoc of Realtors
Cady Thomas	"
Jessi Hays	NC Home Builders Assn
Tim Crank	NC Bar Assn.
Brad Hall	NC Home Builders

VISITOR REGISTRATION SHEET

29

Senate Finance Committee
Name of Committee

June ~~23, 2010~~
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
AL MILAK	NCDOR
Lennie Collins	DOR
Michael Houser	DOR
Dennis Patterson	OSA
Rebecca Trant	NCACC
Thomas Jones	NCACC
David Baker	NC DOR
[signature]	SEANC
Penny Griffin	School of Gov.
Elizabeth Ouzts	Environment North Carolina
Tara Steinmetz	Environment NC
Kate Binion	DOR
Tom Beason	NCSEA, NC EDF

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June ~~23~~ 29, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Henry Campen	Parker Poe
Thomas C. Caves, Jr.	NC Dept. of Crime Control; Public Safety
Blair Bacisin	OSA
Al Wilson	OSA
TIFFANY BARNAS	OSA
ANTHONY M. ALLEN	NCACC.
BRIAN DEMPSEY	MWC
William T. Belch	NCSHP
William M. Nichols	NCSHP
John Womble	MK DDSAS
Brownie Newman	FLS Energy

H

HOUSE BILL 1695

Short Title:	Repeal Waynesville Firemen's Supp. Pension.	(Local)
Sponsors:	Representatives Rapp and Haire (Primary Sponsors).	
Referred to:	Pensions and Retirement, if favorable, Finance.	

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PROVISIONS ESTABLISHING THE WAYNESVILLE FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 288 of the 1981 Session Laws is repealed.

SECTION 2. All funds remaining in the Waynesville Firemen's Supplemental Retirement Fund are transferred to the Board of Trustees of the Local Firemen's Relief Fund of the Town of Waynesville, to be held and administered as provided in Article 84 of Chapter 58 of the General Statutes.

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

HOUSE BILL 1695:
Repeal Waynesville Firemen's Supp. Pension

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Reps. Rapp, Haire	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1695 is a local bill that would repeal the Waynesville Firemen's Supplemental Retirement Fund and transfer the monies in the Fund to the Board of Trustees of the Local Firemen's Relief Fund of the Town of Waynesville.***

HB 1695 has been given a favorable report in House Pensions and Retirement.

CURRENT LAW: The Waynesville Firemen's Supplemental Retirement Fund was created by local act in 1981 by Chapter 288 of the 1981 Session Laws. This act required the Board of Trustees of the Local Fireman's Relief Fund of Waynesville to transfer all funds in the Local Firemen's Relief Fund in excess of $40,000 to the newly created Supplemental Fund before January 1, 1982. After January 1, 1982, each retired fireman of the town, who retires with at least 20 years of service as a Waynesville fireman and is at least 55 years of age, receives $50 per month as long as the Supplemental Retirement Fund exists. The funds in the Supplemental Retirement Fund or the Local Firemen's Relief Fund may be invested in CDs and certain classes of securities. The Supplemental Retirement Fund will cease to exist when all the funds have been disbursed.

BILL ANALYSIS: HB 1695 repeals S.L. 1981-288, which created the Waynesville Firemen's Supplemental Retirement Fund, and directs that the funds remaining in this Fund be transferred to the Board of Trustees of the Local Firemen's Relief Fund of the Town of Waynesville. The transferred funds are to be held and administered as provided in Article 84 of Chapter 58 of the General Statutes.

Article 84 requires each county, town, or city receiving benefits under the Article to appoint a local board of trustees for the firemen's relief fund. Pursuant to G.S. 58-84-30, the board is composed of five members, two of whom are elected by the members of the local fire department or departments who are qualified as beneficiaries, two of whom are elected by the mayor and board of aldermen or other local governing body, and one named by the Commissioner of Insurance. Article 84 also provides for the disbursement of funds by the trustees (G.S. 58-84-35), the requirement to keep account and file certified reports (G.S. 58-84-40), the responsibility to file a certificate of eligibility with the Commissioner of Insurance (G.S. 58-84-46), a prohibition on discrimination (G.S. 58-84-55), and other provisions.

EFFECTIVE DATE: HB 1695 is effective when it becomes law.

BACKGROUND: The General Assembly has repealed supplemental firemen's retirement funds in the following municipalities: Burlington (S.L. 2008-49), Whiteville (S.L. 2007-111), Fayetteville (S.L. 2003-34), Lincolnton (S.L. 2002-41), Monroe (S.L. 2001-70), Cary (S.L. 2001-23), Marion (S.L. 2001-21), Morehead City (S.L. 2001-18), Cherryville (S.L. 2000-21), Forest City (S.L. 1999-63), Laurinburg (S.L. 1998-63), Raleigh (S.L. 1997-460) and Hendersonville (S.L. 1995-343).

Theresa Matula, staff to House Pensions and Retirement, and Martha Walston, staff to House Finance, substantially contributed to this summary

H1695-SMRB-93(e1) v1

SENATE BILL 1446*

Short Title:	Durham Stormwater Facilities Assessments.	(Local)
Sponsors:	Senators McKissick; and Atwater.	
Referred to:	Finance.	

May 27, 2010

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE ASSESSMENTS AGAINST PROPERTIES SERVED BY STORMWATER FACILITIES FOR THE CONSTRUCTION AND REPAIR OF THOSE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter VI of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to read as follows:

"Sec. 82.1. Assessment Authority for Stormwater Facilities.

(a) The City Council is authorized to assess the City's direct and indirect costs for projects that construct, reconstruct, or repair stormwater facilities on private or public property when the projects remediate a flooding or other public nuisance or enable compliance with State or federal requirements regarding water quality. The assessments shall be made against properties the project serves or will serve or against the owner of a failing facility or the property on which the facility is located. The authority granted under this section does not allow the City to enter private property except as otherwise authorized by law or agreement. In the event that work is necessary on an existing facility, unless the project is necessary to remediate a current public nuisance, prior to initiating a project, the City shall give advance written notice to the property owner or owners upon which the facility is located and shall afford the owner or owners a reasonable opportunity to cure any deficiency in the facility. The City Council's assessment authority under this section shall be exercised pursuant to one or more ordinances adopted by the City Council which are consistent with the provisions of this section.

(b) The City shall make a professional engineering determination regarding the properties that are or will be served by the project using drainage basins, subdivision plats, site plans, or other professionally recognized indicators. When costs are to be allocated to more than one property, the City shall allocate the costs using any or a combination of the following criteria: (i) the area of individual properties; (ii) tax valuation; (iii) the number of buildable lots or properties; (iv) zoning; (v) one or more professional appraisals; or (vi) impervious area. Properties owned by the federal government or State government shall not be assessed unless authorized by law, and the assessments that would have been made against federal government or State government properties shall not be charged against the remaining properties.

(c) The City shall prepare an assessment roll showing the cost allocated to each property which shall be filed and available for public review in the office indicated in notices provided pursuant to this subsection. The City Council shall conduct a public hearing regarding the proposed assessment and assessment roll. At least 21 days prior to the public hearing, individual notice by first-class mail shall be sent to each impacted property owner at the

address shown on the most current county tax records. The notice shall include a description of the project, the assessment roll, and the time and date of the council meeting at which the public hearing is scheduled. Notice shall also be published not less than 10 days before the public hearing on the City's Web site and in a daily newspaper that serves the City. Published notice shall include a description and location of the project, the total costs to be assessed, the geographic area subject to the assessment, the public office in which the assessment roll showing individual properties and assessment amounts can be found, and an Internet link where the specifics of the assessment roll can be located. The person who has mailed notice and ensured compliance with the published and Internet postings shall file with the City Council a certificate of compliance with the requirements of this subsection and, in the absence of fraud, the certificate shall be conclusive.

(d) After the public hearing, the City Council may confirm the assessment as proposed, continue the matter, not approve the proposed assessment, or direct that the assessment process begin anew. All documentation regarding the approved assessment shall be retained in the Office of the City Clerk or the Department of Public Works.

(e) The City Council may set aside or reduce a prior assessment made against a property, with individual notice to the affected property owner, if a clerical or factual error has substantially impacted the result of any assessment by more than five percent (5%). For purposes of this subsection, the term "error" includes, but is not limited to, the use of an incorrect tax value, incorrect calculation of buildable lots or area of property, or mistaken identification of a property or lot. In addition, the City Council may set aside the whole of an assessment if there has been a substantial irregularity in the proceedings or process as required under this section. The assessment process shall be considered an in rem proceeding.

(f) A final assessment approved by the City Council shall be a lien against the property assessed of the same nature and to the same extent as a lien for county and city taxes, according to the priorities set forth in G.S. 160A-233(c).

(g) The provisions of subsections (21), (22), (22.1), (23), (26), (27), and (29) of Section 77 of this Charter shall apply to assessments approved pursuant to the provisions of this section. A request for apportionment of an assessment for property that is subdivided as provided under Section 77(26) of this Charter may be approved administratively by the City Manager and the City Manager's approval, and the resulting assessment amounts for subdivided properties shall be filed with the City Clerk with the originally approved assessment amounts. Notwithstanding the provisions of subsections (21), (22), (22.1), (23), (26), (27), and (29) of Section 77 of this Charter, the City Council may, in its discretion, by ordinance, accelerate payment of assessments due for land that at the time of assessment was undeveloped so that payment is required prior to issuance of a building permit or a certificate of compliance.

(h) The authority provided in this section is in addition to and not in limitation of any other authority granted by this Charter or any other provision of general or local law."

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

SENATE BILL 1446:
Durham Stormwater Facilities Assessments

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Sen. McKissick	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1446[1] would amend the charter for the City of Durham to authorize assessments against private or public properties served by stormwater facilities for the construction and repair of the facilities when such projects remediate a flooding or other public nuisance or enable compliance with State or federal requirements regarding water quality.***

BACKGROUND: Cities must meet legal requirements imposed by both State and federal law and regulation to ensure completion of stormwater facilities on private property and their continued upkeep. Over the past 20 years, approximately 500 stormwater detention facilities of various types have been created in the City of Durham to meet water quality requirements in water supply/watershed areas and in the Neuse Basin. These facilities are now required throughout the City and an increasing number will be necessary to meet the Jordan and Falls nutrient management requirements imposed by the State.

Generally, the City requires developers to build the facilities in a development project and the property owners the facilities serve are required to maintain them. The City is experiencing incomplete stormwater facilities as some development projects are halted. In the past, the City would require the next developer that comes to a failed project to complete the infrastructure. However, financing of the construction of these facilities is becoming more problematic. Bonds and similar securities are not always sufficient to cover completion. And requiring a developer who may be taking over 10% of a failed project to complete construction of the entire facility that will serve a larger area may not be fair. Likewise the cost of reconstructing and maintaining these facilities is becoming increasingly difficult. Homeowners' associations often do not have the legal resources to collect the costs of major reconstruction of a stormwater facility from all their members.

CURRENT LAW: Although cities have general statutory authority to make special assessments, the City of Durham has relied upon the authority granted to it by the General Assembly in its Charter for many decades. G.S. 160A-216 allows a city to make special assessments against benefited property for, among other things, constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems. Article 7 of Chapter VI of the Charter of the City of Durham authorizes special assessments to be made for storm sewer improvements upon petition of a majority of the owners of properties subject to assessment, and under certain limited circumstances, without a petition.

BILL ANALYSIS: Senate Bill 1446 would add a new section 82.1 to Article 7 of Chapter VI of the Durham city charter specifically authorizing the City Council to assess the direct and indirect costs for projects for the construction, reconstruction, or repair of stormwater facilities on properties served or to be served by the projects, when the projects remediate flooding or other public nuisance or enable compliance with State or federal water quality requirements. The provision incorporates various assessment procedures that have been used for many decades for water and sewer projects in the City.

The City Council would be required to exercise all of its newly granted assessment authority pursuant to one or more ordinances. The bill would require the City to prepare an assessment roll showing the costs

[1] As introduced, this bill was identical to H2069, as introduced by Representatives Hall, Luebke, Michaux, and Wilkins, which is currently in House Local Government II.

allocated to each property to be assessed, make the roll available for public inspection, and hold a public hearing regarding the proposed assessment and allocation of costs.

The bill would authorize the City Council to reduce or set aside a prior assessment for clerical or factual errors impacting the assessment result by more than 5%, and would make a final assessment a lien against the property of the same nature and to the same extent as a lien for county and city taxes.

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

Bill Patterson, counsel , counsel to ?, substantially contributed to this summary.

S1446-SMRB-99(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 710*

Senate State and Local Government Committee Substitute Adopted 6/22/10

Short Title: Archer Lodge Boundary Correction. (Local)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CORRECT THE BOUNDARIES OF THE TOWN OF ARCHER LODGE BY REMOVING A PARCEL INCLUDED IN THE ORIGINAL DESCRIPTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.1 of the Charter of the Town of Archer Lodge, being S.L. 2009-466, reads as rewritten:

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Archer Lodge are as follows:

Beginning at a point on the centerline of Covered Bridge Road with an intersection of Millstone Manor S/D (PB 31/377). Thence in a southwesterly direction along the centerline of Covered Bridge Road approximately 570 feet to a corner with lot #5 of Millstone Manor S/D (PB 31/377), thence in a northwesterly direction along lot #5 following an unnamed branch (PB 31-377) following the same unnamed branch to a corner with lot 19 (PB 35/77), thence southeasterly along Millstone Manor S/D to a point (PB 69/90), thence northwesterly along Millstone Manor S/D lot numbers 55 and 56 and along a drainage easement (PB 69/90) to an unnamed branch to a corner with lot 20 where the unnamed branch intersects with Big Arm Branch (PB 70/236), thence along Big Arm Branch to its intersection with "Ben's Prong," thence along "Ben's Prong" to Lot 15, Millstone Manor S/D (PB 70/236), thence along Ben's Prong Branch (DB 3636/97), (Parcel #16J03034A) to its intersection with (Parcel #16J03033F), thence following this line in a northerly direction to its intersection with (Parcel #16J02024B), thence in a southwesterly direction, thence northwesterly, thence northeasterly (PB 28/217) to an intersection with (Parcel #16J03021), thence following this parcel line in a northeasterly direction to its intersection with (Parcel #16I02017A), thence southeasterly along this line to its intersection with (Parcel #16J03024B), thence in a northeasterly direction along this line to its intersection with (Parcel #16J03033D), thence in a southeasterly direction along this line to its intersection with (Parcel #16J03033F), thence in a northeasterly direction along this line (Parcel #16J03033D) to its intersection with (Parcel #16I02024), thence in a northwesterly direction along this line to its intersection with (Parcel #16J03024C), thence along this line in a northwesterly direction to its intersection with (Parcel #16I02017A), thence continuing northwesterly along (Parcel #16I02024) to its intersection with Big Arm Branch, thence northeasterly along Big Arm Branch to an intersection with (Parcel #16J02037), thence in an easterly direction to a point on the centerline of Buffalo Road (SR 1003), thence following the centerline of Buffalo Road to its intersection with (Parcel #16J02038T), thence following the perimeter of this parcel (16J02038T) to an intersection with the centerline of Buffalo Road, thence in a northerly direction along the centerline of Buffalo Road to an intersection with (Parcel #16J02038B), thence in a westerly direction following this property line to its most northwesterly point with (Parcel #16J02038C), thence in an easterly direction to

a corner with (Parcel #16J02038J), thence following the most easterly perimeter of this parcel to an intersection with the centerline of Buffalo Rd., thence along this centerline in a northerly direction to an intersection with (Parcel #16J02038J), thence in a northwesterly direction following the perimeter of (Parcel #16J02038 J) to its intersection with (Parcel #16J02038D), thence following this parcel line in an easterly direction to its intersection with the centerline of Buffalo Road, thence southerly along the centerline of Buffalo Road to its intersection with (Parcel #16J02026), thence following the perimeter of this line to its intersection with Fletcher Road (SR 1770), thence easterly along the centerline of Fletcher Road to its intersection with (Parcel #16J02026), thence in a northeasterly direction following the perimeter of (Parcel #16J02026) to its intersection with (Parcel #16J02011A), thence southerly along this property line to its intersection with (Parcel #16J02027A), thence southerly along this property line to its intersection with (Parcel #16K01025M), thence following this line to its intersection with (Parcel #16J02009), thence in an southerly direction following the perimeter of this line to its intersection with (Parcel #1601025A), thence with this line to its intersection with (Parcel #16J02007A), thence in a southeasterly direction following this property line along its perimeter to its intersection with (Parcel #16J02005E), thence following the run of an unnamed branch (PB 27/435) to its intersection with the centerline of Wall Road (SR 1747). Thence from the preceding point continuing southeasterly and subsequently northeasterly along Archer's Glen S/D (PB 36/29), thence northwesterly along Jimmie Barne's (Parcel #16K03026A) to a corner with Phyllis Edwards (DR 1938/207), thence southeasterly along her line to its intersection with Donald Driver's line (DR 680/382), thence northeasterly along Driver's line, thence southeasterly to an intersection with Paul Tippett's line, thence northeasterly along this line (DB 958/348), thence northeasterly along Charles Tippett's line, (DB 2645/444) to a point in the centerline of Wendell Road (SR 1701), thence in a northeasterly direction along the centerline of Wendell Road (SR 1701) to a point in the centerline of Wendell Road and Buffalo Creek (PB 64/181), thence southeasterly along Phyllis Edwards' line (PB 64/181), thence southeasterly along Barnes View S/D (PB 64/101), thence northeasterly following "Old Buffalo Creek," a parcel owned by Creekside Land Development Corporation (DR 2691/428), to where it runs into Buffalo Creek, thence in a southeasterly direction following Buffalo Creek to its intersection with (Parcel #16K03031), thence southerly along this line to its intersection with Creekside S/D (Section 9B), from this point continuing in a northeasterly direction along the property line of (Parcel #16K03031) to its intersection with Buffalo Creek, thence southerly along Buffalo Creek to its intersection with Creekside S/D, Section 6 (PB 54/201) and (Parcel #16K04022A), thence following the Creekside S/D Boundary line to a point at its intersection with (Parcel #16K04022), thence in an easterly direction following the perimeter of this parcel to its intersection with the centerline of Covered Bridge Road (SR 1700), thence in an easterly direction along the centerline of Covered Bridge Road to its intersection with (Parcel #16K04021A), thence southeasterly along this property line to its intersection with Tafton S/D Phase 2 (PB 59/495), thence in an easterly direction along this line to its intersection with Buffalo Creek, thence in a southeasterly direction along Buffalo Creek to its intersection with Wyndfall S/D Section 5 (PB 64/273), (Parcel #16J04047O), thence in a southwesterly direction following this property line to a point on the centerline of Carrie Drive, thence southeast along this centerline and continuing to follow (Parcel #16J04047O) to its intersection with Buffalo Creek, thence following Buffalo Creek in a southwesterly direction to its intersection with Hog Pen Branch, thence northwesterly following Hog Pen Branch (Edenton S/D, PB 73/54), (PB 55/270), (PB 58/127) to a point on the centerline of Buffalo Road (SR 1003), thence southeasterly along Buffalo Road (SR 1003), thence southwesterly and following Horseman's Run S/D (PB 44/237) and (PB 41/383), thence southwesterly along Jerry Pace's line (DB 883/277) to a point on Tim's Creek (PB 25/221), thence in a northeasterly direction along Tim's Creek to its intersection with (Parcel #16J03049), thence in a westerly direction along this property line to a point at the intersection of Mineral Springs Branch (PB 25/221) and (Parcel

#16J03050B), thence in a southerly direction following this line to a point where it intersects with (Parcel #16J03053B), thence in a westerly direction to its intersection with (Parcel #16J04011A), thence in a southerly direction to its intersection with (Parcel #16J04011P), thence continuing in a southerly direction and around (Parcel #16J04011P) to its intersection with Sandy Creek Drive, thence in a westerly direction, including all of Sandy Creek Drive, to the centerline of South Murphrey Road (SR 1703), thence northeasterly along the centerline to an intersection with (Parcel #16J04010), thence westerly to an intersection with (Parcel #16P99041I), thence continuing westerly to an intersection with (Parcel #16J03059), thence southerly to the intersecton of (Parcel #16J04009) and (Parcel #16J04007), thence in a westerly direction along Phillip Barnes' property (Parcel #16J04009) to its intersection with (Parcel #16J04009A), thence in a southerly direction to the southeastern corner of (Parcel # 16J04008) and including all of (Parcels # 16J04009A and 16J04008); thence from the corner of (Parcel # 16J04008) to its intersection with the centerline of Castleberry Road (SR 1705); thence in a southwesterly direction along this centerline to an intersection with Parcel #16J04005, ~~#16JO4014E; thence southeasterly and around (Parcel # 16J04014E) to its intersection with (Parcel # 16J04007H), thence easterly and around (Parcel # 16J04007H) to its intersection with (PN # 16J04005),~~ thence following this property line in a southeasterly direction to its intersection with Watson's Mill S/D (PB 73/349), (PB 63/241) to a point at River Bend S/D (PB 31/143), thence in a southeasterly direction following the River Bend S/D line, thence following River Bend S/D to a point, thence northwesterly along River Bend S/D to a point on the centerline of Castleberry Road (SR 1705), thence following the centerline of Castleberry Road (SR 1705) in a northeasterly direction at a point in the centerline, thence in a northwesterly direction along William Holloway's line (DB 3167/343) to a point on a creek adjoining Riverwood S/D (PB 47/167), thence along this line (Perry Creek) in a northeasterly direction and continuing along Perry Creek (PB 57/436), thence northeasterly along Perry Creek (James Allen's line: Parcel #16J03061) to a point at the intersection of Phillip Barnes' line (PR 16J03060), thence southeasterly following his property line to a point at the centerline of Castleberry Road (SR 1705), thence northeasterly along Castleberry Road to a point with the intersection of J.T. Smith's line (PN # 16J03057), (DB 1448/893), thence northwesterly along Smith's line to its intersection with Charles Johnson's line (PR 16J03056), (DB 978/679), thence with Johnson's line in a northwesterly direction to its intersection with Phillip H. Barnes' property (PR 16J03063), (DB 3304/201), thence westerly and southwesterly along Phillip H. Barnes' property (PN # 16J03062), (DB 3304/201) to a point on James Allen's line (DB 595/217), thence westerly along James Allen's line where it intersects with Perry Creek, thence in a southwesterly direction along Perry Creek to an intersection with Elizabeth Badgett's line (PB 57/436), thence northwesterly along Badgett's line to a point on the centerline of Loop Road (SR 1706), thence in a northeasterly direction along the centerline of Loop Road (SR 1706) to a point where lot #1 of Mooneyham Estates (PB 33/231) intersects with Loop Road, thence in a northwesterly direction along lot #1 of Mooneyham Estates, thence in a northeasterly direction along lot #1 (PB 33/321) to a point in the eastern right-of-way of an existing 50' access easement, thence northeasterly along this easement to an intersection in the line of Cooper Farms S/D (PB 54/267), (PB 45/141), thence following Cooper Farms S/D to its intersection with Saddlebrook S/D (PB 23/127), thence northeasterly along the Saddlebrook S/D line to its intersection with Millstone Manor S/D (PB 35/77), thence following this line southwesterly thence northeasterly to its intersection with the centerline of Covered Bridge Road (SR 1700) at its Point of Beginning."

SECTION 2. This act becomes effective retroactively from and after the effective date of incorporation under S.L. 2009-466.

HOUSE BILL 710:
Archer Lodge Boundary Correction

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Rep. Daughtry	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: This Senate Committee Substitute for House Bill 710 would correct the boundary of the Town of Archer Lodge by removing a parcel of land included in the original description.

CURRENT LAW: In 2009, the General Assembly incorporated a new municipality in Johnston County, the Town of Archer Lodge. The incorporation was subject to a referendum to be held on November 3, 2009. When the referendum was held, a majority of the voters of the area described in the act voted in favor of incorporation, and the town was incorporated upon the certification of those referendum results a week later, on November 10, 2009.

BILL ANALYSIS: The Senate Committee Substitute for House Bill 710 would correct the boundary, as described in the Charter of the Town of Archer Lodge, as enacted by the General Assembly in 2009, by removing a parcel of land that was included in the original description.

EFFECTIVE DATE: Retroactively to November 10, 2009, the date of incorporation of the town.

BACKGROUND: As introduced, House Bill 710 would have allowed the Town of Clayton, also in Johnston County, to use electronic means to give notice of certain public hearings.

Bill Gilkeson, counsel to Senate State and Local Government Committee, substantially contributed to this summary.

H710-SMRB-95(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1736
Committee Substitute Favorable 5/27/10
Committee Substitute #2 Favorable 6/9/10

Short Title: Local Delinquent Sewer Fees. (Local)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF LOCUST AND THE TOWNS OF NEW LONDON AND STANFIELD TO ATTACH PERSONAL PROPERTY, GARNISH WAGES, AND PLACE LIENS ON CERTAIN REAL PROPERTY TO COLLECT UNPAID FEES FOR SEWER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. A city may adopt an ordinance providing that a fee charged by the city for sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the city for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided and shall include a statement containing the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. A lien on real property is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service or availability fees and within 180 days of the date of the failure to pay for the service or fees. The lien may be discharged as provided in G.S. 44-48.

The city shall adopt an appeals process providing notice and an opportunity to be heard in protest of the imposition of such liens. The county tax office, once notified of the city's lien, shall include the lien amount on any tax bills printed subsequent to the notification. The county tax office shall add or remove liens from the tax bill at the request of the city (such as in the case of an appeal where the city decides to cancel the lien).

SECTION 2. This act applies to the City of Locust and to the Towns of New London and Stanfield.

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

HOUSE BILL 1736:
Local Delinquent Sewer Fees

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Rep. Burr	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1736 authorizes the City of Locust and the Towns of New London and Stanfield, which are located in Stanly County, to collect delinquent fees for sewer services in the same manner that property taxes are collected.

CURRENT LAW: Municipalities are authorized to acquire, construct, establish, maintain, own, operate, and contract for the operation of a "public enterprise," which includes wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities. [G.S. 160A-311-312]. Municipalities are also authorized to establish a schedule of rates and fees for the use of or the services furnished by any pubic enterprise. [G.S. 160A-314]. A city has the authority to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. [G.S. 160A-314(b)]. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. [G.S. 160A-314(b)]. There are also other statutory provisions that address the collection of fees for government services, including:

- *Ambulance Services* – G.S. 44-51.4 allows a local government to collect an account 90 days delinquent through the use of attachment and garnishment proceedings set forth for the collection of property taxes. G.S. 44-55.1 also allows the placement of a lien on real property for unpaid ambulance fees.
- *Solid Waste Fees* – G.S. 153A-293 authorizes a county to enact an ordinance providing that a solid waste fee may be billed and collected as a property tax.

Property taxes may be collected in the following ways:

- Placement of a lien on real and personal property, which is superior to all other liens.
- Sale of real or personal property.
- Attachment and garnishment of wages and bank accounts.

BILL ANALYSIS: House Bill 1736 would authorize the City of Locust and the Towns of New London and Stanfield to adopt an ordinance providing that the city or town may collect any fee for sewer service that is 90 days past due as if it were a property tax. For liens placed on real property, the lien is valid from the time of filing. The lien must be filed with the clerk of superior court in the county in which the service was provided and must provide a statement of the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service provided for which the fee is delinquent, the amount of the unpaid charge, and the date and place of the service provided. The lien must be filed after the charge is 90 days past due and within 180 days of the failure to pay the charge. The ordinance must include an appeals process. The county tax office must include the lien on any tax bills printed subsequent to its notification, and remove the lien from the bill at the request of the City.

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

BACKGROUND: The following local legislation regarding delinquent water and sewer fees has been enacted:

- S.L. 1993-768: Authorizes City of Durham to collect delinquent water and sewer fees resulting from leaking or broken pipes of the real property owner in the same manner as property taxes.
- S.L. 2003-270: Authorizes Columbus[1], Davie, Duplin, and Lenoir Counties, the municipalities in these counties, and water and wastewater authorities in these counties to collect delinquent water and sewer fees in the same manner as delinquent property taxes.
- S.L. 2009-402 Authorizes Montgomery County to collect delinquent water and sewer fees in the same manner as delinquent property taxes.

Giles Perry, counsel to House Local Government I, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H1736-SMRB-96(e3) v1

[1] The authority for Columbus County was removed in 2004. However, the municipalities within Columbus County maintain the authority.

HOUSE BILL 1741*
Committee Substitute Favorable 6/9/10

Short Title: Animal Euthanasia Technicians. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REGISTER ANIMAL SHELTERS UNDER THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT FOR THE LIMITED PURPOSE OF OBTAINING, POSSESSING, AND USING DRUGS FOR ANIMAL EUTHANASIA, TO AUTHORIZE CERTIFIED EUTHANASIA TECHNICIANS TO ADMINISTER THESE DRUGS TO EUTHANIZE DOGS AND CATS ON THE PREMISES OF THE ANIMAL SHELTER, AND TO GIVE THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES EXPLICIT AUTHORIZATION TO REJECT CERTIFICATION OF OR TO DECERTIFY A EUTHANASIA TECHNICIAN FOR CERTAIN FELONY CONVICTIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-101 reads as rewritten:

"**§ 90-101. Annual registration and fee to engage in listed activities with controlled substances; effect of registration; exceptions; waiver; inspection.**

(a) Every person who manufactures, distributes, dispenses, or conducts research with any controlled substance within this State or who proposes to engage in any of these activities shall annually register with the North Carolina Department of Health and Human Services, in accordance with rules adopted by the Commission, and shall pay the registration fee set by the Commission for the category to which the applicant belongs. An applicant for registration shall file an application for registration with the Department of Health and Human Services and submit the required fee with the application. The categories of applicants and the maximum fee for each category are as follows:

CATEGORY	MAXIMUM FEE
Clinic	$150.00
Animal Shelter	150.00
Hospital	350.00
Nursing Home	150.00
Teaching Institution	150.00
Researcher	150.00
Analytical Laboratory	150.00
Dog Handler	150.00
Distributor	600.00
Manufacturer	700.00

(a1) Any physician who prescribes or dispenses Buprenorphine for the treatment of opiate dependence shall annually register with the Department, in accordance with rules

adopted by the Commission. In the application for registration under this subsection, the applicant shall document plans to ensure that patients are directly engaged or referred to a qualified provider to receive counseling and case management, as appropriate, and shall acknowledge the application of federal confidentiality regulations to patient information. Applicant plans for referral to appropriate services shall be a written document and may include either an executed memorandum of agreement, contractual arrangement, or linkage agreement with qualified providers. The Department shall provide assistance upon request to physicians registered under this subsection to identify and establish linkages with qualified providers of counseling and case management. The Department shall provide the North Carolina Medical Board with any evidence of noncompliance with this subsection by a qualified physician prior to taking action to rescind the physician's registration to prescribe or dispense Buprenorphine for the treatment of opiate dependency.

(a2) An animal shelter may register under this section for the limited purpose of obtaining, possessing, and using sodium pentobarbital and other drugs approved by the Department in consultation with the North Carolina Veterinary Medical Association for the euthanasia of animals lawfully held by the animal shelter. An animal shelter registered under this section shall also register with the federal Drug Enforcement Agency under the federal Controlled Substances Act. An animal shelter's acquisition of sodium pentobarbital and other approved drugs for use in the euthanizing of animals shall be made only by the shelter's manager or chief operating officer or by a licensed veterinarian.

A person certified by the Department of Agriculture and Consumer Services to administer euthanasia by injection is authorized to possess and administer sodium pentobarbital and other approved euthanasia drugs for the purposes of euthanizing domestic dogs (Canis familiaris) and cats (Felis domestica) lawfully held by an animal shelter. Possession and administration of sodium pentobarbital and other approved drugs for use in the euthanizing of dogs and cats by a certified euthanasia technician shall be limited to the premises of the animal shelter.

For purposes of this section, "animal shelter" means an animal shelter registered under Article 3 of Chapter 19A of the General Statutes and owned, operated, or maintained by a unit of local government or under contract with a unit of local government for the purpose of housing or containing seized, stray, homeless, quarantined, abandoned, or unwanted animals.

(b) Persons registered by the North Carolina Department of Health and Human Services under this Article (including research facilities) to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of this Article:

(1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment;

(2) The State courier service operated by the Department of Administration, a common or contract carrier, or a public warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner;

(4) Repealed by Session Laws 1977, c. 891, s. 4.

(5) Any law-enforcement officer acting within the course and scope of official duties, or any person employed in an official capacity by, or acting as an agent of, any law-enforcement agency or other agency charged with

enforcing the provisions of this Article when acting within the course and scope of official duties; and

(6) A practitioner, as defined in G.S. 90-87(22)a., who is required to be licensed in North Carolina by his respective licensing board.

(d) The Commission may, by rule, waive the requirement for registration of certain classes of manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration shall be required at each principal place of business, research or professional practice where the registrant manufactures, distributes, dispenses or uses controlled substances.

(f) The North Carolina Department of Health and Human Services is authorized to inspect the establishment of a registrant, applicant for registration, or practitioner in accordance with rules adopted by the Commission.

(g) Practitioners licensed in North Carolina by their respective licensing boards may possess, dispense or administer controlled substances to the extent authorized by law and by their boards.

(h) A physician licensed by the North Carolina Medical Board pursuant to Article 1 of this Chapter may possess, dispense or administer tetrahydrocannabinols in duly constituted pharmaceutical form for human administration for treatment purposes pursuant to rules adopted by the Commission.

(i) A physician licensed by the North Carolina Medical Board pursuant to Article 1 of this Chapter may dispense or administer Dronabinol or Nabilone as scheduled in G.S. 90-90(5) only as an antiemetic agent in cancer chemotherapy."

SECTION 2. G.S. 19A-24(b) reads as rewritten:

"(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture ~~may adopt rules on the euthanasia of animals for:~~ shall adopt rules for the certification of euthanasia technicians. The rules may provide for:

(1) Written and practical examinations for persons who perform euthanasia.

(2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.

(3) Recertification of euthanasia technicians on a periodic basis.

(4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.

(5) Approval of materials for use in euthanasia technician training.

(6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.

(7) Denial, suspension, or revocation of certification of euthanasia technicians ~~who either violate~~ who:

a. Violate any provision of ~~the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise~~ this Article or rules adopted pursuant to this Article;

b. Have been convicted of or entered a plea of guilty or nolo contendere to:

1. Any felony;

2. Any misdemeanor or infraction involving animal abuse or neglect; or

3. Any other offense related to animal euthanasia, the duties or responsibilities of a euthanasia technician, or a euthanasia technician's fitness for certification;

c. Make any false statement, give false information, or omit material information in connection with an application for certification or for renewal or reinstatement of certification as a euthanasia technician; or

d. Otherwise are or become ineligible for certification.

(8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.

(9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.

(10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians."

SECTION 3. G.S. 19A-24 is amended by adding two new subsections to read:

"(c) Regardless of the extent to which the Board exercises its authority under subsection (b) of this section, the Department may deny, revoke, or suspend the certification of a euthanasia technician who has been convicted of or entered a plea of guilty or nolo contendere to a felony involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, or narcotic.

(d) Persons seeking certification as euthanasia technicians, or a renewal of such certification, shall provide the Department a fingerprint card in a format acceptable to the Department, a form signed by the person consenting to a criminal record check and the use of the person's fingerprints, and such other identifying information as may be required by the State or national data banks. The Department may deny certification to persons who refuse to provide the fingerprint card or consent to the criminal background check. Fees required by the Department of Justice for conducting the criminal background check shall be collected by the Department and remitted to the Department of Justice along with the fingerprint card and consent form."

SECTION 4. Part 2 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.28. Criminal record checks of applicants for certification by the Department of Agriculture and Consumer Services as euthanasia technicians.**

The Department of Justice may provide a criminal record check to the Department of Agriculture and Consumer Services for a person who has applied for a new or renewal certification as a euthanasia technician. The Department of Agriculture and Consumer Services shall provide the Department of Justice a request for the criminal record check, the fingerprints of the individual to be checked, any additional information required by the Department of Justice, and a form signed by the person seeking certification consenting to the check of the criminal record. The fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Agriculture and Consumer Services shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 5. This act becomes effective October 1, 2010.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 24, 2010

TO: Senate Finance Committee
FROM: General Statutes Commission
RE: **House Bill 1741 (Animal Euthanasia Technicians)**

General Comments

This bill allows animal shelters that are owned, operated, or maintained by a unit of local government or under contract with a unit of local government to register with the North Carolina Department of Health and Human Services (DHHS) in order to obtain euthanasia drugs directly from the manufacturer. A shelter will also need to register with the federal Drug Enforcement Agency (DEA). In addition, the bill makes related amendments to the Animal Welfare Act.

The General Statutes Commission is informed that the ability to obtain euthanasia drugs directly from the drug manufacturer will reduce their cost to the animal shelter. Because, historically, carbon monoxide chambers have been less expensive for shelters than euthanasia by injection, it is possible that lowering the cost of euthanasia by injection will result in a decrease in the use of carbon monoxide chambers.

Specific Comments

Section 1 amends G.S. 90-101 to add a new subsection (a2) that:

- Allows DHHS to register animal shelters as described in the bill;
- Limits the persons who can order euthanasia drugs for a shelter to the shelter manager or chief operating officer or a veterinarian;
- Requires a shelter that registers with the State to register also with DEA;
- Authorizes properly certified euthanasia technicians to administer euthanasia drugs to dogs and cats lawfully held by the shelter (but only on its premises); and
- Defines "animal shelter" for purposes of the section.

To answer a possible question, the authorization for animal shelters to purchase euthanasia drugs is for "animals" while the authorization for certified euthanasia technicians is for "dogs" and "cats." The reason is that euthanasia technicians are trained and certified for dogs and cats only. Shelters, however, sometimes take in other animals, and a shelter may employ a veterinarian for other kinds of animals who will use the shelter's supplies.

Section 1 also amends G.S. 90-101(a) to add a registration fee for shelters of $150, the same as the fee for clinics, nursing homes, schools, researchers, laboratories, and dog handlers.

Section 2 amends G.S. 19A-24(b) in two respects.

It conforms the introductory language of the subsection to the subsection's actual content. The introductory language of G.S. 19A-24(b) currently refers to adopting rules on the euthanasia of animals, but the subsection actually deals with certifying euthanasia technicians. The authority of the Board of Agriculture (Board) to adopt rules on animal euthanasia is in G.S. 19A-24(a) (please note that "animal" in G.S. 19A-24 means a dog or a cat, see N.C. Gen. Stat. § 19A-23 (2009)).

Section 2's amendment to G.S. 19A-24(b)(7) clarifies the Board's authority to provide by rule for denying, suspending, or revoking a euthanasia technician's certification. Grounds may include violating the Animal Welfare Act or the Board's rules; conviction of any felony or any lesser offense that involves animal cruelty or is related to being a euthanasia technician; falsifying an application; or otherwise becoming ineligible for certification.

Section 3 adds two new subsections to G.S. 19A-24.

New subsection (c) expressly authorizes the North Carolina Department of Agriculture and Consumer Services (Department) to deny, revoke, or suspend a euthanasia technician's certification for conviction of a drug-related felony even if the Board has not included that ground in its rules.

New subsection (d) requires applicants for certification as a euthanasia technician to provide the Department with fingerprints and consent for the Department to obtain a criminal record check from the Department of Justice. Refusal by an applicant is grounds to deny the application. The Department collects the Department of Justice's fee for the criminal records check and then remits it to the Department of Justice.

Section 4 adds a new section, G.S. 114-19.28, to Chapter 114 of the General Statutes to authorize the Department of Justice to provide criminal record checks to the Department of Agriculture and Consumer Services for applicants for certification as a euthanasia technician. The new statute requires the Department of Agriculture and Consumer Services to provide the fingerprints and authorizes the Department of Justice to charge a fee.

Section 5 provides an effective date of October 1, 2010.

HOUSE BILL 1741:
Animal Euthanasia Technicians

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Rep. Ross	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1741[1], which is a recommendation of the General Statutes Commission, would allow animal shelters that are owned, operated, or maintained by a unit of local government or under contract with a unit of local government to register with the North Carolina Department of Health and Human Services (DHHS) in order to obtain euthanasia drugs directly from the manufacturer. The bill would make related amendments to the Animal Welfare Act.***

CURRENT LAW: Animal shelters may either use euthanasia drugs or carbon monoxide chambers when they have to euthanize animals. Historically, carbon monoxide chambers have been less expensive for shelters than euthanasia by injection. The ability of animal shelters to obtain euthanasia drugs directly from the manufacturer would reduce their costs and may result in more animal shelters utilizing euthanasia by injection.

To obtain euthanasia drugs directly from the manufacturer, a person must be registered with the Developmental Disabilities and Substance Abuse Services program with the Department of Health and Human Services' (DHHS) Division of Mental Health. Some animal shelters currently register with the program under a memorandum of agreement between the shelter and a veterinarian. Shelters may use the memorandum of agreement to register as a 'clinic'. The program currently licenses 93 facilities that euthanize dogs and cats.

The Animal Welfare Section of the Department of Agriculture and Consumer Services (DACS) Veterinary Division certifies euthanasia technicians and licenses public and private animal shelters. There are currently 122 licensed public animal shelters, 93 of which euthanize animals. There are currently 425 certified euthanasia technicians. A certified euthanasia technician is a person employed by a certified facility who has been instructed in the proper methods of humane euthanasia, security, and record keeping. A certification must be renewed every five years.

BILL ANALYSIS: House Bill 1741 would allow animal shelters that are owned, operated, or maintained by a unit of local government or under contract with a unit of local government to register with DHHS in order to obtain euthanasia drugs directly from the manufacturer. The registration fee could not exceed $150. The current registration fee is $125. The bill would also make related amendments to the Animal Welfare Act.

Section 1 of the bill would do the following:

- Allow DHHS to register animal shelters under the NC Controlled Substances Act for the limited purpose of obtaining, possessing, and using drugs for animal euthanasia.
- Require a shelter that registers with the State to register also with the federal Drug Enforcement Agency.

[1] As introduced, the bill was identical to Senate Bill 1219, introduced by Sen. Hartsell. The Senate Bill is in the Senate Judiciary I Committee.

- Authorize properly certified euthanasia technicians to administer euthanasia drugs to dogs and cats lawfully held by the shelter but only on its premises.[2]
- Limit the persons who can order euthanasia drugs for a shelter to the shelter manager or chief operating officer or a licensed veterinarian.
- Define "animal shelter" for purposes of the section.
- Set the maximum registration for shelters at the same amount applicable for clinics, nursing homes, schools, researchers, laboratories, and dog handlers: $150.00.

Section 2 of the bill would clarify the Board of Agriculture's (Board) authority to provide by rule for denying, suspending, or revoking a euthanasia technician's certification. Grounds may include violating the Animal Welfare Act or the Board's rules; conviction of any felony or any lesser offense that involves animal cruelty or is related to being a euthanasia technician; falsifying an application; or otherwise becoming ineligible for certification. The section would also conform the introductory language of the subsection to the subsection's actual content. The introductory language of G.S. 19A-24(b) currently refers to adopting rules on the euthanasia of animals, but the subsection actually deals with certifying euthanasia technicians. The authority of the Board to adopt rules on animal[3] euthanasia is in G.S. 19A-24(a).

Section 3 of the bill would expressly authorize DACS to deny, revoke, or suspend a euthanasia technician's certification for conviction of a drug-related felony even if the Board has not included that ground in its rules. It would also require applicants for certification as a euthanasia technician to provide the DACS with fingerprints and consent for the DACS to obtain a criminal record check from the Department of Justice. Refusal is grounds to deny the application. The DACS would collect the Department of Justice's fee for the criminal records check from the applicant and remit it to the Department of Justice.

Section 4 of the bill would authorize the Department of Justice to provide criminal record checks to the DACS for applicants for certification as a euthanasia technician and to impose the requisite fee. The current fee for a background check is $38.

EFFECTIVE DATE: This act becomes effective October 1, 2010.

This summary was provided by the General Statutes Commission.

H1741-SMRB-94(e2) v3

[2]The authorization for animal shelters to possess and use euthanasia drugs is for "animals" while the authorization for certified euthanasia technicians to possess and use euthanasia drugs is for "dogs" and "cats." The reason is that euthanasia technicians are trained and certified for dogs and cats only. Shelters, however, sometimes take in other animals, and a shelter may employ a veterinarian for other kinds of animals who will use the shelter's supplies.

[3] The term 'animal' refers to a dog or a cat in this context. [G.S. 19A-23].

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1741*

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

H1741-ARB-65 [v.1]

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

Date _____,2010

Senator Hartsell

moves to amend the bill on page 4, line 49, by rewriting the line to read:
"section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1741*

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

H1741-ARB-65 [v.1]

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

Date June 29 ,2010

Senator ~~Hartsell~~ Clodfelter

moves to amend the bill on page 4, line 49, by rewriting the line to read:
"section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1754
Committee Substitute Favorable 6/17/10

Short Title: Tax Certification - Dare & McDowell. (Local)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DARE AND MCDOWELL COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

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

HOUSE BILL 1754:
Tax Certification - Dare & McDowell

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Rep. Spear	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1754 would authorize Dare and McDowell Counties to require the payment of delinquent property taxes before recording deeds conveying property.***

CURRENT LAW: G.S. 161-31(a) provides that the board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property unless the county tax collector has certified that there are no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. In the resolution, the county commissioners may describe the form the certification must take.

G.S. 161-31(a1) provides an exception. It requires that the register of deeds must accept, without certification, a deed that contains the following statement: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31 applies to the following 67 counties: Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin.

The following counties have a similar requirement but under different authorizing legislation:

Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433[1]
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326[2]

These local acts state that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS: House Bill 1754 would add Dare and McDowell Counties to the list of counties that would permit the board of commissioners to pass a resolution requiring that the register of deeds not accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property described in the deed.

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

Brad Krehely, counsel to House Judiciary II, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H1754-SMRB-97(e2) v1

[1] S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

[2] This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

HOUSE BILL 1953
Committee Substitute Favorable 6/9/10
Third Edition Engrossed 6/22/10

Short Title: Delinquent Tax Deny Permits/Set Tax Discount. (Local)

Sponsors:

Referred to:

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CURRITUCK COUNTY MAY PROHIBIT THE ISSUANCE OF A LAND-USE PERMIT OR A BUILDING PERMIT TO A DELINQUENT TAXPAYER AND TO ALLOW PASQUOTANK COUNTY TO SET THE TAX PREPAYMENT DISCOUNT BY JUNE 30, 2010.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of this act applies to Currituck County only.

SECTION 2. G.S. 153A-340 is amended by adding a new subsection to read:

"**§ 153A-340. Grant of power.**

...

(c2) A county may by ordinance provide that a special use permit or conditional use permit may not be issued under subsection (c1) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a special use permit or conditional use permit may be issued to a person protesting the assessment or collection of property taxes."

SECTION 3. G.S. 153A-357(c)(2) reads as rewritten:

"(2) This subsection applies to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Currituck, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes, Surry, Tyrrell, Wayne, and Yadkin Counties only."

SECTION 4. Notwithstanding G.S. 105-360(c)(1), in order to establish a schedule of discounts to be applied to taxes paid prior to the due date prescribed in G.S. 105-360(a), Pasquotank County shall, not later than the 30th day of June preceding the due date of the taxes to which it first applies, adopt a resolution or ordinance specifying the amounts of the discounts and the periods of time during which they are to be applicable.

Any taxpayer who pays 2010 taxes to Pasquotank County prior to the due date and prior to the publishing of the new discount schedule under G.S. 105-360(c)(3) shall be entitled to the discount in effect at the time payment was made.

SECTION 5. This act is effective when it becomes law. Section 4 of this act applies only to the 2010 process of adopting a resolution to set the discount to be applied to taxes paid prior to the due date.

HOUSE BILL 1953:
Delinquent Tax Deny Permits/Set Tax Discount

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 28, 2010
Introduced by:	Rep. Owens	**Prepared by:**	Cindy Avrette
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1953 would authorize Currituck County to deny issuance of a land use permit or building permit to any person who owes delinquent property taxes, and would extend Pasquotank County's 2010 deadline for setting the property tax prepayment discount schedule from May 1 to June 30..

DELINQUENT TAX DENY PERMITS: In 2005, the General Assembly authorized Greene, Lenoir, Iredell, Wayne, and Yadkin Counties to deny issuance of a building permit to a person who owes delinquent property taxes on property owned by the person.[1] This authority was granted to Davie and Lincoln Counties in 2006,[2] to Gates County in 2007,[3] and to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokes, Surry and Tyrell Counties in 2009.[4] Section 3 of the bill would add Currituck County to the list of counties previously authorized to deny issuance of a building permit to a person who owes delinquent property taxes.

G.S. 153A-340(c1) authorizes a county to issue special use permits or conditional use permits pursuant to zoning and development regulation ordinances enacted by the county. Section 2 of the bill would authorize Currituck County to enact an ordinance prohibiting issuance of a special use permit or a conditional use permit to a person who owes delinquent property taxes, and permitting issuance of such permits to a person protesting the assessment or collection of property taxes.

SET TAX DISCOUNT: G.S. 105-360(c)(1) authorizes counties to establish a schedule of discounts applied to property taxes paid before their due date, provided that the schedule is specified by resolution or ordinance adopted no later than May 1 preceding the due date of the taxes to which the schedule first applies. Section 4 of the bill would extend the deadline for Pasquotank County to adopt a revised schedule of discounts for payment of property taxes before they are due from May 1 to June 30 preceding the due date of the taxes to which the discounts first apply. It would also entitle any taxpayer who prepays their taxes to Pasquotank County before the new discount schedule is published to claim the discount in effect at the time payment was made.

EFFECTIVE DATE: The act is effective when it becomes law. Section 4 would only apply to the 2010 process by which Pasquotank County adopts the revised schedule of discounts for prepayment of taxes.

Bill Patterson, counsel to House Local Government II, and Martha Walston, counsel to House Finance, substantially contributed to this summary.

H1953-SMRB-98(e3) v1

[1] S.L. 2005-433, s. 3(b).
[2] S.L. 2006-150, s. 2.
[3] S.L. 2007-58, s. 1.
[4] S.L. 2009-117, s. 1.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1829*
Committee Substitute Favorable 6/3/10
Third Edition Engrossed 6/9/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1829-CSTD-108 [v.2]

6/29/2010 12:58:03 PM

Short Title: Renewable Energy Incentives. (Public)

Sponsors:

Referred to:

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE USE OF RENEWABLE ENERGY BY EXTENDING THE CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES AND THE CREDIT FOR BIODIESEL PRODUCERS, REVISING THE TAX CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY, REINSTATING AND EXPANDING THE TAX CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY PROPERTY FACILITY, CLARIFYING THE AUTHORITY OF LOCAL GOVERNMENTS TO FINANCE ENERGY PROGRAMS, CLARIFYING THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE, AND ENSURING THAT HOMEOWNERS ASSOCIATION RESTRICTIONS DO NOT PREVENT THE USE OF SOLAR ENERGY SYSTEMS.

The General Assembly of North Carolina enacts:

TO EXTEND THE CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES AND THE CREDIT FOR BIODIESEL PRODUCERS.

SECTION 1.(a) G.S. 105-129.16D(d) reads as rewritten:

"**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

...

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, ~~2011.~~2013."

SECTION 1.(b) G.S. 105-129.16F(b) reads as rewritten:

"**§ 105-129.16F. Credit for biodiesel producers.**

...

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, ~~2010.~~2013."

CHANGES TO CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY

SECTION 2.(a) G.S. 105-129.15 reads as rewritten:

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

...

(2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to ~~G.S. 105-130.4(j)(2).~~ G.S. 105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code.

...

(4b) Installation of renewable energy property. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.

....

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Combined heat and power system property. – Defined in section 48 of the Code.

c. Geothermal equipment that meets either of the following descriptions:

1. It is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

2. It uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.

~~b.~~ d. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

~~c.~~ e. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

~~d.~~ f. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity ~~produced.~~ produced or relaying the electricity by cable from the turbine motor to the power grid.

~~e. Geothermal heat pumps that use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.~~

~~f. Geothermal equipment that uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating and cooling.~~"

SECTION 2.(b) G.S. 105-129.16A reads as rewritten:

"**§ 105-129.16A. Credit for investing in renewable energy property.**

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a ~~single-family dwelling,~~nonbusiness purpose, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Upon request of a taxpayer that leases renewable energy property, the lessor of the property must give the taxpayer a statement that describes the renewable energy property and states the cost of the property.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) ~~Nonresidential Property.~~ Business. – A ceiling of two million five hundred thousand dollars ($2,500,000) ~~per installation~~ applies to each installation of renewable energy property placed in service for ~~any purpose other than residential.~~ a business purpose. Renewable energy property is placed in service for a business purpose if the useful energy generated by the property is offered for sale or is used on-site for a purpose other than providing energy to a residence.

(2) ~~Residential Property.~~Nonbusiness. – The following ceilings apply to each installation of renewable energy property placed in service for ~~residential purposes:~~ a nonbusiness purpose. The ceiling applies to each residence:

a. One thousand four hundred dollars ($1,400) ~~per dwelling unit~~ for solar energy equipment for domestic water heating, including pool heating.

b. Three thousand five hundred dollars ($3,500) ~~per dwelling unit~~ for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. ~~Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.~~Eight thousand four hundred dollars ($8,400) for geothermal equipment.

d. ~~Eight thousand four hundred dollars ($8,400) per installation for a geothermal heat pump or geothermal equipment.~~Ten thousand five hundred dollars ($10,500) for any other renewable energy property.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, 2016."

SECTION 2.(c) G.S. 105-259(b) is amended by adding the following new subdivision to read:

"(40) To furnish to a taxpayer claiming a credit under G.S. 105-129.16A information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 2.(d) This section is effective for taxable years beginning on or after January 1, 2010.

REINSTATE AND EXPAND CREDIT FOR A RENEWABLE ENERGY PROPERTY FACILITY

SECTION 3.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16I. Credit for a renewable energy property facility.**

(a) Credit. – A taxpayer that places in service in this State a commercial facility for the manufacture of renewable energy property or a major component subassembly for a solar array or a wind turbine is allowed a credit. A taxpayer places a facility in service if it constructs the facility or converts its existing manufacturing facility to change the product it manufactures. For a taxpayer that constructs a facility, the credit is 25% of the taxpayer's cost to construct and equip the facility. For a taxpayer that converts a facility, the credit is 25% of the taxpayer's cost to convert and equip the existing facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the facility may not take the credit allowed in this section with respect to that facility.

(b) Installments. – The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in five equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) Sunset. – This section is repealed effective for a renewable energy property facility placed in service on or after January 1, 2014."

SECTION 3.(b) This section is effective for taxable years beginning on or after January 1, 2011.

CLARIFY LOCAL GOVERNMENT AUTHORITY TO FINANCE ENERGY PROGRAMS

SECTION 4.(a) G.S. 153A-455 reads as rewritten:

"**§ 153A-455. ~~Revolving loan program for energy~~Program to finance energy improvements.**

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the

State in order to conserve energy, promote economic competitiveness, and expand employment in the State. The General Assembly also finds that a county has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the county's territorial jurisdiction. In furtherance of this purpose, a county may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) ~~Revolving Loan Fund.~~Financing Assistance. – A county may establish a revolving loan fund and a loan loss reserve fund for the purpose of ~~providing loans to finance~~financing or assisting in the financing of the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A county may establish other local government energy efficiency and distributed generation renewable energy source finance programs funded through federal grants. A county may use ~~Energy Efficiency and Conservation Block Grant Funds~~ State and federal grants and loans and its ~~unrestricted~~ general revenue ~~to fund the revolving loan fund.~~for this financing. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8."

SECTION 4.(b) G.S. 153A-149(c) is amended by adding a new subdivision to read:

"(10c) Energy Financing. – To provide financing for renewable energy and energy efficiency in accordance with a program established under G.S. 153A-455."

SECTION 4.(c) G.S. 160A- 459.1 reads as rewritten:

"**§ 160A-459.1. ~~Revolving loan program for~~ Program to finance energy improvements.**

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. The General Assembly also finds that a city has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the city's territorial jurisdiction. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) ~~Revolving Loan Fund~~ Financing Assistance. – A city may establish a revolving loan fund and a loan loss reserve fund for the purpose of ~~providing loans to finance~~ financing or assisting in the financing of the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may establish other local government energy efficiency and distributed generation renewable energy source finance programs funded through federal grants. A city may use ~~Energy Efficiency and Conservation Block Grant Funds~~ State and federal grants and loans and its ~~unrestricted~~ general revenue ~~to fund the revolving loan fund.~~ for this financing. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8."

SECTION 4.(d) G.S. 160A-209(c) is amended by adding a new subdivision to read:

"(10b) Energy Financing. – To provide financing for renewable energy and energy efficiency in accordance with a program established under G.S. 160A-459.1."

CLARIFY THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE

SECTION 5.(a) G.S. 105-130.34(a) reads as rewritten:

"(a) Any C Corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity ~~to and accepted by~~ for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

The credit allowed under this section for one or more qualified donations made in a taxable year may not exceed five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report."

SECTION 5.(b) G.S. 105-151.12(a) reads as rewritten:

"(a) An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity ~~to and accepted by~~ for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the

property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

(2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report."

ENSURE THAT HOMEOWNERS ASSOCIATION RESTRICTIONS DO NOT PREVENT THE USE OF SOLAR ENERGY SYSTEMS

SECTION 6.(a) G.S. 22B-20 reads as rewritten:

§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) ~~Except as provided in subsection (d) of this section, any~~A deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property on land subject to the deed restriction, covenant, or agreement is void and unenforceable. As used in this section, the term "residential property" means property where the predominant use is for residential purposes. The term "residential property" does not include any condominium created under Chapter 47A or 47C of the General Statutes located in a multi-story building containing units having horizontal boundaries described in the declaration. As used in this section, the term "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which the condominium was created.

(c) ~~This section does not prohibit a~~A deed restriction, covenant, or similar binding agreement that runs with the land ~~that would regulate~~may not place unreasonable restrictions on the location or screening of solar collectors as described in subsection (b) of this ~~section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a residential property.~~ section. As used in this subsection "unreasonable restrictions" means any restriction that would increase the installation costs of a solar collector by more than 10% of the total initial installation costs, including labor and equipment. If an owners' association is responsible for exterior maintenance of a structure containing individual residences, a deed restriction, covenant, or similar binding agreement that runs with the land may provide that (i) the title owner of the residence shall be responsible for all damages caused by the installation, existence, or removal

of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the owners' association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) the owners' association shall not be responsible for maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a written agreement that is recorded in the office of the register of deeds in the county or counties in which the property is situated. As used in this section, "owners' association" has the same meaning as in G.S. 47F-1-103.

~~(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:~~

~~(1) On the facade of a structure that faces areas open to common or public access;~~

~~(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or~~

~~(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.~~

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party.".

SECTION 6.(b) This section becomes effective December 1, 2010, and applies to deed restrictions, covenants, or similar binding agreements that run with the land and that are recorded on or after that date.

EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: 6/29/2010

TO: Senate Finance

FROM: Jonathan Tart
Fiscal Research Division

RE: PCS to H1829 v3

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
REVENUES:	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
Section 1.(a)	No Impact – see assumptions and methodology				
Section 1.(b)	-$.7	-1.3	-$.7	$0.0	$0.0
Section 2	Insignificant impact based on information gathered from NCSEA and the Department of Revenue				
Section 3	No Impact – see assumptions and methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC DOR

EFFECTIVE DATE: Becomes effective when law except where otherwise specified.

BILL SUMMARY:

Section 1: Section 1 extends the sunsets for the credit for constructing renewable fuel facilities and the credit for biodiesel producers from January 1, 2011 to January 1, 2013.

Section 2: Section 2 makes the following changes to the credit for investing in renewable energy property:

- Amends the definition of "cost" to follow the federal definition under the Internal Revenue Code. As currently defined, the cost of leased property is determined by multiplying the annual rent by eight. This is the same definition that is used under the Bill Lee Act and Article 3J. In some instances, a developer will structure a project in such a way as to elect for federal purposes to pass through the federal tax credit to an affiliated entity that is leasing the equipment. In these instances, the actual cost of the renewable energy property and installation can be greater than the amount derived by multiplying the annual rent by eight. This change to the definition would allow the person that elects to pass through the federal credit to use the actual cost of the property when calculating the tax credit.

- Creates a definition for the term "installation" that is consistent with the interpretation of the term by the Department of Revenue in private letter rulings. The tax credit is limited to $2.5 million per nonresidential installation. The term "installation" is not defined, and investors routinely seek rulings from the Department of Revenue for clarification of this term and its application to particular projects. The Department has defined installation as "renewable energy property that standing alone or in combination with other machinery, equipment, or real property is able to produce usable renewable energy on its own."

- Adds combined heat and power equipment to the types of property that is eligible for the credit. Combined heat and power equipment produces heat and electricity simultaneously.

- Amends the definition of wind turbine to include equipment used in relaying the electricity produced by a wind turbine by cable to the power grid.

- Makes other technical and conforming changes to the statute.

This section is effective for taxable years beginning on or after January 1, 2010.

Source: Committee Counsel Bill Summary

Section 3: Section 3 reinstates and expands the credit for constructing a facility for renewable energy property and a major component subassembly for a solar array or a wind turbine. The credit is equal to 25% of the cost to the taxpayer of constructing and equipping the facility. Renewable energy property includes biomass equipment, combined heat and power equipment, hydroelectric generators, geothermal equipment, solar energy equipment, and wind equipment. The credit may be taken against the franchise tax or the income tax. The entire credit must be taken in five equal installments, beginning with the taxable year the facility is placed in service. If the facility is disposed of, or taken out of service, the taxpayer may not take any remaining installments. The credit is subject to the following limitations:

- The credit may not exceed 50% of the tax against which it is claimed for the taxable year.

- Any unused portion of the credit may be carried forward for five years.

- A taxpayer that claims any other credit with respect to the construction of a facility to manufacture renewable energy property may not take this credit with respect to the same facility.

The credit is effective for taxable years beginning on or after January 1, 2010 and would sunset for facilities placed in service on or after January 1, 2014.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:

Section 1.(a): This subsection extends the sunset for the credit for constructing renewable fuel facilities from January 1, 2011 to January 1, 2013. The Department of Revenue Tax Expenditure Report projects no significant impact for this credit in FY 2009-10. Fiscal Research is aware of an ethanol plant, which opened in 2010 and may qualify for the credit for constructing renewable fuel processing facilities; however, because the plant is being completed before the existing sunset, any fiscal impact would be realized under current law. As a result, the extension of the credit is expected to have no significant impact.

Section 1.(b): This subsection extends the sunset for the tax credit for biodiesel producers from January 1, 2011 to January 1, 2013. The credit is equal to the per gallon excise tax paid under Article 36C of Chapter 105. The credit does not apply to biodiesel blend. According to the Department of Revenue Tax Expenditure Report, there are 8 biodiesel producers in North Carolina and annual production is assumed to be 4 million gallons per year. Based on a projected motor fuels tax rate of 31.7 cents per gallon, the credit is estimated to cost $1.3 million annually.

The bill would sunset the credit in January 2013. This would result in a partial year impact for FY 2012-13, and no impact for FY 2013-14.

Section 2: The change to the definition of cost will make the credit more generous for taxpayers that lease renewable energy property in the majority of cases, but it is estimated to have an insignificant fiscal impact because lessees of renewable energy property have already been following the federal rules under the Internal Revenue Code for determining the cost of leased property used to calculate the tax credit according to the North Carolina Sustainable Energy Association. This practice is consistent with the determination of cost as applied under the change made by House Bill 1829.

Adding a statutory definition of installation will not have an impact because House Bill 1829 codifies the definition as currently interpreted by the Department of Revenue in letter rulings. Additional statutory definitions provide clarity regarding the types of property that qualify and do not have a fiscal impact.

Section 3: The bill creates a tax credit for the construction of a facility used to manufacture renewable energy property. Since there are no known projects that would qualify for the credit, there is no fiscal impact estimated.

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Sustainable Energy Association

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1214
PROPOSED COMMITTEE SUBSTITUTE S1214-CSTDf-104 [v.8]

6/29/2010 11:52:57 AM

Short Title: Highway Patrol Motor Carrier Fine/Local Fees. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRESPONDING CHANGES TO THE MOTOR VEHICLES LAWS TO COMPLY WITH FEDERAL MOTOR CARRIER ENFORCEMENT REGULATIONS AND MAINTAIN FEDERAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FUNDING FOR THE STATE HIGHWAY PATROL'S MOTOR CARRIER SECTION, TO REQUIRE DECLARED REGISTRATION LICENSE WEIGHT TO BE FOR THE MAXIMUM WEIGHT FOR ALL VEHICLES THAT ARE PROVIDED EXEMPTIONS UNDER G.S. 20-118, AND TO MODIFY THE STATUTE OF LIMITATION FOR CIVIL SUITS RELATED TO UNCOLLECTED CIVIL FINES THAT HAVE BEEN ASSESSED AND REMAIN OWED TO THE STATE CIVIL FINES AND FORFEITURES FUND AND TO ALLOW LOCAL GOVERNMENTS TO REFUND UNUSED ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used.

(12c) Gross Combination Weight Rating (GCWR). – Defined in 49 C.F.R. § 390.5.

(12d) Gross Vehicle Weight (GVW). – The total weight of a vehicle, including passengers, fuel, cargo, and attachments.

(12e) Gross Combined Weight (GCW). – The total weight of a combination (articulated) motor vehicle, including passengers, fuel, cargo, and attachments.

~~(12e)~~(12f) Hazardous Materials. – Any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under Subpart F of Part 172 of Title 49 of the Code of Federal Regulations ~~(1 October 2007 Edition)~~, or any quantity of a material listed as a select agent or toxin under Part 73 of Title 42 of the Code of Federal ~~Regulations (1 October 2007 Edition).~~Regulations.

...."

SECTION 2. G.S. 20-96 is amended by adding a new subsection to read:

"(c) The authority of a law enforcement officer to seize a motor vehicle pursuant to subsection (a) of this section shall not be affected by the statutes of limitation set out in Chapter 1 of the North Carolina General Statutes."

SECTION 3. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

a. Is hauling agricultural crops from the farm where the crop is grown to any market within 150 miles of that farm.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

c. Does not exceed a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.

d. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section.

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-47, s. 10, effective December 16, 2001.

e. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

e. Is registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration as listed in subsection (b) of this section."

SECTION 4. G.S. 20-196.4 reads as rewritten:

"**§ 20-196.4. Oversized and hazardous shipment escort fee.**

(a) Every person, firm, corporation, or entity required by the North Carolina Department of Transportation or any federal agency or commission to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized load or hazardous shipment by road or rail shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(b) If the State Highway Patrol provides an escort to accompany the transport of oversized loads or hazardous shipments by road or rail at the request of any person, firm, corporation, or entity that is not required to have a law enforcement escort pursuant to subsection (a) of this section, then the requester shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(c) ~~The Department of Crime Control and Public Safety shall comply with the provisions of G.S. 12-3.1(a)(2) when establishing fees to implement this section.~~A fee established under this section is subject to G.S. 12-3.1. The full cost of an escort includes costs for vehicle or equipment maintenance required before or after an escort to ensure the visibility and safety of the law enforcement escort and the motoring public.

(d) All fees collected pursuant to this section shall be placed in a special Escort Fee ~~Account and shall remain unencumbered and unexpended until appropriated by the General Assembly.~~Account. Revenue in the account is annually appropriated to the Department to reimburse the Department for its expenses in providing escorts under this section.

~~(e) The Department shall report quarterly on the funds in the special account to the Chairs of the Joint Legislative Transportation Oversight Committee, to the Chairs of the House of Representatives Appropriations Subcommittee on Transportation and the Senate Appropriations Subcommittee on Department of Transportation, and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.~~"

SECTION 5. G.S. 20-376(5) reads as rewritten:

"(5) Intrastate motor carrier. – Any person, firm, or corporation that operates or controls a ~~commercial~~ motor vehicle ~~as defined in G.S. 20-4.01(3d) in intrastate commerce~~ in intrastate commerce when the vehicle:

a. Is a vehicle having a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) or gross vehicle weight (GVW) or gross combination weight (GCW) of 26,001 pounds or more, whichever is greater.

b. Is designed or used to transport 16 or more passengers, including the driver.

c. Is used in transporting a hazardous material in a quantity requiring placarding pursuant to 49 C.F.R. Parts 170 through 185."

SECTION 6. G.S. 1-52 is amended by adding a new subdivision to read:

"(20) Upon a liability for a civil penalty, civil assessment, or civil fine imposed pursuant to Chapter 20 of the General Statutes."

SECTION 7. A local government that imposed an assessment prior to 2005 to finance a capital project that has been assumed by another unit of local government may return unused assessments to the person that paid the assessment.

SECTION 8. This act becomes effective July 1, 2010.

SENATE BILL 1214:
Highway Patrol Motor Carrier Fines/ Local Fees.

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Sen. Jenkins	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S1214-CSTDf-104		

SUMMARY: Senate Bill 1214 would clarify the vehicles that are regulated under the Motor Carrier Safety Regulation Unit, would amend various laws pertaining to property hauling vehicles and would allow local governments refund assessments.

BILL ANALYSIS:

Vehicles Regulated under the Motor Carrier Safety Regulation Unit.

The Federal Motor Vehicle Safety Act, 49 C.F.R. 350.331 requires a state that receives funding from the Motor Carrier Safety Assistance Program (MCSAP) to conduct an annual review of its laws for conformity with federal motor safety requirements. The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents involving commercial motor vehicles. 49 C.F.R. 350.341 permits a state to exempt from its safety laws commercial motor vehicles with a gross vehicle rating (GVWR), gross combination weight rating (GCWR) gross vehicle weight (CVW), or gross combination weight (GCW) of less than 26,001. Under current State law, a vehicle with a GVWR of less than 26,001 pounds and a towed unit with a GVWR of less than 10,001 are not regulated under the Motor Carrier Regulation Unit, although the GCWR, GHVW, or GCW of the vehicle and towed unit combined exceed 26,001 pounds.

Sections 1 and 5: Amend the North Carolina motor vehicle laws to comply with the Federal Motor Vehicle Safety Act, bringing the State in compliance for funding purposes. Section 1 provides definitions for gross combination weight rating (GVWR), gross vehicle weight (GCWR), and gross combined weight (GVW). Section 5 provides that vehicles are regulated under the Motor Carrier Regulation Unit if the vehicle has a GVWR, GCWR, GVW, or GCW of 26,001 pounds or more.

State of Limitations on Seized Vehicles.

Under G. S. 20-96, a law enforcement officer has authority to seize and detain property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until delinquent fines or penalties and taxes are paid. When necessary, an officer who detains a vehicle may have the vehicle stored, and the owner of the vehicle is responsible for the care of any property being hauled by the vehicle and for any storage charges. G.S. 1-54 provides the statute of limitations on penalties or forfeitures is one year.

Section 2: Provides that the authority of a law enforcement officer to seize a motor vehicle for delinquent fines and penalties pursuant to G.S. 20-96 is not affected by the statutes of limitations set out in Chapter 1 of the General Statutes.

Registration of Property-hauling vehicles.

Under G.S. 20-88, fees are imposed on the annual registration of self-propelled property-hauling vehicles based on the type of vehicle and its weight. For the purpose of licensing, the weight of the vehicle is the empty weight and heaviest load to be transported, as declared by the owner or operator. G.S. 20-118 regulates the weight of vehicles and load for vehicles operating on the highways of the State. Vehicles that violate the weight limitation are subject to a civil penalty in an amount specified in

the statute for each weight violation. Certain vehicles that meet all specified conditions are exempt from the weight limitations and penalties. Exemptions apply for certain vehicles including those hauling agricultural crops from farm to market or hauling aggregates from certain distribution yards or State-permitted production sites in counties contiguous to the State border.

Section 3: Adds as a condition for being eligible from weight limitations and penalties under G.S. 29-118 a requirement that the property hauling vehicle be registered pursuant to G.S. 20-88 for the maximum weight allowed for the vehicle configuration.

Escort Fee.

Under G.S. 20-196.6, an entity that is required or desires to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized load or hazardous shipment must pay a fee to the Department of Crime Control and Public Safety covering the full cost to administer, plan and carry out the escort within this State. The fees are placed in a special Escort Fee Account, and remain in the account until appropriated by the General Assembly.

Section 4: Allows funds in the Escort Fee Account be used to pay actual expenses for escorting vehicles when required by the Department of Transportation. Any unexpended fees could be used by the Highway Patrol to pay for vehicle or equipment maintenance. The bill would also eliminate a requirement that the Department provide quarterly reports to the legislature on the funds in the special account.

Statute of Limitation of Fees.

G.S. 1-15 provides that civil actions can only be commenced within the periods prescribed in Chapter 1 of the General Statutes, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute. The periods prescribed for the commencement of actions, other than for the recovery of real property, are as set forth in Article 5 of Chapter 1.

Section 6: Adds a provision to Chapter 1 of the General Statutes to establish a 3-year time limitation for commencement of a legal proceeding to collect a civil penalty, civil assessment, or civil fine imposed pursuant to the State's motor vehicle laws.

Refund of Assessments.

Counties are authorized to impose assessments for certain capital improvements under Article 9 of Chapter 153A. Cities are authorized to impose assessments for certain capital improvements under Article 10 of Chapter 160A. The statutes do not provide a mechanism for refunds of unused assessments.

Section 7: Authorizes local governments to refund assessments imposed prior to 2005 to finance capital projects that have been assumed by another unit of local government.

EFFECTIVE DATE: The bill would become effective July 1, 2010.

NOTE: This bill requires a certification under to G.S. 120-36.8, which requires bills proposing changes that purport to be necessary for the receipt of federal funds to have an analysis of the bill identifying the federal law requiring the bill. A preliminary certification has been provided to the Committee. A final certification will be provided to members when the bill is considered on the floor.

Brenda J Carter, counsel to Senate Transportation, substantially contributed to this summary.

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

Session 2009

Senate Bill 1214

Highway Patrol Motor Carrier Fine/ Local Fees.

Bill Primary Sponsor(s):	Senator Jenkins	S1214-CSTDf-104
Relevant Federal Law:	*49 C.F.R. §350.331, 49 C.F.R. §350.341*	
☒ Required by or Necessary for Compliance with Federal Law		☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law		☐ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

The Federal Motor Vehicle Safety Act, 49 C.F.R. 350.331 requires a state that receives funding from the Motor Carrier Safety Assistance Program (MCSAP) to conduct an annual review of its laws for conformity with federal motor safety requirements. The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents involving commercial motor vehicles. 49 C.F.R. 350.341 permits a state to exempt from its safety laws commercial motor vehicles with a gross vehicle rating (GVWR), gross combination weight rating (GCWR), gross vehicle weight (CVW), or gross combination weight (GCW) of less than 26,001. Under current State law, a vehicle with a GVWR of less than 26,001 pounds and a towed unit with a GVWR of less than 10,001 are not regulated under the Motor Carrier Regulation Unit, although the GCWR, GVWW, or GCW of the vehicle and towed unit combined exceed 26,001 pounds.

COMPLIANCE CONSIDERATIONS

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents involving commercial motor vehicles. Failure to comply with Federal rules on commercial motor vehicle safety would result in the loss of up to 50% of funds awarded to the State. For the Federal Fiscal Year 2009, the State received $4,961,860.00 in funding from this program. Sections 1 and 5 of the bill would amend the North Carolina motor vehicle laws to comply with the Federal Motor Vehicle Safety Act, bringing the State in compliance for funding purposes. Section 1 provides definitions for gross combination weight rating (GVWR), gross vehicle weight (GCWR), and gross combined weight (GVW). Section 5 provides that vehicles are regulated under the Motor Carrier Regulation Unit if the vehicle has a GVWR, GCWR, GVW, or GCW of 26,001 pounds or more.

TECHNICAL OR MECHANICAL CONSIDERATIONS

Senate Bill 1214 has no apparent technical or mechanical considerations.

REVIEW AND APPROVAL

Prepared By: _____ **Date:** 6/28/2010

Name of Preparer
Title of Preparer

Approved By: _____ **Date:** 6/28/2010

for O. Walker Reagan
Director of Research

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 29, 2010

TO: Senate Finance Committee

FROM: Amna Cameron
Fiscal Research Division

RE: PCS for Senate Bill 1214 - CSTDf-104 (v.4)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:	No Fiscal Impact				
EXPENDITURES:	No Fiscal Impact				
POSITIONS (cumulative):	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Highway Patrol

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY:
This bill makes technical and conforming changes to comply with the Federal Motor Carrier Safety regulations. It enacts new G.S. 20-96(c) to allow a law enforcement officer to seize a motor vehicle pursuant to G.S. 20-96(a), regardless of the statutes of limitation provided in G.S. Chapter

1. It amends G.S. 20-118(c) to add vehicles registered pursuant to G.S. 20-88 for the maximum weight allowed for that vehicle configuration to the categories excepted from the weight limitations and penalties applicable to vehicles in the state. The bill makes additional conforming changes to amend G.S. 20-196.4 to designate that oversized and hazardous shipment escort fees collected by the Department of Crime Control and Public Safety (Department) cover the actual escorting expenses when required by the Department of Transportation (DOT) and allows the State Highway Patrol to use any remaining fees on vehicle and equipment maintenance. It removes the Department's reporting requirement and enacts new G.S. 1-52(20) to apply a three-year statute of limitation to civil penalties, assessments, or fines imposed under G.S. Chapter. Section 7 authorizes local governments to refund assessments imposed prior to 2005 to finance capital projects that have been assumed by another unit of local government.
Source: Bill Digest S.B. 1214 (05/18/0201).

ASSUMPTIONS AND METHODOLOGY:
The changes proposed in this bill are technical changes that will not yield any change in tax revenue or require any additional budget appropriations to support these changes.

SOURCES OF DATA: State Highway Patrol

TECHNICAL CONSIDERATIONS
1. G.S. 143C-1-2 of the State Budget Act requires an act of appropriation to withdraw State funds. This statute states that "an enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation." Section 4(d) of this bill should be amended to specify funds are appropriated for the purposes identified.

2. There are two Section 7's.

SENATE FINANCE COMMITTEE
Wednesday, June 30, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on June 30, 2010, in Room 544 of the Legislative Office Building. Twenty-seven members of the committee were present. Senator Clodfelter presided as chair. Cameron Castleberry and Thomas Sigmon of Raleigh, Katherine Selix of Marvin, Haley Ezzell of Harrells, Vivlica Rodgers of Washington, Margot de St. Aubin of Siler City, Zach Goldman of Cary and Katya Mordhorst of Almond served as pages.

H.B. 664 – Avery: Deed Recordation & Delinquent Taxes

Senator Queen was recognized to explain the bill which requires the Register of Deeds of Avery County to refuse recordation of a deed for property subject to delinquent municipal property taxes for the Village of Sugar Mountain. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1919 – Matthews Public-Private Project

Senator Rucho was recognized to explain the bill. It authorizes the Town of Matthews to participate in a public-private development project outside the downtown area consisting of a sports facility and family entertainment complex. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 2052 – Winston-Salem/Assessments Exemption

Representative Brown was recognized to explain the bill which authorizes the Winston-Salem City Council to establish an exemption from assessments for lots or parcels of land encumbered by city or county greenway easements from water main and storm and sanitary sewer assessments with the exemption not exceeding 75% of the total frontage of the lot or parcel of land. Senator Garrou moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1936 – Remove Sunset/Priv. Sales Local Gov't Bonds

Representative Owens was recognized to explain the bill which would remove the sunset on the authorization to sell local bonds that are either not rated or rated below "AA" through a private sale. Senator Stevens moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 1:16 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

PAGES ATTENDING

Date: 6-30

Committee: Finance **Room:** 544 LOB 1 PM

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Page Name	Hometown	Sponsoring Senator
1 Cameron Castleberry	Raleigh	Hunt
2 ~~Katherine~~ Haley Ezzell	Harrells	Albertson
3 Vivica Rodgers	Washington	Basnight
4 Kathrin Silej	Marvin	Goodall
5 ~~Thomas Sigmon~~	Raleigh	Hunt
6 Margot de St. Aubin	Siler City	Preston
7 Zach Goldman	Cary	Hunt
8 Katya Mordhorst Mordhorst	Almond	Snow
9 ~~Katie Eagles~~	~~Boone~~	~~Gilmore~~

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, June 30, 2010

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

FAVORABLE

H.B. **664** Avery: Deed Recordation & Delinquent Taxes.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1919** Matthews Public-Private Projects.
Sequential Referral: None
Recommended Referral: None

H.B. **1936** Remove Sunset/ Priv. Sale Local Gov't Bonds.
Sequential Referral: None
Recommended Referral: None

H.B. **2052** Winston-Salem/Assessments Exemption.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comments:

H664 – Sen. Queen
H1919 – Sen. Rucho
H1936 – Sen. Clodfelter
H2052 – Sen. Brunstetter

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brice Hamby	Randolph Cloud and Assoc.
David McGowan	NC Realtors
David Baker	NCDOR
[illegible]	NCACC
David Crawford	AIANC
Dan Fagan	City of Charlotte
Jon Lenn	Jordan Price Law Firm
[illegible]	SEANC
Patrick Gannon	Wilmington Star News
Lawless Bass	City of Wilmington
Pam Mayer	NCLM
Brenda Craig	Gastonia, NC

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 30, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	Electricities of NC, Inc
Michael Howser	NCDOR
Connie Wilson	CWC
Amy Hobbs	MWC
Chris Agnor	DOA
Patrick Buffkin	NCAEC
Bhw Merritt	MWC

VISITOR REGISTRATION SHEET

Senate Finance Committee — June 30, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lorri Thyne	T-Mobile
Wendy Kelly	The Policy Group
Emily Welborne	The Policy Group
Marketa Barbee	CTIA
Susan Valeure	NCW
Kathryn Westcott	NCEC/NC
[illegible]	[illegible]
Gin Swoboda	[illegible]
Thom Mann	Fidelity WMS
DAVID BARNES	Poyner Spruill
Paul Sherman	NCFB

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 30, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joe Lanier	Nelson Mullins
Henry Jones	attorney-Raleigh
Mitch Campbell	Jordan Price
DAVE Schuyler	CAGC
Coach K	DU
Allison Waller	Charlotte Chamber
Jay Stein	NCAA
BERRY JENKINS	CAROLINAS AGC
Doug Paris	CITY OF SALISBURY
L. Andrews	NCFB
Andy Ellen	NCPWA

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

June 30, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER FOE

HOUSE BILL 664

Short Title:	Avery: Deed Recordation & Delinquent Taxes.	(Local)
Sponsors:	Representative Frye.	
Referred to:	Local Government I.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTER OF DEEDS OF AVERY COUNTY TO REFUSE RECORDATION OF A DEED FOR PROPERTY SUBJECT TO DELINQUENT MUNICIPAL PROPERTY TAXES FOR THE VILLAGE OF SUGAR MOUNTAIN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 305 of the 1963 Session Laws, as rewritten by Section 7 of S.L. 1997-410 and Section 1 of S.L. 1998-73, reads as rewritten:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.

(3) If the property described in the deed is located in whole or in part in the Town of Banner Elk, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.

(4) If the property described in the deed is located in whole or in part in the Village of Sugar Mountain, the deed is accompanied by a certificate from the tax collector for the village to the effect that all delinquent municipal taxes have been paid with respect to the property."

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

HOUSE BILL 664:
Avery: Deed Recordation & Delinquent Taxes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Rep. Frye	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 664 requires that any deed for property in the Village of Sugar Mountain that is submitted to the Register of Deeds of Avery County for recordation be accompanied by a certificate from the tax collector for the Village indicating all delinquent Village taxes have been paid.

CURRENT LAW: Under current local law, the Register of Deeds of Avery County is prohibited from recording any deed unless it is accompanied by a certificate from the Avery County Tax Collector indicating that all County taxes and municipal taxes collected by the County on the property have been paid.[1] Furthermore, for property in whole or in part in the Towns of Newland[2] and Banner Elk[3], the certificate shall indicate the same, and shall be provided by the tax collector for the respective town.

BILL ANALYSIS: House Bill 664 adds the Village of Sugar Mountain to the list of municipalities in Avery County[4] that would require any deed for property in the Village of Sugar Mountain that is submitted to the Register of Deeds of Avery County for recordation be accompanied by a certificate from the tax collector for the Village indicating all delinquent Village taxes have been paid.

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

BACKGROUND: G.S. 161-31(a) provides that the board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property unless the county tax collector has certified that there are no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. In the resolution, the county commissioners may describe the form the certification must take.

G.S. 161-31(a1) provides an exception. It requires that the register of deeds must accept, without certification, a deed that contains the following statement: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31 applies to the following 67 counties: Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin.

S.L. 2010-24 provided similar requirements to the municipalities in Duplin County and the Senate Finance Committee gave a favorable report yesterday, June 29th, to HB 754 which added Dare and McDowell Counties to the list of counties in G.S. 161-31.

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[1] Chapter 305 of the 1963 Session Laws.
[2] S.L. 1997-410.
[3] S.L. 1998-73.
[4] There are 11 municipalities in Avery County: Banner Elk, Beech Mountain, Crossnore, Elk Park, Grandfather, Linville, Minneapolis, Newland, Pineola, Seven Devils, and Sugar Mountain.

In addition to Avery County, the following counties have a similar requirement to G.S. 161.31, but under different authorizing legislation:

Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-4335
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-3266

These local acts state that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

H664-SMRB-102(e1) v1

[5] S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

[6] This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

HOUSE BILL 1919
Committee Substitute Favorable 6/24/10

Short Title: Matthews Public-Private Project. (Local)

Sponsors:

Referred to:

May 24, 2010

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF MATTHEWS TO PARTICIPATE IN A PUBLIC-PRIVATE DEVELOPMENT PROJECT OUTSIDE THE DOWNTOWN AREA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definition. – For purposes of this act, a "public-private development project" is defined as a capital project that is: (i) located in either the Town's central business district, as defined by the Town's Board of Commissioners, located in or along a major transportation corridor, or located in a development zone designated pursuant to G.S. 105-129.3A; (ii) comprised of one or more buildings or other improvements; and (iii) includes both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building or publicly or privately owned sports complex facility.

SECTION 1.(b) Authorization. – If the Town Board of Commissioners finds that it is likely to be of significant economic benefit to the area of the Town where the project is to be located, the Town may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of a public-private development project or of specific facilities within the project. The Town may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating the project. The contract may, among other provisions, specify the following:

(1) The property interests of both the Town and the developer or developers in the project.

(2) The responsibilities of the Town and the developer or developers for construction of the project.

(3) The responsibilities of the Town and the developer or developers with respect to financing the project.

(4) The responsibilities of the Town and the developer or developers with respect to the operation of the project.

The contract may be entered into before the acquisition of any real property necessary to the project.

SECTION 1.(c) Project Acquisition. – A public-private development project may be constructed on property acquired by the developer or developers or on property directly acquired by the Town by purchase.

SECTION 1.(d) Property Disposition. – In connection with a public-private development project, the Town may lease or convey interests in property owned by it, including air rights over public facilities, by private negotiation or sale, and Article 12 of Chapter 160A of the General Statutes shall not apply to the dispositions.

SECTION 1.(e) Construction of the Project. – The contract between the Town and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire public-private development project. If so, the contract shall include such provisions as the Town Board of Commissioners deems sufficient to assure that the public facility or facilities included in the project meet the needs of the Town and are constructed at a reasonable price. A project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the General Statutes, provided that Town funds constitute no more than fifty percent (50%) of the total costs of the project. Notwithstanding the foregoing, payment bonds pursuant to G.S. 143-129 and Article 3 of Chapter 44A shall be provided for the contract or contracts for the construction of the entire public-private development project, regardless of whether the property upon which the project is developed is public or private lands or whether the funds used to construct the project are public or private funds.

SECTION 1.(f) Operation. – The Town may contract for the operation of any public facility or facilities included in a public-private development project by a person, partnership, firm, or corporation, public or private. The contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the Town.

SECTION 1.(g) Grant Funds. – To assist in the financing of its share of a public-private development project, the Town may apply for, accept, and expend grant funds from the federal or State government.

SECTION 2. This act only applies to one project within the corporate limits of the Town of Matthews that includes a sports facility and a family entertainment complex and the extension of Greylock Ridge Road.

SECTION 3. This act applies to the Town of Matthews only.

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

HOUSE BILL 1919:
Matthews Public-Private Project

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Reps. Gulley, Cotham	**Prepared by:**	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1919[1] authorizes the Town of Matthews to participate in a public-private development project outside the downtown area consisting of a sports facility and family entertainment complex.

CURRENT LAW: G.S. 160A-458.3 authorizes cities to acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of downtown development projects. A 'downtown development project' is a capital project that is located in a city's central business district, is comprised of one or more buildings, and includes both public and private facilities. An example would be a publicly owned convention center and parking deck alongside a privately owned hotel or office building. Cities may enter into contracts with private developers for the acquisition, construction, operation, and financing of these projects. A project constructed under this statute is not subject to the requirements of Article 8 of Chapter 143[2] of the General Statutes, provided that city funds constitute no more than 50% of the total costs of the development project.

The City of Charlotte and Durham County have legislation similar to House Bill 1919 authorizing those local governments to enter into public-private partnerships anywhere within the district. Yancey County and the City of Greenville have similar project-specific local acts as well.

BILL ANALYSIS: House Bill 1919 would authorize the Town of Matthews to enter into a public-private partnership for the development of one specific project that includes a sports facility, a family entertainment complex, and the extension of Greylock Ridge Road, which is outside the downtown area. With regard to this project, the Town would be authorized to do all of the following:

- Acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of the public-private development project if the Town Board finds the project to be of significant economic benefit. A 'public-private development project' is defined as a capital project that meets all of the following conditions:
  - It is located in the Town's central business district, in or along a major transportation corridor, or located in a development zone.
  - It is comprised of one or more buildings.
  - It includes both public and private facilities.
- Enter into contracts with private developers with respect to the acquisition, construction, financing, and operation of the project. The project would not be subject to Article 8 of Chapter 143 of the General Statutes if the Town funds constitute no more than 50% of the total cost of the project. However, payment bonds must be provided for the contracts for the construction of the project regardless of whether the project is developed on public or private land or whether public or private funds are used for the project.

[1] As introduced, this bill was identical to S1295, as introduced by Sen. Rucho, which is currently in Senate Finance.

[2] Article 8 of Chapter 143 governs public contracts, including bidding, minority business participation, and payment bond requirements.

- Lease or convey property interests it owns by private negotiation or sale and Article 12 of Chapter 160A of the General Statutes would not apply.[3]
- Contract for the operation of any public facility included in the development by any public or private entity.
- Apply for and accept grant funds from the federal or State government to assist with the financing of the project.

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

BACKGROUND: The Town of Matthews intends to build a 12-acre sports complex that will include 12 fields, a stadium complex, and other amenities such as trails and picnic shelters. The Town seeks to partner with a private developer to facilitate the building of the complex. According to a recent newspaper article[4], Matthews would be responsible for 25% of the total cost to finance the regional sportsplex in addition to the $2 million that officials have committed to the project. Matthews would pay about $5.5 million over 10 years to help finance the estimated $28 million project. The Town would also pay 25% of the maintenance expenses. The county would pay for 50% of the financing over ten years, plus $5 million earmarked for the project. Under this proposal, the private developer would pay the remainder and 25% of the maintenance costs.

Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H1919-SMRB-100(e2) v1

[3] Article 12 of Chapter 160A limits the methods by which municipalities may dispose of property.
[4] "Bill puts Sportsplex on statewide agenda," *Matthews-Mint Hill Weekly* (May 28, 2010).

HOUSE BILL 2052

Short Title:	Winston-Salem/Assessments Exemption.	(Local)
Sponsors:	Representatives Brown; and McGee.	
Referred to:	Local Government I, if favorable, Finance.	

May 27, 2010

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY COUNCIL OF THE CITY OF WINSTON-SALEM TO ESTABLISH AN EXEMPTION FROM ASSESSMENTS FOR LOTS OR PARCELS OF LAND ENCUMBERED BY A CITY OR COUNTY GREENWAY EASEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14(c) of Chapter 224 of the Private Laws of 1927, as amended by Chapter 144 of the 1965 Session Laws, reads as rewritten:

"~~(c)~~ (c1) *Water mains and sewers.* In the case of water mains and storm and sanitary sewers, the cost of not exceeding an eight-inch water or sanitary sewer main and of not exceeding a thirty inch storm sewer main and of such portion of said mains as lie within the limits of the street or streets, or part thereof, to be improved as provided in the petition or resolution ordering the same, shall be assessed against the abutting property. Such costs shall be assessed against the lots and parcels of land abutting on said street or streets, or parts thereof, according to their respective frontages thereon (i.e. the entire frontage benefited by the water or sanitary sewer project) by an equal rate per foot of such frontage: *Provided,* that in case of a corner lot, used as a single lot, where there is a water main or sewer already laid on the intersecting street on which such lot abuts and by which such lot is or can be served, no assessment shall be made against said lot for the second water main or sewer for any part of the frontage of said lot except that portion in excess of one hundred and fifty feet if said lot is in a residential section of the municipality, or in excess of one hundred feet if said lot is in a business section of the municipality, and in such case such portion of said cost as would otherwise be assessed against said lot shall be borne by the municipality: *Provided further,* that if a water or sanitary sewer main in excess of eight inches in size or a storm sewer main in excess of thirty inches in size is laid in said portion of said street or streets, then the cost of such water or sanitary sewer main in excess of the cost of an eight-inch main and the cost of such storm sewer main in excess of a thirty-inch main shall be borne by the municipality: *Provided further,* that if the resolution ordered by the construction of any pumping station, outfall, septic tank or disposal plant, no part of the cost of the same shall be specially assessed. Nothing contained herein shall be construed to limit the right of any municipality to contract with any property owner or owners for the construction of any pumping station, outfall, septic tank or disposal plant or for the construction of water mains or storm or sanitary sewers and for the assessment of the cost thereof according to the terms of such contract.

(c2) Notwithstanding the provisions of subsection (c1) of this section, in the case of water mains and storm and sanitary sewers, the city council or a board or commission designated by the city council shall have the authority to establish an exemption from assessments for a lot or parcel of land that is encumbered by a city or county greenway easement or easements, according to the length of frontage so encumbered, provided that the

exemption shall not exceed seventy-five percent (75%) of the total frontage of the lot or parcel of land."

SECTION 2. This act applies to the City of Winston-Salem only.

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

HOUSE BILL 2052:
Winston-Salem/Assessments Exemption

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Rep. Brown	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 2052 is a local bill that would authorize the City of Winston-Salem to exempt properties that are encumbered by city or county greenway easements from water main and storm and sanitary sewer assessments. The exemption shall not exceed 75% of the total frontage of the lot or parcel of land.***

BILL ANALYSIS: House Bill 2052 is a local bill that would give the City of Winston-Salem the authority to establish an exemption from assessments for water-main and storm and sanitary sewer mains that benefit any lot or parcel of land that is encumbered by a city or county greenway easement or easements. The exemption may not exceed 75% of the total frontage of the lot or parcel of land. For example, if the system runs along a total of 100 feet of frontage and 80 feet of this frontage is encumbered by a greenway easement, then no more than 75 feet of frontage could be exempt from assessment. If there is 50 feet of frontage encumbered by a greenway easement, then the entire frontage encumbered by the greenway easement is exempt.

In S.L. 1987-712, similar legislation was enacted in Brunswick County to exempt private lands used exclusively for greenways.

EFFECTIVE DATE: When it becomes law.

Martha Walston, counsel to House Finance, substantially contributed to this summary.

H2052-SMRB-101(e1) v1

HOUSE BILL 1936

Short Title:	Remove Sunset/ Priv. Sale Local Gov't Bonds.	(Public)
Sponsors:	Representatives Owens; Faison and Lucas.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE AUTHORIZATION TO SELL, THROUGH A PRIVATE SALE, LOCAL GOVERNMENT BONDS THAT ARE EITHER NOT RATED OR RATED BELOW "AA," SO AS TO CONTINUE TO TAKE ADVANTAGE OF THE FEDERAL "BUILD AMERICA BONDS" PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-123(b)(8) reads as rewritten:

"**§ 159-123. Sale of bonds by sealed bids; private sales.**

...

(b) The following classes of bonds may be sold at private sale:

...

(8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this ~~subsection that are sold prior to December 31, 2010.~~subsection."

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

HOUSE BILL 1936:
Remove Sunset/ Priv. Sale Local Gov't Bonds

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2010
Introduced by:	Rep. Owens	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1936 would remove the sunset on the authorization to sell local bonds that are either not rated or rated below "AA" through a private sale.

CURRENT LAW: Bonds issued by units of local government must be sold by the Local Government Commission after advertisement and upon sealed bids, unless it meets one of 9 statutory exceptions. Under current law, the following types of bonds may be sold at private sale:

- Bonds that a State or federal agency has previously agreed to purchase.
- Bonds for which no legal bid is received within the time allowed for submission of bids.
- Revenue bonds and special obligations bonds issued under G.S. 159-84.
- Refunding bonds issued under G.S. 159-78.
- Refunding bonds issued under G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Bonds that result in a tax credit to the owners under federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Project development financing debt instruments.
- **General obligation bonds issued under the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" or are unrated if they are sold before December 31, 2010.**
- Bonds that are part of an issue in which the interest payment on some or all of the bonds is intended to be subsidized by payments from the federal government if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

BILL ANALYSIS: House Bill 1936 would remove the December 31, 2010 sunset on the private sale of obligation bonds issued under the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" or are unrated.

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

BACKGROUND: Last year in S.L. 2009-140 (SB 754), the General Assembly added the type bond described above in bold to the classes of bonds that may be sold at private sale. As part of the 2009 American Recovery and Reinvestment Act, Congress expanded the ability of banks to buy bonds issued by small local governmental units and certain nonprofit entities because those entities were facing considerable challenges in borrowing during the economic downturn. According to the State and Local Government Finance Division of the Department of State Treasurer, allowing the private sale of general obligation bonds with no rating or rated below AA would enable local governments to take advantage of the debt issuance relief afforded under ARRTA. The provisions are scheduled to expire December 31, 2010. There is movement at the federal level to extend the relief given the continued uncertainty in the bond market. Lifting the current sunset date, in anticipation of the extension of the federal provisions, would allow local governments to continue to take advantage of these instruments.

Drupti Chauhan, counsel to House Commerce, substantially contributed to this summary.

SENATE FINANCE COMMITTEE
Thursday, July 1, 2010 at 1:30 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:30 PM on July 1, 2010, in Room 544 of the Legislative Office Building. Twenty-five members of the committee were present. Senator Jenkins presided as chair. Lillian Badgett of Statesville, Haley Ezzell of Harrells, Tori Boddie of Cary, and Cameron Castleberry of Raleigh served as pages.

H.B. 1717 – Modernization of the State ABC System

This bill was removed from the agenda.

H.B. 1685 – Turnpike Authority Toll Enforcement Changes

Representative Cole was recognized to explain the proposed committee substitute (PCS) and Senator Clodfelter moved to adopt the PCS for discussion. The motion carried. The PCS makes various changes to the statutes governing collection and enforcement of tolls by the Turnpike Authority. Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

H.B. 1961 – Use of 911 Funds

Representative Bryant was recognized to explain the bill. Senator Clodfelter moved to adopt the PCS for discussion and the motion carried. The PCS makes various changes to the statutes governing Emergency Telephone Service and increases the funding available for supplemental PEG channel support. Senator Swindell moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal memo is attached.

H.B. 1729 – Motor Vehicle Law Changes

Representative Cole was recognized to explain the bill. Senator Swindell moved to adopt the PCS for discussion and the motion carried. The PCS makes various changes to the State's motor vehicle laws. Senator Walters moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the fiscal memo is attached.

H.B. 1973 – Various Economic Changes

Senator Clodfelter was recognized to explain the bill. Senator Swindell moved to adopt the PCS for discussion and the motion carried. The PCS would:

1. extend the sunset for Article 3J from 1/1/11 to 1/1/13, modify the definition of agrarian growth zones, modify what types of environmental events disqualified a taxpayer from qualifying for certain economic incentives, and reduce the credit for investments in business property under Article 3J.

2. enhance the film production tax credits by increasing the per production cap from $7.5 million to $20 million.
3. create a new tax credit for interactive digital media
4. extend the sunset for the credit for recycling oyster shells from 1/1/11 to 1/1/13.
5. create economic development incentives and favorable tax treatment for Eco-Industrial Parks.
6. exempt certain wood chippers from sales tax.
7. recognize a new type of corporate designation known as a low-profit limited liability company (L3C).
8. establish the Yadkin River Trust to develop the resources of the Yadkin River in Davidson, Montgomery, Rowan, and Stanley counties.
9. provide funding for the DNA Database and Databank, provided the General Assembly enacts either Senate Bill 1383 or House Bill 1403, "Collect DNA Sample on Arrest".

Sabra Faires, the Senate Tax Counsel, was recognized to answer questions. Senator Clodfelter offered a technical amendment on Section 9 and moved for it adoption. The motion carried. Senator Jenkins offered a film credit amendment. Senator Garrou moved for its adoption and the motion carried. Senator Hoyle moved to adopt the PCS as amended. The motion carried. A copy of the PCS, the summary, the fiscal memo and the amendments is attached.

The meeting adjourned at 2:29 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Thursday, July 01, 2010

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1685** Turnpike Authority Toll Enforcement Changes.

Draft Number:	60099
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1691** Use of 911 Funds.

Draft Number:	60098
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1973** Keep North Carolina Competitive Act.

Draft Number:	50965
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1729** Motor Vehicles Law Changes.

Draft Number:	60097
Sequential Referral:	None
Recommended Referral:	None

Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

H1685 – Sen. Goss
H1691 – Sen. Davis
H1729 – Sen. Goss
H1973 – Sen. Clodfelter

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 1, 2010	15 minutes after adjournment	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1691	Use of 911 Funds.	Representative Bryant Representative Faison Representative Sager Representative West
HB 1685	Turnpike Authority Toll Enforcement Changes.	Representative Carney Representative Cole
HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren
HB 1729	Motor Vehicles Law Changes.	Representative Cole
HB 1973	Keep North Carolina Competitive Act.	Representative Brubaker Representative Gibson, III Representative Owens, Jr. Representative Wainwright

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Thursday, July 1, 2010,
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1685	Turnpike Authority Toll Enforcement Changes.	Rep. Carney Rep. Cole
HB 1691	Use of 911 Funds.	Rep. Bryant Rep. Faison Rep. Sager Rep. West
HB 1717	Modernization of the State ABC System.	Rep. Bell Rep. Lucas Rep. Warren
HB 1729	Motor Vehicles Law Changes.	Rep. Cole
HB 1973	Keep North Carolina Competitive Act.	Rep. Brubaker Rep. Gibson Rep. Owens Rep. Wainwright

Adjournment

PAGES ATTENDING

Date: 7-1

Committee: Finance **Room:** 544 LOB 1:30

15 mins. after session

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Emilyn Padgett	Statesville	Rabon
2 Haley Ezzell	Harrells	Albertson
3 Tor Bodaie	Cary	Stevens
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9		

Do not add additional names below the grid.

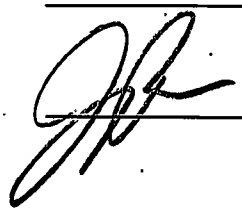
Pages: Please present this form to either the Committee Clerk at the eting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Finance Committee
Name of Committee

July 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	NAEC

VISITOR REGISTRATION SHEET

Senate Finance Committee — July 1, 2010

Name of Committee — **Date**

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Pam Melton	Centurylink
Mike Taylor	Stanly County
Franklin Freeman, Jr.	MWC
Bo Heath	MWC
Amy Hobbs	MWC
[illegible]	JD/AL, PA
Michael Horner	NC DOR
Kate Binion	NCDOR
Butch Bunnell	NC Beverage A.
Aaron Sykett	NC Commerce

VISITOR REGISTRATION SHEET

Senate Finance Committee
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Kay Emanuel	UNC Institute of Government
Johanna Reese	DOT
Andy Lelewski	NCTA
Beau Memory	NCDOT
[illegible]	NCTA
Geoff Gisler	Southern Environmental Law Center
Rob Lamm	RL & Assoc
[illegible]	RJNC - Duke
Jardie Hauser	DENR
John Peterson	NCEDA
Bill Scoggin	TSS

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CS Hollis	TSS
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Pat Gannon	Wilmington Star News
George Everett	Duke Energy
Patrick Baker	NCAEC
Sage Boyd	Intern – Rep Martin
Mary Grasso	NC Water Rights Committee
Kathy H.	Duke

VISITOR REGISTRATION SHEET

Senate Finance Committee
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July 1, 2010
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Carl Mackenzie	Sierra Club
Jay Stem	NCAA
Thrift Barber	CHPA
Bob Kaylor	NC DMV
Joey Gardner	DMV License & Theft
Allison Waller	Charlotte Chamber
Drew Martin	Raleigh Chamber
Heather Ramsey	NCRMA
Andy Allen	NCRMA
Amy Kim	DENR

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Senate Finance Committee
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Kathryn Westcott	HZEL/NC
Erin Schwaltzely	UNC-GA
[illegible]	NMRS
[illegible]	TWC
Henry Jones	Attorney - Raleigh
DAVID BARNES	Poyner Spruill
David Crawford	AIA NC
[illegible]	NCS
[illegible]	GA
DOUG BARIS	CITY OF SALISBURY
Kevin Leonard	NCACC
Chip Byrd	NCMS

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Senate Finance Committee — July 1, 2010

Name of Committee — **Date**

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Gary Salamido	G&L
Josh McNeill	NFIB
Mitchell Frazier	NFIB
Connie Wilson	CWC
Stephanie McGarrah	Commerce
Rita Harris	NC Commerce

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1685*
Committee Substitute Favorable 5/27/10
PROPOSED COMMITTEE SUBSTITUTE H1685-CSTD-110 [v.2]

7/1/2010 10:17:26 AM

Short Title: Turnpike Authority Toll Enforcement Changes. (Public)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING COLLECTION AND ENFORCEMENT OF TOLLS BY THE NORTH CAROLINA TURNPIKE AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-82.2 is repealed.

SECTION 2. G.S. 136-89.211 reads as rewritten:

"**§ 136-89.211. Tolls for use of Turnpike project.**

In exercising its authority under G.S. 136-89.183 to set tolls for the use of a Turnpike project, the Authority may not do any of the following:

(1) Set open road tolls that vary for the same class of motor vehicle depending on the method by which the Authority identifies a motor vehicle that drives on the Turnpike project. This does not preclude the Authority from allowing a discount ~~of up to thirty-five percent (35%) of the amount of a toll~~ for a motor vehicle equipped with an electronic toll collection ~~transponder.~~transponder or a motor vehicle that has prepaid its toll.

(2) Exempt a motor vehicle that is not a law enforcement vehicle, an emergency fire or rescue vehicle, or an emergency medical services vehicle from the requirement of paying a toll for the use of a Turnpike project."

SECTION 3. G.S. 136-89.214(a) reads as rewritten:

"(a) Bill. – If a motor vehicle travels on a Turnpike project that uses an open road tolling system and a toll for traveling on the project is not paid ~~within 15 days after the travel occurs,~~ prior to travel or at the time of travel, the Authority must send a bill by first-class mail to the registered owner of the motor vehicle for the amount of the unpaid toll. The Authority must send the bill within 90 days after the travel occurs. If a bill is not sent within the required time, the Authority waives collection of the toll. The Authority must establish a billing period for unpaid open road tolls that is no shorter than 15 days. A bill for a billing period must include all unpaid tolls incurred by the same person during the billing period."

SECTION 4. G.S. 136-89.215 reads as rewritten:

"**§ 136-89.215. Required action upon receiving bill for open road toll and processing fee for unpaid toll.**

(a) Action Required. – A person who receives a bill from the Authority for an unpaid open road toll must take one of the following actions within 30 days ~~after receiving the bill:~~of the date of the bill:

(1) Pay the bill.

(2) Send a written request to the Authority for a review of the toll.

(b) Fee. – If a person does not take one of the actions required under subsection (a) of this section within the required time, the Authority may add a processing fee to the amount the person owes. The processing fee may not exceed six dollars ($6.00). A person may not be charged more than forty-eight dollars ($48.00) in processing fees in a ~~calendar year.~~ 12-month period.

The Authority must set the processing fee at an amount that does not exceed the costs of identifying the owner of a motor vehicle that is subject to an unpaid toll and billing the owner for the unpaid toll. The fee is a receipt of the Authority and must be applied to these costs."

SECTION 5. G.S. 136-89.216 reads as rewritten:

"**§ 136-89.216. Civil penalty for failure to pay open road toll.**

(a) Penalty. – A person who receives ~~one~~ two or more bills for unpaid open road tolls ~~during the first or second six-month period in a year~~ and who has not paid the amount due on those bills within 30 days ~~after the end of the six-month period~~ is subject to a civil penalty of twenty-five dollars ($25.00). ~~The period from January 1 through June 30 of a year is the first six-month period in a year, and the period from July 1 through December 31 is the second six-month period in a year.~~ Only one penalty may be assessed ~~for~~ in a six-month period.

(b) Payment. – The Authority must send a notice by first-class mail to a person who is assessed a civil penalty under this section. A person who is assessed a civil penalty must pay the unpaid toll for which the civil penalty was imposed, the amount of any processing fee due, and the civil penalty within 30 days ~~after receiving the notice.~~of the date of the notice.

(c) Penalty Proceeds. – A civil penalty imposed under this section is payable to the ~~Authority or, if collected when a vehicle registration is renewed, to the Division of Motor Vehicles of the Department of Transportation.~~ Authority. The clear proceeds of a civil penalty imposed under this section must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. The guidelines used by the Office of State Budget and Management to determine an agency's actual costs of collecting a civil penalty and the clear proceeds of the civil penalty apply to the determination of the clear proceeds of a civil penalty imposed under this section."

SECTION 6. G.S. 136-89.217 reads as rewritten:

"**§ 136-89.217. Vehicle registration renewal blocked for unpaid open road toll.**

(a) Registration Block. – Failure of a person to pay an open road toll billed to the person under G.S. 136-89.214, any processing fee added under G.S. 136-89.215, and any civil penalty imposed under G.S. 136-89.216 is grounds under G.S. 20-54 to withhold the registration renewal of a motor vehicle registered in that person's name. The Authority must notify the Commissioner of Motor Vehicles of a person who owes a toll, a processing fee, or a civil penalty. When notified, the Commissioner of Motor Vehicles must withhold the registration renewal of any motor vehicle registered in that person's name.

~~(b) Collection by DMV. – A person whose motor vehicle registration renewal is blocked under this section may pay to the Division of Motor Vehicles of the Department of Transportation the amount owed for unpaid tolls, processing fees, and civil penalties due under this Part when renewing the vehicle registration. The Division must remit to the Authority the amount of tolls, fees, and civil penalties collected. The Division's costs of collecting tolls, fees, and civil penalties are considered a necessary expense of the operation of the Authority, and the Authority must reimburse the Division for these costs.~~"

SECTION 7. G.S. 136-89.218 reads as rewritten:

"**§ 136-89.218. Procedures for contesting liability for unpaid open road toll.**

(a) Informal Review. – A person who receives a bill for an unpaid open road toll and who disputes liability for the toll may contest the toll by sending to the Authority a request for review of the toll. The person may include a sworn affidavit described in G.S. 136-89.212 that establishes that someone else had the care, custody, and control of the motor vehicle subject to the toll when the toll was incurred. The person must send the request for review to the Authority within 30 days ~~after receiving the bill for the toll.~~ of the date of the bill sent by the Authority. A person who does not send a request for review to the Authority within this time limit waives the right to a review. If a person sends a timely request for review to the Authority, the Authority may not collect the disputed toll and any processing fee added to the bill for the toll until the conclusion of the review process in this section.

(b) Administrative Hearing. – If the Authority conducts an informal review under subsection (a) of this section and determines that the person who requested the review is liable for the toll, the Authority must send the person a notice informing the person of the Authority's determination. The person may contest this determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(c) Judicial Review. – Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision made in a contested case authorized under subsection (b) of this section."

SECTION 8. This act becomes effective December 1, 2010.

HOUSE BILL 1685:
Turnpike Authority Toll Enforcement Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2010
Introduced by:	Reps. Cole, Carney	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition H1685-CSTDx-110		

SUMMARY: ***House Bill 1685 makes various changes to the statutes governing collection and enforcement of tolls by the Turnpike Authority. The bill was given a favorable report in House Transportation.***

[As introduced, this bill was identical to S1131, as introduced by Sen. Goss, which is currently in Senate Finance.]

CURRENT LAW: Part 2 of Article 6H of Chapter 136 of the General Statutes sets out the procedures for collection of tolls for Turnpike Authority projects.

BILL ANALYSIS:

Section 1 of the bill repeals G.S. 136-82.2, which authorizes DOT to charge a toll for a bridge of at least three and one-half miles in length, set toll rates, authorizes employment of toll personnel, specifies use of the toll revenue, and requires an annual report.

text of repealed G.S. 136-82.2

§ 136-82.2. State toll bridges.

(a) Toll. – The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars ($10.00) for a round trip or five hundred dollars ($500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. – The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. (1993 (Reg. Sess., 1994), c. 765, s. 1.)

Section 2 of the bill removes a limitation on the size of the discount the NC Turnpike Authority may offer to a motor vehicle with a transponder, or that has prepaid its toll.

Section 3 of the bill provides that the Authority bills for open-road tolls must be sent for tolls that are not prepaid *prior to or at the time of* travel.

Section 4 of the bill provides that a person who receives a bill for an unpaid open road NC Turnpike Authority toll must pay or respond within 30 days *of the date of the bill from the Authority*, and clarifies that a person may not be charged more than $48 in processing fees *in a 12-month period.*

Section 5 of the bill changes the circumstances in which a person may be subject to a civil penalty for unpaid open road tolls for travel on an Authority facility. The section provides that a person who receives two or more bills for unpaid open road tolls and who has not paid within 30 days is subject to a civil penalty of $25. The section provides that one civil penalty may be assessed in a six-month period from the date the toll was incurred. The section provides that the civil penalty must be paid within 30 days of the date of the notice, and is payable to the Authority.

Section 6 of the bill removes a provision authorizing DMV collection of Authority tolls, processing fees, and civil penalties

Section 7 of the bill provides that a request for review of a bill for an unpaid toll must be sent within 30 days of the date of the bill sent by the Authority.

EFFECTIVE DATE: This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Giles Perry, counsel to House Transportation, substantially contributed to this summary.

H1685-SMTD-188(CSTDx-110) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 30, 2010

TO: Senate Finance Committee

FROM: Bob Weiss
Fiscal Research Division

RE: House Bill 1685 (Second Edition) Turnpike Authority Toll Enforcement Changes

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Turnpike Authority

EFFECTIVE DATE: December 1, 2010

BILL SUMMARY: House Bill 1685 makes various changes to the statutes governing collection and enforcement of tolls by the Turnpike Authority.

ASSUMPTIONS AND METHODOLOGY: The Department of Transportation reports that the bill would have no fiscal impact.

SOURCES OF DATA: DOT

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1691
Corrected Copy 5/17/10
Committee Substitute Favorable 6/10/10
Committee Substitute #2 Favorable 6/17/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1691-CSTDf-107 [v.9]

7/1/2010 12:25:30 PM

Short Title: Use of 911 Funds. (Public)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING EMERGENCY TELEPHONE SERVICE AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON THE USE OF 911 FUNDS, AND TO INCREASE FUNDS FOR SUPPLEMENTAL PEG CHANNEL SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-40 reads as rewritten:

"**§ 62A-40. Definitions.**

The following definitions apply in this Article.

...

(5) Call taking. – The act of processing a 911 call for emergency assistance ~~up to the point that the call is ready for dispatch,~~ by a primary PSAP, including the use of 911 system equipment, call classification, location of a caller, ~~and~~ determination of the appropriate response level for emergency ~~responders.~~responders, and dispatching 911 call information to the appropriate responder.

...

(9) Enhanced 911 service. – Directing a 911 call to an appropriate PSAP by selective routing or other means based on the geographical location from which the call originated and providing information defining the approximate geographic location and the telephone number of a 911 caller, in accordance with the FCC Order.

...."

SECTION 2.(a) G.S. 62A-41 reads as rewritten:

"(a) Membership. – The 911 Board is established in the Office of Information Technology Services. Neither a local government unit that receives a distribution from the fund under G.S. 62A-46 nor a telecommunication service provider may have more than one representative on the 911 Board. The 911 Board consists of 17 members as follows:

(1) Four members appointed by the Governor as follows:

a. An individual who represents ~~municipalities~~ a municipality where a primary PSAP is located, appointed upon the recommendation of the North Carolina League of Municipalities.
b. An individual who represents ~~counties~~ a county where a primary PSAP is located, appointed upon the recommendation of the North Carolina Association of County Commissioners.
c. An individual who represents a VoIP provider.
d. An individual who represents the North Carolina chapter of the National Emergency Number Association (NENA).

(2) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives as follows:
a. An individual who is a sheriff.
b. ~~Two individuals~~An individual who ~~represent~~ represents CMRS providers operating in North Carolina.
c. An individual who represents the North Carolina chapter of the Association of Public Safety Communications Officials (APCO).
d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 50,000 access lines.
e. A fire chief with experience operating or supervising a PSAP, appointed upon the recommendation of the North Carolina Firemen's Association.

(3) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate as follows:
a. An individual who is a chief of police.
b. Two individuals who represent CMRS providers operating in North Carolina.
c. ~~An individual who represents the North Carolina chapter of the National Emergency Number Association (NENA).~~A Rescue or Emergency Medical Services Chief with experience operating or supervising a PSAP, appointed upon the recommendation of the North Carolina Association of Rescue and Emergency Medical Services.
d. Two individuals who represent local exchange carriers operating in North Carolina, one of whom represents a local exchange carrier with less than 200,000 access lines.

(4) The State Chief Information Officer or the State Chief Information Officer's designee, who serves as the chair.

(b) Term. – A member's term is four years. No member may serve more than two terms. Members remain in office until their successors are appointed and qualified. Vacancies are filled in the same manner as the original appointment. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

...."

SECTION 2.(b) Other than the positions removed by this act or individuals prohibited from serving on the Board due to duplicate representation prohibited by this act, the existing members of the 911 Board shall continue to serve until the expiration of their original terms. An existing member may not be reappointed to the Board if he or she has served two terms on the 911 Board.

SECTION 3. G.S. 62A-42 reads as rewritten:

"(a) Duties. – The 911 Board has the following powers and duties:

...

(4) To establish policies and procedures to fund advisory services and training for ~~PSAPs~~ PSAPs, to set operating standards for PSAP, and to provide funds in accordance with these ~~policies and procedures.~~policies, procedures, and standards.

...

(6a) To use funds available to the 911 Board under G.S. 62-47 to pay its obligations incurred for Statewide 911 Projects.

...

(8a) To design, create, or acquire printed or Web-based public education materials regarding the proper use of 911.

(9) To adopt rules to implement this Article. This authority does not include the regulation of any enhanced 911 service, such as the establishment of technical ~~standards.~~standards for telecommunications service providers to deliver 911 voice and data.

....

(b) Prohibition. – In no event shall the 911 Board or any other State agency lease, construct, operate, or own a communications network for the purpose of providing 911 service. The 911 Board may pay private sector vendors for provisioning a network for the purpose of providing 911 service."

SECTION 4. G.S. 62A-43(d) reads as rewritten:

"(d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the service charge. If the 911 Board determines that the rate produces revenue that exceeds or is less than ~~in excess of~~ the amount needed, the 911 Board ~~must reduce~~may adjust the rate. The ~~reduced~~ rate must ensure full cost recovery for voice communications service providers and for primary PSAPs over a reasonable period of time. A change in the amount of the rate becomes effective only on ~~July 1~~July 1, ~~of an even-numbered year.~~ The 911 Board must notify providers of a change in the rate at least 90 days before the change becomes effective."

SECTION 5. G.S. 62A-44(b) reads as rewritten:

"(b) Allocation of Revenues. – The 911 Board may deduct and retain for its administrative expenses ~~up to one percent (1%)~~ a percentage of the total service charges remitted to it under G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%). The percentage is one percent (1%) unless the 911 Board sets the percentage at a different amount. The 911 Board must monitor the amount of funds required to meet its financial commitment to provide technical assistance to primary PSAPs and set the rate at an amount that enables the 911 Board to meet this commitment. The remaining revenues remitted to the 911 Board for deposit in the 911 Fund are allocated as follows:

(1) A percentage of the funds remitted by CMRS providers to the 911 Fund are allocated for reimbursements to CMRS providers pursuant to G.S. 62A-45.

(2) A percentage of the funds remitted by CMRS providers and all funds remitted by all other voice communications service providers are allocated for monthly distributions to primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to G.S. 62A-47.

(3) The percentage of the funds remitted by CMRS providers allocated to CMRS providers and PSAPs shall be set by the 911 Board and may be adjusted by the 911 Board as necessary to ensure full cost recovery for CMRS providers and, to the extent there are excess funds, for distributions to primary PSAPs."

SECTION 6. G.S. 62A-45(c) reads as rewritten:

"(c) Grant Reallocation. – If the amount of reimbursements to CMRS providers by the 911 Board for a fiscal year is less than the amount of funds allocated for reimbursements to CMRS providers for that fiscal year, the 911 Board may reallocate part ~~or all~~ of the excess

amount to the PSAP Grant and Statewide 911 Projects Account established under G.S. 62A-47. The 911 Board may reallocate funds under this subsection only once each calendar year and may do so only within the three-month period that follows the end of the fiscal year. If the 911 Board reallocates more than a total of three million dollars ($3,000,000) to the PSAP Grant and Statewide 911 Projects Account in a calendar year, it must consider reducing the amount of the service charge in G.S. 62A-44 to reflect more accurately the underlying costs of providing 911 system services.

The 911 Board must make the following findings before it reallocates funds to the PSAP Grant and Statewide 911 Projects Account:

(1) There is a critical need for additional funding for PSAPs in rural or high-cost areas to ensure that enhanced 911 service is deployed throughout the State.

(2) The reallocation will not impair cost recovery by CMRS providers.

(3) The reallocation will not result in the insolvency of the 911 Fund."

SECTION 7.(a) G.S. 62A-46(a) reads as rewritten:

"(a) Monthly Distribution. – The 911 Board must make monthly distributions to primary PSAPs from the amount allocated to the 911 Fund for PSAPs. A PSAP is not eligible for a distribution under this section unless it provides enhanced 911 service and received distributions from the 911 Board in the 2008-2009 fiscal year. The Board must comply with all of the following:

(1) Administration. – The Board must notify PSAPs of the estimated distributions no later than December 31 of each year. The Board must determine actual distributions no later than June 1 of each year. The Board must determine a method for establishing distributions that is equitable and sustainable and that ensures distributions for eligible operating costs and anticipated increases for all funded PSAPs. The Board must establish a formula to determine each PSAP's base amount. The formula must be determined and published to PSAPs in the first quarter of the fiscal year preceding the fiscal year in which the formula is used. The Board may not change the funding formula for the base amount more than once every year.

(2) Reports. – The Board must report to the Joint Legislative Commission on Governmental Operations, the Revenue Laws Study Committee, and the Joint Legislative Utility Review Committee within 45 days of a change in the funding formula. The report must contain a description of the differences in the old and new formulas and the projected distributions to each PSAP from the new formula.

(3) Formula. – The funding formula established by the Board must consider all of the following:

a. The population of the area served by a PSAP.

b. PSAP reports and budgets, disbursement histories, and historical costs.

c. PSAP operations, 911 technologies used by the PSAP, compliance with operating standards of the 911 Board, level of service a PSAP delivers dispatching fire, emergency medical services, law enforcement, and Emergency Medical Dispatch.

d. The tier designation of the county in which the PSAP is located as designated in G.S. 143B-437.08.

e. Any interlocal government funding agreement between a primary PSAP and a secondary PSAP, if the secondary PSAP was in existence as of June 1, 2010, receives funding under the agreement, and is within the service area of the primary PSAP.

f. Any other information the Board considers relevant.

(4) Additional distributions. – In the first quarter of the Board's fiscal year, the Board must determine whether payments to PSAPs during the preceding fiscal year exceeded or were less than the eligible costs incurred by each PSAP during the fiscal year. If a PSAP receives less than its eligible costs in any fiscal year, the Board may increase a PSAP's distribution in the following fiscal year above the base amount as determined by the formula to meet the estimated eligible costs of the PSAP as determined by the Board. The Board may not distribute less than the base amount to each PSAP except as provided in subsection (b1) of this section. The Board must provide a procedure for a PSAP to request a reconsideration of its distribution or eligible expenses.

~~The amount to be distributed to each primary PSAP is the sum of the following:~~

~~(1) The PSAP's base amount. The PSAP's base amount is the amount the PSAP received in the fiscal year ending June 30, 2007, and deposited in the Emergency Telephone System Fund of its local governing entity, as reported to the State Treasurer's Office, Local Government Division.~~

~~(2) The PSAP's per capita amount. The PSAP's per capita amount is the PSAP's per capita share of the amount designated by the Board under subsection (b) of this section for the per capita distribution. The 911 Board must use the most recent population estimates certified by the State Budget Officer in making the per capita distribution under this subdivision. A PSAP is not eligible for a distribution under this subdivision unless it provides enhanced 911 service.~~"

SECTION 7.(b) G.S. 62A-46 is amended by adding a new subsection to read:

"(b1) Carryforward. – A PSAP may carry forward distributions for eligible expenditures for capital outlay, capital improvements, or equipment replacement. Amounts carried forward to the next fiscal year from distributions made by the 911 Board may not be used to lower the distributions in subsection (a) of this section unless the amount is greater than twenty percent (20%) of the average yearly amount distributed to the PSAP in the prior two years. The 911 Board may allow a PSAP to carry forward a greater amount without changing the PSAP's distribution."

SECTION 7.(c) G.S. 62A-46(c) reads as rewritten:

"(c) Use of Funds. – A PSAP that receives a distribution from the 911 Fund may not use the amount received to pay for the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring or compensating telecommunicators, or the purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles. Distributions received by a PSAP may be used only to pay for the following:

(1) The lease, purchase, or maintenance ~~of emergency telephone equipment, including necessary computer hardware, software, and database provisioning, addressing, and nonrecurring costs of establishing a 911 system.~~of:

a. Emergency telephone equipment, including necessary computer hardware, software, and database provisioning.

b. Addressing.

c. Telecommunicator furniture.

d. Dispatch equipment located exclusively within a building where a PSAP is located excluding the costs of base station transmitters, towers, microwave links, and antennae used to dispatch emergency call information from the PSAP.

(1a) The nonrecurring costs of establishing a 911 system.

(2) Expenditures for in-State training of 911 personnel regarding the maintenance and operation of the 911 system. Allowable training expenses include the cost of transportation, lodging, instructors, certifications, improvement programs, quality assurance training, ~~and~~ training associated with call taking, and emergency medical, fire, or law enforcement ~~procedures.~~procedures, and training specific to managing a PSAP or supervising PSAP staff. Training outside the State is not an eligible expenditure unless the training is unavailable in the State or the PSAP documents that the training costs are less if received out-of-state. Training specific to the receipt of 911 calls is allowed only for intake and related call taking quality assurance and improvement. Instructor certification costs and course required prerequisites, including physicals, psychological exams, and drug testing, are not allowable expenditures.

...."

SECTION 7.(d) G.S. 62A-46(e) is amended by adding a new subdivision to read:

"(5) A primary PSAP must comply with the rules, policies, procedures, and operating standards for primary PSAPs adopted by the 911 Board."

SECTION 7.(e) Subsection (a) of this section becomes effective July 1, 2010, and applies to distributions by the Board in fiscal years beginning in 2011. Subsection (b) of this section becomes effective July 1, 2011, and applies to distributions made on or after that date. Subsection (d) of this section becomes effective July 1, 2011.

SECTION 8. G.S. 62A-47 reads as rewritten:

"**§ 62A-47. PSAP Grant and Statewide 911 Projects Account.**

"(a) Account Established. – A PSAP Grant and Statewide 911 Projects Account is established within the 911 Fund for the purpose of making grants to PSAPs in rural and other high-cost ~~areas.~~areas and funding projects that provide statewide benefits for 911 service. The Account consists of revenue allocated by the 911 Board under G.S. 62A-45(c) and G.S. 62A-46.

(b) Grant Application. – A PSAP may apply to the 911 Board for a grant from the ~~PSAP Grant~~ Account. An application must be submitted in the manner prescribed by the 911 Board. The 911 Board may approve a grant application and enter into a grant agreement with a PSAP if it determines all of the following:

(1) The costs estimated in the application are reasonable and have been or will be incurred for the purpose of promoting a cost-effective and efficient 911 system.

(2) The expenses to be incurred by the applicant are consistent with the 911 State Plan.

(3) There are sufficient funds available in the fiscal year in which the grant funds will be distributed.

(4) The costs are authorized PSAP costs under ~~G.S. 62A-46(c).~~ G.S. 62A-46(c), or the costs are for consolidating one or more PSAPs with a primary PSAP, or the relocation costs of primary PSAPs, including costs not authorized under G.S. 62A-46(c) and construction costs.

(c) Grant Agreement. – A grant agreement between the 911 Board and a PSAP must include the purpose of the grant, the time frame for implementing the project or program funded by the grant, the amount of the grant, and a provision for repaying grant funds if the PSAP fails to comply with any of the terms of the grant. The amount of the grant may vary among grantees. If the grant is intended to promote the deployment of enhanced 911 service in a rural area of the State, the grant agreement must specify how the funds will assist with this goal. The 911 Board must publish one or more notices each fiscal year advertising the availability of grants from the PSAP Grant and Statewide 911 Projects Account and detailing

the application process, including the deadline for submitting applications, any required documents specifying costs, either incurred or anticipated, and evidence demonstrating the need for the grant. Any grant funds awarded to PSAPs under this section are in addition to any funds reimbursed under G.S. 62A-46.

(d) Statewide 911 Projects. – The 911 Board may use funds from the Account for a statewide project if the Board determines the project meets all of the following requirements:

(1) The project is consistent with the 911 plan.

(2) The project is cost-effective and efficient when compared to the aggregated costs incurred by primary PSAPs for implementing individual projects.

(3) The project is an eligible expense under G.S. 62A-46(c).

(4) The project will have statewide benefit for 911 service."

SECTION 9. Fifty percent (50%) of funds in the Emergency Telephone System Fund on the effective date of this act may be used by the local government entity to provide for public safety needs, including costs that are not eligible expenses under G.S. 62A-46. The expenditures must be made in fiscal years 2010-2011 and 2011-2012. A local governing entity is not relieved of any prior obligation incurred for uses authorized by G.S. 62A-46. All other funds in the Emergency Telephone System Fund must be used for eligible expenses under Article 3 of Chapter 62A of the General Statutes.

SECTION 10. The House Select Committee on the Use of 911 Funds shall study the funding of secondary PSAPs and whether secondary PSAPs should be eligible to receive distributions from the 911 Board.

SECTION 11.(a) G.S. 66-359 is repealed.

SECTION 11.(b) G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Channel Support. – G.S. 105-164.44J sets out the requirements for receipt by a county or city of supplemental PEG channel support funds distributed under this subsection. The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one fourth of the share of each qualifying PEG channel certified by the city or county under G.S. 105-164.44J. The share of each certified PEG channel is the sum of four million dollars ($4,000,000) and the amount of any funds returned to the Secretary in the prior fiscal year under G.S. 105-164.44J(d) divided by the number of PEG channels certified under G.S. 105-164.44J.~~one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel certified by the county or city under G.S. 105-164.44J.~~ A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

~~The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year, plus the amount of any funds returned to the Secretary in the prior fiscal year under G.S. 105-164.44J(d). If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than this maximum amount, the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.~~ For purposes of this subsection, the term "qualifying PEG channel" has the same meaning as in G.S. 105-164.44J."

SECTION 11.(c) G.S. 105-164.44J(b) reads as rewritten:

"(b) Certification. – A county or city must certify to the Secretary by July 15 of each year all of the qualifying PEG channels provided for its use during the preceding fiscal year by a cable service provider under either G.S. 66-357 or an existing agreement. A county or city may not certify more than three qualifying PEG channels. The certification must include all of the following:

(1) An identification of each channel as a public, an education, or a government channel.

(2) The name and signature of the PEG channel operator for each channel. If a qualifying PEG channel has more than one PEG channel operator, the county or city must include the name of each operator of the PEG channel. A PEG channel operator may be included on the certification of only one county or city for each type of PEG channel that it operates.

(3) Any other information required by the Secretary."

SECTION 11.(d) Subsection (b) of this section becomes effective July 1, 2011 and applies to distributions made on or after July 1, 2011, for quarters starting on or after April 1, 2011.

SECTION 12. Unless otherwise provided, this act becomes effective July 1, 2010.

HOUSE BILL 1691: Use of 911 Funds

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2010
Introduced by:	Reps. Bryant, Faison, Sager, West	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fourth Edition H1691-CSTDf-107		

SUMMARY: ***The proposed committee substitute to House Bill 1691 makes various changes to the statutes governing Emergency Telephone Service, and increases the funding available for supplemental PEG channel support.***

911 Emergency Telephone Service

CURRENT LAW: Prior to 2007, local government entities collected a 911 service charge from subscribers of local telephone providers, and the Wireless 911 Board collected a monthly service charge on each subscriber of wireless providers. The local 911 service varied from 50¢ per subscriber line to almost $3.00 per subscriber line. The statewide wireless fee was 70¢ per subscriber line. The entire fee collected by local governments, and a portion of the fees collected by the Wireless 911 Board was distributed to "public safety answering points" (PSAP). Each PSAP is the public safety agency that receives incoming 911 calls and dispatches public safety agencies in response. Funds from the Wireless 911 Board not distributed to PSAPs were used to reimburse wireless providers for the costs updating equipment necessary for PSAPs to geographically locate individuals who call 911 from wireless phones.

In 2007, the local 911 service charge was eliminated, and a new statewide administrative system was adopted for collecting the 911 service charge and distributing the funds to PSAPs. The 911 Board oversees the distribution of funds to PSAPs and wireless providers. The amount of the distributions to each eligible PSAP is based on the prior distribution to the PSAP from both the local service charge and the Wireless 911 service charge. The distributions may only be used for certain eligible purchases by the PSAP including:

- The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software and database provisioning, addressing, and nonrecurring costs of establishing a 911 system.
- Reasonable expenditures for training of 911 personnel.

BILL ANALYSIS: The PCS to House Bill 1691 makes the following changes to the statutes governing Emergency Telephone Service:

The Board:

- Provides that PSAPs receiving distributions from the Fund and telecommunications service providers may not have more than 1 position on the Board.
- Removes one CMRS provider, and one NENA position from the Board.
- Requires the individuals representing cities and counties to be from a locality that has a primary PSAP.
- Adds two positions to the Board - a fire chief upon the recommendation of the NC Firemen's Association, and a Rescue or Emergency Medical Services Chief upon the recommendation of the NC Association of Rescue and EMS. The individuals representing fire chiefs and Rescue or EMS chiefs must have experience managing or supervising a PSAP.
- Prohibits Board members from serving more than two terms.

Board Authority: Authorizes the Board to establish operating standards for PSAPs that receive distributions from the Fund. Authorizes the Board to create, design, or acquire public education materials regarding the proper use of 911. Authorizes the 911 Board to pay a private vendor for the provisioning of a network for the purpose of providing 911 service.

Board Administrative Fee: Authorizes the 911 Board to increase the percentage of funds it retains for administrative expenses to 2% from 1%,

PSAP Distributions: Authorizes the 911 Board to determine the monthly distributions to eligible PSAPs. The new distribution amount will be based on a formula adopted by the Board. The new distribution formula will be effective for distributions made in the fiscal year 2011. The Board must notify each PSAP of the estimated distributions by December 31st of each year, and notify each PSAP of the actual amount of distributions by June 1 of each year.

- **Base amount formula:** The Board must establish a formula to determine each PSAP's base amount. The formula must consider certain information including population, area served, and cost history.
- **Additional distributions:** The Board may increase the distribution to a PSAP above its base amount if the PSAP receives less than its eligible costs in any fiscal year. The Board may not distribute less than the base amount.
- **Reconsideration:** The Board must provide a procedure for a PSAP to request a reconsideration of its distribution or eligible expenses.
- **Carry forward:** A PSAP may carry forward up to twenty percent (20%) of the total funds disbursed by the Board during a fiscal year for eligible expenditures for capital outlay, capital improvements, or equipment replacement. If more than 20% is carried forward, the Board may use the amount to lower the PSAPs annual distributions.

Fund Uses: Expands the use of the 911 Fund to dispatch equipment located within the building where the PSAP is located excluding the costs of base station transmitters, towers, microwave links and antennae used to dispatch emergency call information from the PSAP. The use is also expanded to include training specific for supervising and training a primary PSAP.

Operating Standards: Effective July 1, 2011, a PSAP must comply with the operating standards to be eligible for distributions under the Act.

Statewide Projects: Authorizes the 911 Board to implement statewide projects for the benefit of 911 service. Surplus funds designated to be used for reimbursement for CMRS providers may be reallocated to the PSAP Grant Account. The Grant Account is redesignated the PSAP Grant and Statewide Projects Account. In order for the Board to use funds for a statewide project, the Board must determine the project is consistent with the 911 Plan, is cost effective and efficient when compared to the aggregated costs of similar projects if implemented by primary PSAPs, the expenses are eligible under the Fund, and the project has a statewide benefit. Also authorizes the Board to raise or lower the service charge each year.

Consolidation Grants: Authorizes the 911 Board to provide grants for the voluntary consolidations of PSAPs into primary PSAPs.

Fund Balances: Authorizes a PSAP to use 50% of its fund balance on July 1, 2010 for public safety needs, including costs that are not eligible expenses under G.S. 62A-46.

Supplemental PEG Channel Support

CURRENT LAW: S.L. 2007-151, the Video Service Competition Act, equalized the taxation of video programming services regardless of how the service is delivered and replaced locally negotiated franchises of cable service with a State-issued franchise. The Act increased the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. The distributions are made quarterly.

G.S. 105-164.44I(b) designates $2,000,000 of the video programming sales tax revenue distributed to cities and counties for Supplemental PEG channel support. To receive a distribution of the Supplemental PEG channel support funds, a city or county must certify the PEG channels provided to the city or county for its use. Up to $6,250, per quarter ($25,000 per year) may be distributed for each certified channel. A city or county may not receive funding for more than three PEG channels. The amount distributed per PEG channel depends on the total number of PEG channels certified. For the first quarter of 2010, there were 107 certified PEG channels. Each certified channel eligible to receive funding received $4,672.90 for that quarter. Revenues that are not expended for Supplemental PEG support are transferred to the PEG Grant Fund. The PEG Grant Fund is administered by e-NC Authority. A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $25,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

The revenues cities and counties receive from the video programming tax have exceeded the anticipated revenue. However, the amount distributed per PEG channels has been less than anticipated due to a greater number of PEG channels certified than expected. With the higher number of PEG channels, there are not excess Supplemental PEG support revenues to transfer to the PEG Grant Fund.

BILL ANALYSIS: The PCS to House Bill 1691 repeals the PEG Grant Fund and increases the revenues available for Supplemental PEG Channel support to $4,000,000 per year. The yearly cap on funding is removed. Each PEG channel will receive a proportional share of the total revenues available. Based on the most recent number of certified PEG Channels, each PEG channel would receive approximately $9,300 per quarter. Each city and county is may certify up to 3 PEG channels.

EFFECTIVE DATE: Unless otherwise provided, this act is effective July 1, 2010.

H1691-SMTD-187(CSTDf-107) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 1, 2010

TO: Senate Finance Committee

FROM: Sandra Johnson and Karlynn O'Shaughnessy
Fiscal Research Division

RE: House Bill 1691 (PCS)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:	**No General Fund Impact, Local Funding Interchangeable**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: July 1, 2010 unless otherwise noted.

BILL SUMMARY: The PCS to House Bill 1691 makes the following changes to the statutes governing Emergency Telephone Service:

- Provides that "public safety answering points" (PSAP)—the public safety agency that receives incoming 911 calls and dispatches public safety agencies in response—receiving distributions from the Fund and telecommunications service providers may not have more than one position on the Board.
- Removes one CMRS provider, and one NENA position from the Board.
- Requires the individuals representing cities and counties on the Board to be from a locality that has a primary PSAP.
- Adds two positions to the Board - a fire chief and a Rescue or Emergency Medical Services Chief.
- Prohibits Board members from serving more than two terms.
- Expands Board authority over 911 operational standards and responsibilities.
- Allows each Board to increase the percentage of funds retained for administrative expenses to 2% from 1%.
- Authorizes the 911 Board to determine the monthly distributions to eligible PSAPs.
- Expands the use of the 911 Fund to dispatch equipment located within the building where the PSAP is located.
- Authorizes the 911 Board to implement statewide projects for the benefit of 911 service.

Section 11 of the bill reallocates the local portion of the taxes received under G.S. 105-164.44 I, a subsection defining the city and county portion of video programming and telecommunication service taxes.

ASSUMPTIONS AND METHODOLOGY:

This bill does not have any immediate fiscal impact for the State, as it simply redistributes and expands the use of the 911 Board's current revenue. Section 4 does allow the Board to adjust rates in the future, if the current rate produces revenue in excess of or insufficient for the amount needed to cover costs. However, it is impossible to determine when and what adjustments might occur. Individual Public Safety Answering Points (PSAPs) may see changes in funding, depending on the distribution formula that the 911 Board develops.

Section 11 of the PCS has no General Fund impact. This proposal reallocates two million dollars in local taxes originally designated as discretionary funds under G.S. 105-164.44I towards funding for public, educational, and government (PEG) channels. Original local revenue projections under G.S. 105-164.44 I equaled $75.3 million in FY 08-09. Actual local revenue for the 2008-09 fiscal year equaled $80.3 million, five million dollars above the projected amount. In that vein, Section 11 redirects an additional two million towards funding PEG channels. If the 107 channels certified by the North Carolina Department of Revenue in March 2010 remains constant, the per PEG channel funding amount will increase by roughly $18, 691 for a total of $37,383 annually.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1729*

Committee Substitute Favorable 5/27/10
Committee Substitute #2 Favorable 6/9/10
Committee Substitute #3 Favorable 6/16/10
Senate Transportation Committee Substitute Adopted 6/24/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1729-CSTD-111 [v.3]

7/1/2010 1:26:52 PM

Short Title: Motor Vehicles Law Changes. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 54 years old expires on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least 54 years old expires on the birthday of the licensee in the fifth year after issuance. A commercial drivers license expires on the birthday of the licensee in the fifth year after issuance. A commercial drivers license that has a vehicles carrying passengers (P) and school bus (S) endorsement issued pursuant to G.S. 20-37.16 ~~shall expire on the birth date of the licensee three years after the date of~~ expires on the birthday of the licensee in the third year after issuance, if the licensee is certified to drive a school bus in North Carolina.

(2a) Duration of renewed licenses. – A renewed drivers license that was issued by the Division to a person at least 18 years old but less than 54 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least 54 years old expires five years after the expiration date of the license that is renewed. A renewed commercial drivers license expires five years after the expiration date of the licensed that is renewed.

(3) Duration of license for certain other drivers. – The durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the

applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States.

(3a) When to renew. – A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 60 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law. Notwithstanding the provisions of this sub-subdivision, no license shall be considered valid more than 18 months after the date of expiration.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant, unless the applicant is ineligible for mail delivery by the United States Postal Service at the applicant's residence. If the United States Postal Service documents that it does not deliver to the residential address provided by the applicant, and the Division has verified the applicant's residential address by other means, the Division may mail the drivers license to the post office box provided by the applicant. Applicants whose only mailing address prior to July 1, 2008, was a post office box in this State may continue to receive their license at

that post office box, provided the applicant's residential address has been verified by the Division."

SECTION 2. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate ~~shall have displayed upon it~~must display the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word ~~"weighted".~~"weighted," unless the plate is a special registration plate authorized in G.S. 20-79.4.

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness."

SECTION 3. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be

placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be ~~fined~~ penalized under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be ~~fined~~ penalized under G.S. 14-3.1. Any operator of a motor vehicle who covers any registration plate with any frame or transparent clear or color-tinted cover that makes a number or letter on the plate, the State name on the plate, or a number or month on the registration renewal sticker on the plate illegible commits an infraction and shall be penalized under G.S. 14-3.1. ~~Any operator of a motor vehicle who covers the State name, year sticker, or month sticker on a registration plate with a license plate frame commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that do not prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras.~~"

SECTION 4. G.S. 20-64.2 is repealed.

SECTION 5. G.S. 20-79 reads as rewritten:

"**§ 20-79. Dealer license plates.**

(a) How to Get a Dealer Plate. – The Division may issue a person licensed under Article 12 of this Chapter the appropriate classification of dealer license plate. A person eligible for a dealer license plate may obtain one by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. – A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending December 31 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	~~1~~ 3
At least 12 but less than 25	~~4~~ 6
At least 25 but less than 37	~~5~~ 7
At least 37 but less than 49	~~6~~ 8
49 or more	At least ~~6~~ 8, but no more than ~~4~~ 5 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending December 31 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending December 31 but has sold at least that number since January 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending December 31.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

A dealer engaged in the alteration and sale of specialty vehicles may apply for up to two dealer plates in addition to the number of dealer plates that the dealer would otherwise be entitled to under this section.

This subsection does not apply to manufacturers licensed under Article 12 of this Chapter.

(c) Form and Duration. – A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. A dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate. The symbol may vary depending upon the classification of dealer license plate issued. The Division must provide suitably reduced sized license plates for motorcycle dealers and manufacturers.

A dealer license plate is issued for a period of one year. The Division shall vary the expiration dates of dealer registration renewals so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. A dealer license plate may be transferred from one vehicle to another. When the Division issues a dealer plate, it may issue a registration that expires at the end of any monthly interval. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.
(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.
(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) Restrictions on Use. – A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.
(5) Is driven on a highway by a person who meets one of the following descriptions:
    a. Has a demonstration permit to test-drive the motor vehicle and carries the demonstration permit while driving the motor vehicle.
    b. Is an officer or sales representative of the dealer and is driving the vehicle for a business purpose of the dealer.
    c. Is an employee of the dealer and is driving the vehicle in the course of employment.

d. Is an employee of the dealer or of a contractor of the dealer and is driving the vehicle within a 20-mile radius of a place where the vehicle is being repaired or otherwise prepared for sale.

e. Is an employee of the dealer or of a contractor of the dealer and is transporting the vehicle to or from a vehicle auction or to the dealer's established salesroom

(6) A copy of the registration card for the dealer plate issued to the dealer is carried by the person operating the motor vehicle or, if the person is operating the motor vehicle in this State, the registration card is maintained on file at the dealer's address listed on the registration card, and the registration card must be able to be produced within 24 hours upon request of any law enforcement officer.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. – The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of ~~fifty dollars ($50.00).~~one hundred dollars ($100.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of ~~two hundred dollars ($200.00).~~two hundred fifty dollars ($250.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. – No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used.

(g) Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) Definition. – For purposes of this section, the term "dealer" means a person who is licensed under Article 12 of this Chapter."

SECTION 6. G.S. 20-79.2 reads as rewritten:

"**§ 20-79.2. Transporter plates.**

(a) Who Can Get a Plate. – ~~A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:~~The Division may issue a transporter plate authorizing the limited operation of a motor vehicle in the circumstances listed in this subsection. A person who receives a transporter plate must have proof of financial responsibility that meets the requirements of Article 9A of this Chapter. The person to whom a

transporter plate may be issued and the circumstances in which the vehicle bearing the plate may be operated are as follows:

(1) To a business or a dealer to facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.

(2) To a financial institution that has a recorded lien on a motor vehicle to repossess ~~a~~ the motor vehicle.

(3) To a dealer or repair facility to pick up and deliver a motor vehicle that is to be ~~repaired~~ repaired, is to undergo a safety or emissions inspection, or is to otherwise be prepared for sale by a dealer, to road-test the vehicle, if it is ~~repaired,~~ repaired or inspected within a ~~10-mile~~20-mile radius of the place where it is ~~repaired,~~ repaired or inspected, and to deliver the vehicle to the dealer. A repair facility may not receive more than two transporter plates for this purpose.

(4) To a business that has at least 10 registered vehicles to move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale.

(5) To a dealer or a business that contracts with a dealer and has a business privilege license to take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale. The title to the vehicle, a bill of sale, or written authorization from the dealer or auction must be inside the vehicle when the vehicle is operated with a transporter plate.

(6) To a business or dealer to road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.

(7) To a business or dealer to move a mobile office, a mobile classroom, or a mobile or manufactured ~~home.~~ home, or to transport a newly manufactured travel trailer, fifth-wheel trailer, or camping trailer between a manufacturer and a dealer. Any transporter plate used under this subdivision may not be used on the power unit.

(8) To a business to drive a motor vehicle that is registered in this State and is at least ~~25~~35 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns ~~a motor vehicle that is at least 25 years old~~ one of these motor vehicles is considered to be in the business of collecting those vehicles.

(9) To a dealer to drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.

(10) To drive special mobile equipment in any of the following circumstances:

a. From the manufacturer of the equipment to a facility of a dealer.

b. From one facility of a dealer to another facility of a dealer.

c. From a dealer to the person who buys the equipment from the dealer.

(b) How to Get a Plate. – A ~~person~~ business or a dealer may obtain a transporter plate by filing an application with the Division and paying the required fee. An application must be on a form provided by the Division and contain the information required by the Division. The fee for a transporter plate is one-half the fee set in G.S. 20-87(5) for a passenger motor vehicle of not more than 15 passengers.

(b1) Number of Plates. – The total number of ~~transporter and~~Dealer-Transporter or dealer plates issued to a dealer may not exceed the total number of ~~dealer~~ plates that can be

issued to the dealer under G.S. 20-79(b). ~~This restriction does not apply to a person who is not a dealer.~~ Transporter plates issued to a dealer shall bear the words "Dealer-Transporter." This subsection does not apply to a person who is not a dealer.

(b2) Sanctions. – The following sanctions apply when a motor vehicle displaying a "Dealer-Transporter" or "Transporter" license plate is driven in violation of the restrictions on the use of the ~~plate:~~or of the requirement to have proof of financial responsibility:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of ~~fifty dollars ($50.00).~~one hundred dollars ($100.00).

(2) The ~~dealer~~ dealer, or business to whom the plate is issued is subject to a civil penalty imposed by the Division of ~~two hundred dollars ($200.00).~~ two hundred fifty dollars ($250.00) per occurrence.

(3) The Division may rescind all dealer license ~~plates~~ plates, dealer transporter plates, or transporter plates issued to the dealer or business whose plate was displayed on the motor vehicle.

(4) A person who sells, rents, leases, or otherwise provides a transporter plate to another person in exchange for the money or any other thing of value is guilty of a Class I felony. A conviction for a violation of this subdivision is considered a felony involving moral turpitude for purposes of G.S. 20-294.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue. A law enforcement officer having probable cause to believe that a transporter plate is being used in violation of this section may seize the plate.

(c) Form, Duration, and Transfer. – ~~A transporter plate is a type of commercial license plate. A transporter plate issued to a dealer is issued on a fiscal year basis. A transporter plate issued to a person who is not a dealer is issued on a calendar year basis.~~ A transporter license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. A transporter license plate shall have a distinguishing symbol identifying the plate as a transporter license plate. The symbol may vary depending upon the classification of transporter license plate issued. A transporter license plate is issued for a period of one year. The Division shall vary the expiration dates of transporter registration renewals so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division issues a transporter plate, it may issue a registration that expires at the end of any monthly interval. During the year for which it is issued, a ~~person~~ business or dealer may transfer a transporter plate from one vehicle to another as long as the vehicle is driven only for a purpose authorized by subsection (a) of this section. The Division ~~may~~ must rescind a transporter plate that is displayed on a motor vehicle driven for a purpose that is not authorized by subsection (a) of this section.

(d) County. – A county may obtain one transporter plate, without paying a fee, by filing an application with the Division on a form to be provided by the Division. A transporter plate issued pursuant to this subsection may only be used to transport motor vehicles as part of a program established by the county to receive donated motor vehicles and make them available to low-income individuals.

If a motor vehicle is operated on the highways of this State using a transporter plate authorized by this section, all of the following requirements shall be met:

(1) The driver of the vehicle shall have in his or her possession the certificate of title for the motor vehicle, which has been properly reassigned by the previous owner to the county or the affected donor program.

(2) The vehicle shall be covered by liability insurance that meets the requirements of Article 9A of this Chapter.

The form and duration of the transporter plate shall be as provided in subsection (c) of this section.

(e) Any vehicle being operated on the highways of this State using a transporter plate shall have proof of financial responsibility that meets the requirement of Article 9A of this Chapter."

SECTION 7. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge ~~one registration plate~~ a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of ~~war.~~ war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration ~~plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates,~~ plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

...."

SECTION 8. G.S. 20-85.1 reads as rewritten:

"**§ 20-85.1. Registration by mail; one-day title service; fees.**

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. ~~A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.~~

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check. This fee shall be credited to the Highway Trust Fund.

~~(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund.~~"

SECTION 9. G.S. 20-88.02 reads as rewritten:

"**§ 20-88.02. Registration of logging vehicles.**

Upon receipt of an application on a form prescribed by it, the Division shall register ~~trucks, tractor trucks, trailers, and semitrailers~~ trucks and tractor trucks used exclusively in connection with logging ~~operations in a separate category.~~ operations, as provided in section 4483(e) of the Internal Revenue Code and 26 C.F.R. § 41.4483-6 for the collection of the federal heavy vehicle use tax. For the purposes of this section, "logging" shall mean the harvesting of timber and transportation from a forested site to places of sale.

Fees for the registration of vehicles under this section shall be the same as those ordinarily charged for the type of vehicle being registered."

SECTION 10. G.S. 20-118(c) reads as rewritten:

"**§ 20-118. Weight of vehicles and load.**

...

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without

penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to either one of the two nearest highways that is not a light-traffic ~~road~~road. If that vehicle's point of origin is a non-light-traffic road and that road is blocked by light-traffic roads from all directions and is not contiguous with other non-light-traffic roads, then the road at point of origin is treated as a light-traffic road for purposes of this subdivision:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products transported from a farm to first market.

c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.

d. Livestock or poultry transported from their point of origin to a processing plant or first market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

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

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow any disabled truck or other motor vehicle or combination of vehicles to a place for repairs, parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles operating on interstate highways, vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

a. Is hauling agricultural crops from the farm where the crop is grown to any market within 150 miles of that farm.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

c. Does not exceed a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.

(13) Vehicles specifically designed for fire fighting that are owned by a municipal or rural fire department. This exception does not apply to vehicles operating on interstate highways.

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or exceed any posted bridge weight limits.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; ~~or~~ is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the ~~vehicle.~~vehicle; or is hauling animal waste products from the animal waste storage site to a farm or field.

b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or exceed any posted bridge weight limits.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

...."

SECTION 11. G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:
- (1) A police car;
- (2) A highway patrol car;
- (3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
- (4) An ambulance;
- (5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;
- (6) A fire-fighting vehicle;
- (7) A school bus;
- (8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
- (9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
- (10) A vehicle operated by medical doctors or anesthetists in emergencies;
- (11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
- (11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
- (12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;
- (13) A light required by the Federal Highway Administration;
- (14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;
- (15) A vehicle operated by an emergency medical service as an emergency support vehicle; ~~and~~
- (16) A State emergency management ~~vehicle.~~vehicle; and
- (17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.

(c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means any forward facing blue light installed on a vehicle after initial manufacture of the vehicle; or an operable blue light which:
- (1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;
- (1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, "inoperable blue light" means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination.

(d) Repealed by Session Laws 1999-249, s. 1.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor."

SECTION 12. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, or is a vehicle being used to restore electric utility service due to an unplanned event, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 13. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the ~~paved or~~ main-traveled portion of any highway or highway bridge ~~outside municipal corporate limits~~with the speed limit posted less than 45 miles per hour unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge. This subsection shall not apply to a solid waste vehicle stopped on a highway while engaged in collecting garbage as defined in G.S. 20-118(c)(5)g. or recyclable material as defined in G.S. 130A-290(a)(26)."

SECTION 14. G.S. 20-161 is amended by adding a new subsection to read:

"(a1) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge with the speed limit posted 45 miles per hour or greater unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main-traveled portion of the highway or highway bridge. This subsection shall not apply to a

solid waste vehicle stopped on a highway while engaged in collecting garbage as defined in G.S. 20-118(c)(5)g. or recyclable material as defined in G.S. 130A-290(a)(26)."

SECTION 15. G.S. 20-161(b) reads as rewritten:

"(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway ~~outside municipal corporate limits~~ unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic."

SECTION 16. G.S. 20-294(2) reads as rewritten:

"**§ 20-294. Grounds for denying, suspending or revoking licenses.**

The Division may deny, suspend, or revoke a license issued under this Article for any one or more of the following grounds:

...

(2) Willfully and intentionally failing to comply with this Article, Article 15 of this Chapter, or G.S. 20-52.1, 20-75, 20-79.1, 20-79.2, 20-108, 20-109, or a rule adopted by the Division under this Article."

SECTION 17. G.S. 160A-300.1(c1) reads as rewritten:

"(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 18. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 19. G.S. 160A-300.3(e), as enacted by Section 4 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 20. G.S. 160A-303(b1)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~days or is determined by law enforcement to be a hazard to the motoring public."

SECTION 21. Section 25.10 of S.L. 2009-451, as added by Section 20 of S.L. 2009-575, reads as rewritten:

"**DMV TO MOVE ~~EMISSIONS~~ INSPECTION PROGRAM CALL CENTER TO NORTH CAROLINA**

"**SECTION 25.10.** The Department of Transportation, Division of Motor Vehicles, shall replace the current out-of-state contractors handling questions ~~from service station operators~~ about the State's ~~emissions~~ inspection program with State employees at an existing Division of

Motor Vehicles call center within the State. The Department of Transportation, Division of Motor Vehicles, is authorized to create up to 15 new receipt-supported positions to replace the current out-of-state contractors."

SECTION 22. Sections 21 and 22 of this act are effective when it becomes law. The remainder of this act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

HOUSE BILL 1729:
Motor Vehicles Law Changes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2010
Introduced by:	Rep. Cole	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Fifth Edition H1729-CSTD-111		

SUMMARY: House Bill 1729 makes various changes to the State's motor vehicle laws.

[As introduced, this bill was identical to S1132, as introduced by Sen. Goss, which is currently in Senate Ref to Transportation. If fav, re-ref to Finance.]

[As introduced, this bill was identical to S1132, as introduced by Sen. Goss, which is currently in Senate Ref to Transportation. If fav, re-ref to Finance.]

BILL ANALYSIS:

5-year CDL expiration date

Section 1 of the bill changes the expiration date of a commercial drivers license (CDL) to the birth date of the licensee in the fifth year after issuance.

Special registration plates on certain property-hauling vehicles

ection 2 of the bill specifies that special registration plates issued to vehicles 7,000 lbs. to 26,000 lbs. e not required to include the word "weighted".

License plate covers

Section 3 of the bill provides that any operator of a motor vehicle who covers any registration number, registration letter, or the State name on a registration plate, number on a year sticker, or number on a month sticker with any frame or transparent clear or color-tinted cover that makes the registration numbers, registration letters, the State name, or the numbers on the stickers illegible commits an infraction.

Repeal emergency use of registration plates

Section 4 of the bill repeals G.S. 20-64.2, which authorizes the DMV Commissioner to allow emergency use of a registration plate on another vehicle when the vehicle for which it was originally issued is being repaired.

Text of repealed G.S 20-64.2:

§ 20-64.2. Permit for emergency use of registration plate.

The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Division and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so ıg as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of 20 ys from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or nalties that might accrue by reason of the provisions of G.S. 20-86 and 20-96 of the General Statutes. (1957, c. 402; 1975, c. 716, s. 5.)

Dealer plate changes

Section 5 of the bill makes the following changes to State law governing dealer plates:

- increases the number of plates that may be issued to most dealers by 2, and increases the cap for larger dealers to no more than 5 times the average number of qualifying sales representatives employed by the dealer. The current fee for a dealer license plate is $28 for each of the first five plates issued to the same dealer and $14 for each additional dealer license plate issued to the same dealer.
- authorizes specified employees to operate vehicles with dealer plates and dealer transporter plates.
- Increases the dealer license plate sanctions as follows: increases the penalty imposed on individual driving a vehicle from $50 to $100, increases the penalty imposed on the dealer from $200 to $250.

Transporter plate changes

Section 6 of the bill makes the following changes to State law governing issuance of transporter plates:

- clarifies who can obtain a transporter plate: a business or dealer licensed under the Motor Vehicle Dealers and Manufacturers Licensing Law requiring the limited operation of a motor vehicle for the listed purposes.
- requires a business using a transporter plate for repossession to have proof of garage liability insurance, and limits issuance to a financial institution that is the recorded lien holder.
- authorizes transporter plate in order to pick up and deliver a vehicle that is to be repaired, is to undergo a safety or emissions inspection, or is to be prepared for sale, to road-test the vehicle, if it is repaired or inspected within a 20-mile radius of the place it is repaired or inspected, and to deliver the vehicle to the dealer. Also limits who may perform the road test. Transporter plates issued to a repair facility are limited to two transporter plates for each business.
- limits issuance of transporter plate to move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale, to a business that has 10 or more registered vehicles.
- limits issuance of transporter plates to move vehicles to and from an auction, to licensed dealers or to a business contracted by the dealer to deliver vehicles to or from an auction. Any business contracted by the dealer must have a privilege license & financial responsibility.
- requires applicants for a transporter plate for use in road testing a repaired truck to show proof of garage liability insurance.
- authorizes use of transporter plate to move a newly manufactured travel trailer, fifth-wheel trailer, or camping trailer between a manufacturer and a dealer, but the transporter plate may not be used on the power unit. (Current law authorizes use of a transporter plate to move a mobile office, a mobile classroom, or a mobile or manufactured home.)
- authorizes use of a transporter plate to transport a vehicle at least 35 years old to and from a parade or another public event, if the vehicle is titled in this State, and has proof of insurance. (Current law requires a transporter plate to transport a vehicle at least 25 years old.)
- Restricts the authorized use of transporter plates to move a vehicle that is part of dealer inventory to and from a vehicle trade show or parade in which it is used. Issuance of the plate is limited to licensed dealers.

- provides that the total number of dealer transporter or dealer plates issued to a dealer may not exceed the total number of plates that can be issued under G.S. 20-79(b).
- amends the transporter plate sanctions to provide that they apply to violations of the section's requirements for financial responsibility; increases the infraction penalties imposed on individual driving a vehicle from $50 to $100; increases the infraction penalty imposed on the person, dealer, or business to whom plate is issued from $200 per occurrence to $250 per occurrence; requires DMV to rescind dealer or transporter plates for violations, and makes unlawful sale or rental of a transporter plate a Class I Felony.
- authorizes a law enforcement officer having probable cause to believe that a transporter plate is being used in violation of this section to seize the plate.
- authorizes staggered issuance of transporter plates.
- requires DMV to rescind a transporter plate or dealer transporter plate that is displayed on a motor vehicle for a purpose that is not authorized.
- requires any vehicle being operated on the highways of the State using a transporter plate to have liability insurance.

Free special plate clarification/Fee for special plate on property-hauling vehicle

Section 7 of the bill clarifies that recipients of the Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War may receive one *special* registration plate free of charge. The bill, however, requires ecipients of the above plates for use on a vehicle with a registered weight of greater than 6, 000 pounds,) pay the registration fees assessed in G.S. 20-88. Currently, DMV is not charging a registration fee for the initial plate for a vehicle with a registered weight of 6,000 pounds or less.

Repeal $1 mail-in registration renewal fee

Section 8 of the bill repeals the postage and handling fee of $1 for mail-in registration renewal.

Amend separate registration for logging trucks

Section 9 of the bill amends the DMV's requirement for separately registering logging vehicles to help the IRS identify these vehicles as logging vehicles and, therefore, subject to a reduced federal highway use tax. The IRS imposes a highway use tax on motor vehicles over a certain weight. The tax rate for vehicles weighing at least 55,000 pounds, but not over 75,000 pounds is $100 per year plus $22 for each 1,000 pounds in excess of 55,000 pounds. The tax rate for vehicles over 75,000 pounds is $550. The tax rate is reduced by 25% if the motor vehicle is used exclusively for logging. The term "logging" is defined as the harvesting of timber and transportation from a forested site to places of sale. (Added in House Finance, earlier version of HB 1729 repealed the statute)

Light-traffic road limitations

Section 10 of the bill amends the light-traffic road limitations to state that a vehicle's point of origin will be treated as a light-traffic road if the point of origin is a non light-traffic road and that road is blocked by light-traffic roads from all directions and is not contiguous with other non light-traffic roads. Exempts from the weight and penalty limitations the following: vehicles hauling animal waste products from the animal waste storage site to a farm or field. Adds clarifying language to the exemption for ivestock or poultry transported from their point of origins to a processing plant.)

ncident Management Assistance Patrol use of red lights

Section 11 of the bill authorizes use of red lights on Incident Management Assistance Patrol vehicles operated by DOT.

Extend move-over law to electric utility restoration vehicles

Section 12 of the bill extends the "move-over" when passing a parked emergency vehicle law so that it applies to vehicles being used to restore electric utility service due to an unplanned event.

Parking on highway and highway shoulder changes

Section 13 of the bill changes the current prohibition on parking on the *paved or main traveled* portion of a highway or highway bridge *outside municipalities* to a prohibition on parking on the *main traveled* portion of *all* highways with a *speed limit posted less than 45 miles per hour*.

Section 14 of the bill prohibits parking upon the *paved or main-traveled* portion of any highway or highway bridge *with the speed limit posted 45 miles per hour or greater.*

Section 15 of the bill expands the current prohibition on parking on the *shoulder* of a highway *outside municipalities* to *all* highways, both in and outside of municipalities.

Transporter plate misuse grounds for revoking motor vehicle dealer license.

Section 16 of the bill specifies that misuse of transporter plates is grounds for revoking a motor vehicle dealer license.

Yellow light duration at red light camera intersections

Sections 17, 18, and 19 of the bill amend the red light camera laws to change the standard to be used to determine the duration of a yellow light at red light camera intersections from the yellow light duration specified in the DOT Signals and Geometrics Section Design Manual to the duration in the traffic signal plan of record signed and sealed by a licensed professional engineer, and in compliance with the Manual on Uniform Traffic Control Devices.

Removal of abandoned vehicles on streets

Section 20 of the bill changes the statute that authorizes municipalities to prohibit the abandonment of motor vehicles on public streets and on private property. This section would allow the removal and disposal of abandoned vehicles left on a public street at any time, if the motor vehicle is determined to be a hazard to the motoring public. Current law requires removal only if the vehicles has been left for longer than seven days.

Inspection Program Call Center

Section 21 of the bill amends the language in S.L. 2009-451, as added by S.L. 2009-575 concerning the replacement of out-of-state contractors with State employees at an existing call center in Bladen County.

EFFECTIVE DATE: Sections 21 and 22 of this act are effective when the act becomes law. The remainder of the act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Staff Attorneys Brenda Carter, Giles Perry and Martha Walston substantially contributed to this summary.

H1729-SMTD-189(CSTD-111) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 30, 2010

TO: Senate Finance Chairs

FROM: Amna Cameron, Fiscal Research Division

RE: HB 1729 v.5

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2010-11	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
REVENUES:					
Highway Fund					
Section 1:	**$0**	**-$876,420**	**-$757,800**	**-$745,785**	**-$855,630**
Section 8:	**-$574,726**	**-$995,096**	**-$1,005,047**	**-$1,015,098**	**-$1,025,249**
EXPENDITURES:					
Highway Fund					
Section 8:	**-$15,820**	**-$27,120**	**-$27,120**	**-$27,120**	**-$27,120**
POSITIONS (cumulative):	**0**	**0**	**0**	**0**	**0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles

EFFECTIVE DATE: December 1, 2010

BILL SUMMARY: Two sections of the bill have a fiscal impact.

Section 1 (5-year CDL expiration date) of the bill changes the expiration date of a commercial drivers license (CDL) to the birth date of the licensee in the fifth year after issuance.

Section 8 (Repeal $1 mail-in registration renewal fee) of the bill repeals the postage and handling fee of $1 for mail-in registration renewal.

Summary written by Martha Walston. Giles Perry, counsel to House Transportation, substantially contributed to this summary.

ASSUMPTIONS AND METHODOLOGY:

Section 1: The Transportation Security Administration Security Clearance/Threat Assessment requires a "Hazmat Endorsement" be valid for no more than five years. In addition, federal regulations require that hazardous material endorsements be renewed every five years. Currently, commercial driver licenses are renewed every eight years if the applicant is less than 54 years old. The amount paid to renew the license is based on the number of years in which the license will be in effect. Therefore, revenues will decrease for the first five years after implementation because DMV will collect for a five-year, not eight-year license. In year 6, revenues are expected to increase and then stabilize by year 10.

Section 8: Currently, a customer is charged a $1 postage and handling fee if the annual vehicle registration fee is sent by mail. If a customer does not include the fee, DMV returns the renewal and the payment to the customer and the customer must then remit the annual renewal fee again, including the $1 fee if paying by mail. DMV estimates it returns 72,000 renewals per year due to the extra dollar not being included. By stopping the rejection of annual renewals for the omission of the $1 fee, the Division expects to produce savings in mailing costs of $15,820 in FY 2010-11 and $27,120 annually thereafter. Savings are based on the cost of postage and envelopes totaling $2,260 per month. The fiscal impact to revenues is based on the amount of renewals processed by mail in 2009 (totaling 975,489) plus a one percent increase in mailings per fiscal year.

SOURCES OF DATA: Department of Transportation, Division of Motor Vehicles, DOT/IT, Federal Motor Carrier Safety Regulations

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1973
Committee Substitute Favorable 6/10/10
Committee Substitute #2 Favorable 6/16/10
Fourth Edition Engrossed 6/21/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1973-CSRBx-96 [v.1]

Short Title: Various Economic Incentives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO MODIFY EXISTING ECONOMIC DEVELOPMENT INCENTIVES AND TO INCENT NEW ECONOMIC DEVELOPMENT OPPORTUNITIES; TO PROVIDE FOR THE FORMATION OF A LIMITED LIABILITY COMPANY AS A LOW-PROFIT LIMITED LIABILITY COMPANY; TO ESTABLISH THE YADKIN RIVER TRUST, AND TO PROVIDE FUNDING FOR THE DNA DATABASE AND DATABANK.

The General Assembly of North Carolina enacts:

PART I: EXTEND AND REVISE TAX CREDITS FOR GROWING BUSINESSES

SECTION 1.1. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2011.~~2013."

SECTION 1.2. G.S. 143B-437.010(a) reads as rewritten:

"(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area that meets all of the following conditions:

(1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located in whole within a county that has no municipality with a population in excess of 10,000.

(3) Every census tract and census block group that comprises the area either has more than twenty percent (20%) of its population below the poverty level or is adjacent to another census tract or census block group in the zone that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(4) The zone as a whole has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census."

SECTION 1.3. G.S. 105-129.81 is amended by adding a new subdivision to read:

"(9a) Environmental disqualifying event. – Any of the following occurrences:

a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by

the Department of Environment and Natural Resources for failure to comply with an order issued by an agency of the Department to abate or remediate a violation of any program administered by the agency.

b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:

1. A finding was made by the Department of Environment and Natural Resources that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.

2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.

3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.

c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources."

SECTION 1.4. G.S. 105-129.83(e) and (i) read as rewritten:

"(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, ~~the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.~~there has not been a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event. For the purposes of this section, a 'final determination unfavorable to the taxpayer' occurs when there is no further opportunity for the taxpayer to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary of Environment and Natural Resources shall provide an annual report to the Department listing all environmental disqualifying events for which a final determination unfavorable to the taxpayer was made in the prior calendar year and shall provide the name of the taxpayer involved and the date that the disqualifying event occurred.

...

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer forfeits a credit previously allowed under this Article if a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event is made that is applicable to the year in which the activity occurred for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the

number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 1.5. G.S. 143B-437.02(g) reads as rewritten:

"(g) Environmental Impact. – A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, the business ~~has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Commerce annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.~~satisfies the environmental impact standard under G.S. 105-129.83."

SECTION 1.6. G.S. 143B-437.012(h) reads as rewritten:

"(h) Environmental Impact. – A business is eligible for consideration for a grant under this section only if the business ~~has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last three years with respect to the location for which the grant is made. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).~~certifies that, at the time of the application, the business satisfies the environmental impact standard under G.S. 105-129.83."

SECTION 1.7. G.S. 105-129.88 reads as rewritten:

"**§ 105-129.88. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	~~5%~~4%
Tier Three	~~3.5%~~2.%

...

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in

service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress zone or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	~~2,000,000~~3,000,000

...."

SECTION 1.8. Sections 1.3 and 1.4 of this Part are effective for credits claimed for taxable years beginning on or after January 1, 2007. Sections 1.5 and 1.6 of this Part are effective when they become law and apply all agreements in effect on or entered into on or after that date. The remainder of this Part is effective January 1, 2011, and applies to taxable years beginning on or after that date.

PART II: EXPAND TAX CREDITS FOR PRODUCTION COMPANIES

SECTION 2.1. G.S. 105-130.47 reads as rewritten:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less the amount in excess of one million dollars ($1,000,000) paid to a highly compensated individual:

a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.~~

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit by the Secretary before the credit is allowed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed ~~seven~~ twenty million ~~five hundred thousand~~

dollars ~~($7,500,000).~~($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on or after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Division of Tourism, Film, and Sports Development in the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Division. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2014."

SECTION 2.2. G.S. 105-151.29 reads as rewritten:

"**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars ($1,000,000) to a highly compensated individual:

a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.~~

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit by the Secretary before the credit is allowed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed ~~seven~~ twenty million ~~five hundred thousand~~ dollars ~~($7,500,000).~~($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on and after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Division of Tourism, Film, and Sports Development in the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Division. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2014."

SECTION 2.3. G.S. 105-187.51 is amended by adding a new subsection to read:

"**§ 105-187.51. Tax imposed on mill machinery.**

(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include the following:

a. ~~a~~ A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

b. A production company.

(2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term "accessories" does not include electricity."

SECTION 2.4. This Part becomes effective January 1, 2011. Sections 2.1 and 2.2 of this Part apply to taxable years beginning on or after January 1, 2011. Section 2.3 of this Part applies to purchases and sales made on or after January 1, 2011.

PART III: TAX CREDIT FOR DEVELOPING INTERACTIVE DIGITAL MEDIA

SECTION 3.1. The heading to Article 3F of Chapter 105 of the General Statutes reads as rewritten:

"Article 3F.

~~Research and~~ Technology Development."

SECTION 3.2. G.S. 105-129.50 reads as rewritten:

"**§ 105-129.50. Definitions.**

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) ~~through (3):~~ Reserved.

(2) Full-time job. – Defined in G.S. 105-129.81.

(3) Reserved.

(4) North Carolina university research expenses. – Any amount the taxpayer paid or incurred to a research university for qualified research performed in this State or basic research performed in this State.

(5) Period of measurement. – Defined in the Small Business Size Regulations of the federal Small Business Administration.

(6) Qualified North Carolina research expenses. – Qualified research expenses, other than North Carolina university research expenses, for research performed in this State.

(7) Receipts. – Defined in the Small Business Size Regulations of the federal Small Business Administration.

(8) Related person. – Defined in G.S. 105-163.010.

(9) Research university. – An institution of higher education that meets one or both of the following conditions:

a. It is classified as one of the following in the most recent edition of "A Classification of Institutions of Higher Education", the official report of The Carnegie Foundation for the Advancement of Teaching:

1. Doctoral/Research Universities, Extensive or Intensive.
2. Masters Colleges and Universities, I or II.
3. Baccalaureate Colleges, Liberal Arts or General.

b. It is a constituent institution of The University of North Carolina.

(10) Small business. – A business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed one million dollars ($1,000,000)."

SECTION 3.3. G.S. 105-129.51 reads as rewritten:

"**§ 105-129.51. ~~Administration;~~ Taxpayer standards and sunset.**

(a) A taxpayer is eligible for ~~the~~ a credit allowed in this Article if it satisfies the requirements of G.S. 105-129.83(c), (d), (e), ~~and (f)~~(f), and (g) relating to wage standard, health insurance, environmental impact, ~~and~~ safety and health programs, and overdue tax debts, respectively.

(b) This Article is repealed for taxable years beginning on or after January 1, 2014.

(c) Repealed by Session Laws 2004-124, s. 32D.4, effective for taxable years beginning on or after January 1, 2006."

SECTION 3.4. G.S. 150-129.52 reads as rewritten:

"**§ 105-129.52. Tax election; cap.**

(a) Tax Election. ~~The~~ A credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is first claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(b) Cap. – A credit allowed in this Article may not exceed fifty percent (50%) of the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit allowed in this Article may be carried forward for the succeeding 15 years."

SECTION 3.5. G.S. 105-129.54 reads as rewritten:

"**§ 105-129.54. Reports.**

The Department of Revenue must publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that took a credit allowed in this ~~Article,~~Article. The credit allowed under G.S. 105-129.55 must be itemized by the categories of small business, low-tier, other, and university research. The credit allowed under G.S. 105-129.56 must be itemized by categories of university development, application development, and other development.

(2) The amount of each credit taken in each category.

(3) The total cost to the General Fund of the credits taken."

SECTION 3.6. Article 3F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.56. Interactive digital media.**

(a) IDM Defined. – Interactive digital media is a product that meets all of the following requirements:

(1) It is produced for distribution on electronic media, including distribution by file download over the Internet.

(2) It contains a computer-controlled virtual universe with which an individual who uses the program may interact in order to achieve a goal.

(3) It contains a significant amount of at least three of the following five types of data: animated images, fixed images, sound, text, and 3D geometry.

(b) Credit. – A taxpayer that develops in this State interactive digital media or a digital platform or engine for use in interactive digital media is allowed a credit equal to a percentage of the taxpayer's expenses that exceed fifty thousand dollars ($50,000) and that are paid during the taxable year in developing the media, platform, or engine. The percentage that applies to the expenses is determined under subsection (b) of this section. The expenses to which the credit applies are as follows:

(1) Compensation and wages for a full-time job on which withholding payments are remitted to the Department under Article 4A of this Chapter.

(2) Employee fringe contributions on compensation and wages included under subdivision (1) of this subsection, including health, pension, and welfare contributions.

(3) Amounts paid to a research university for services performed in this State.

(b) Percentage. – The percentage of the credit allowed under this section is the percentage set under this subsection. Only one credit is allowed under this section with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. The applicable percentage is as follows:

(1) University. – For allowable expenses paid to a research university, the percentage is twenty percent (20%).

(2) Training and education. – For allowable expenses incurred to develop interactive digital media for any of the following applications, the percentage is fifteen percent (15%):

a. Skill training to enable the user to retain or acquire a job in a specific industry.

b. A military training or simulation application for use by the United States armed services

c. A medical training or simulation application.

d. An education application for use by a public or private primary school.

(3) Other. – For allowable expenses not covered in another subdivision of this subsection, the percentage is ten percent (10%).

(c) Limitations. – The credit allowed by this section does not apply to interactive digital media that meets any of the business purposes or subject matter restrictions in this subsection:

(1) It is developed by the taxpayer for internal use.

(2) It is an interpersonal communications service, such as videoconferencing, wireless telecommunications, a text-based channel, or a chat room.

(3) It is an Internet site that is primarily static and primarily designed to provide information about one or more persons, businesses, companies, or firms.

(4) It is a gambling or casino game.

(5) It is political advertising.

(6) It contains material that is obscene, as defined in G.S. 14-190.1, or that is harmful to minors, as defined in G.S. 14-190.13.

(d) No Double Benefit. – A taxpayer that claims a credit under this section may not claim any of the following with respect to the expenses used to determine the credit under this section:

(1) A credit allowed under any other section of this Chapter.

(2) A grant from the Job Development Investment Grant Program, set out in part 2G of Article 10 of Chapter 143B of the General Statutes.

(3) A grant from the One North Carolina Fund, set out in Part 2H of Article 10 of Chapter 143B of the General Statutes."

SECTION 3.7. This Part is effective for taxable years beginning on or after January 1, 2011.

PART IV: EXTEND SUNSET FOR TAX CREDIT FOR RECYCLING OYSTER SHELLS

SECTION 4.1. G.S. 105-130.48(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2011.~~January 1, 2013."

SECTION 4.2. G.S. 105-151.30(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2011.~~January 1, 2013."

SECTION 4.3. This Part is effective when it becomes law.

PART V: CREATE ECONOMIC DEVELOPMENT INCENTIVES FOR ECO-PARKS

SECTION 5.1. G.S. 143B-437.08 is amended by adding a new subsection to read:

"(j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce has certified meets the following requirements:

(1) It has at least 100 developable acres.

(2) It is located in a county that is not required under G.S. 143-215.107A to perform motor vehicles emissions inspections.

(3) Each building located in the industrial park is constructed in accordance with energy-efficiency and water-use standards established in G.S. 143-135.37 for construction of a major facility.

(4) Each business located in the park is in a clean-industry sector according to the Toxic Release Inventory by the United States Environmental Protection Agency."

SECTION 5.2. G.S. 143B-437.4 reads as rewritten:

"**§ 143B-437.4. NC Green Business Fund ~~established as a special revenue fund.~~and grant program.**

(a) ~~Establishment.~~ Fund. – The NC Green Business Fund is established as a special revenue fund in the Department of Commerce, and the Department shall be responsible for administering the Fund.

(b) Purposes. – Moneys in the NC Green Business Fund shall be allocated pursuant to this subsection. The Department of Commerce shall make grants from the Fund to private businesses with less than 100 employees, nonprofit organizations, local governments, and State agencies to encourage the expansion of small to medium size businesses with less than 100 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund shall be used for projects that will focus on the following three priority ~~areas:~~areas listed in this subsection. In selecting between projects that are within a priority area, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park. The priority areas are:

(1) To encourage the development of the biofuels industry in the State. The Department of Commerce may make grants available to maximize development, production, distribution, retail infrastructure, and consumer purchase of biofuels in North Carolina, including grants to enhance biofuels workforce development.

(2) To encourage the development of the green building industry in the State. The Department of Commerce may make grants available to assist in the development and growth of a market for environmentally conscious and energy efficient green building processes. Grants may support the installation, certification, or distribution of green building materials; energy audits; and marketing and sales of green building technology in North Carolina, including grants to enhance workforce development for green building processes.

(3) To attract and leverage private-sector investments and entrepreneurial growth in environmentally conscious clean technology and renewable

energy products and businesses, including grants to enhance workforce development in such businesses.

(c) Cap and Matching Funds. – The Department of Commerce may set a cap on a grant from the NC Green Business Fund and may require a private business to provide matching funds for a grant from the Fund. A grant to a project located in an Eco-Industrial Park certified under G.S. 143B-437.08 is not subject to a cap or a requirement to provide matching funds."

SECTION 5.3. G.S. 143B-437.52(b) reads as rewritten:

"(b) ~~Cap.~~ Cap and Priority. – The maximum number of grants the Committee may award in each calendar year is 25. In selecting between applicants, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park."

SECTION 5.4. G.S. 105-129.16A(c)(1) reads as rewritten:

"(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. – A ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to renewable energy property that is placed in service outside an Eco-Industrial Park certified under G.S. 143B-437.08 and is for any purpose other than residential. A ceiling of five million dollars ($5,000,000) per installation applies to renewable energy property that is placed in service in a certified Eco-Industrial Park and is for any purpose other than residential."

SECTION 5.5. G.S. 105-129.55 reads as rewritten:

"**§ 105-129.55. Credit for North Carolina research and development.**

~~(a)~~ Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this ~~subsection.~~section. Only one credit is allowed under this ~~subsection~~ section with respect to the same expenses. If more than one subdivision of this ~~subsection~~ section applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under more than one subdivision ~~(2)~~ of this ~~subsection and the remainder qualifies under subdivision (3) of this subsection,~~ section, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three and one-quarter percent (3.25%).

(2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).

(2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).

(2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).

(3) Other research. – For expenses not covered under another subdivision ~~(1) or (2)~~ of this ~~subsection,~~section, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1.25%
$50 million	$200 million	2.25%
$200 million	–	3.25%

~~(b) North Carolina University Research Expenses. A taxpayer that has North Carolina university research expenses for the taxable year is allowed a credit equal to twenty percent (20%) of the expenses.~~"

SECTION 5.6. Sections 5.1, 5.4 and 5.5 of this Part are effective for taxable years beginning on or after January 1, 2011. The remainder of this Part is effective when it becomes law. Sections5.2 and 5.3 of this Part apply to grant applications submitted on or after July 1, 2010.

PART VI: SALES TAX EXEMPTION FOR WOOD CHIPPER

SECTION 6.1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(4g) A wood chipper that meets all of the following requirements:

a. It is designed to be towed by a motor vehicle.

b. It is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association.

c. It is sold to a person who purchases a motor vehicle in this State that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered.

...."

SECTION 6.2. This part becomes effective July 1, 2009, and applies to sales made on or after that date.

PART VII: LOW-PROFIT LIMITED LIABILITY COMPANY

SECTION 7.1. G.S. 57C-2-01 is amended by adding a new subsection to read:

"(d) L3C. – Formation and operation of a limited liability company as a low-profit limited liability company is a lawful purpose. A low-profit limited liability company is a limited liability company whose articles of organization state that the company is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with the requirements of this subsection. A company that operates in accordance with these requirements is considered a for-profit entity and not a charitable entity for all tax purposes. A company's failure to operate in accordance with these requirements does not affect its status as a limited liability company. The charitable purpose requirements are as follows:

(1) To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code, as defined in G.S. 105-228.90.

(2) To operate so that no significant purpose of the company is the production of income or the appreciation of property. The fact that a company produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose to produce income or accumulate capital.

(3) To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code, as defined in G.S. 105-228.90."

SECTION 7.2. G.S. 57C-2-21 reads as rewritten:

"**§ 57C-2-21. Articles of organization.**

(a) The articles of organization must set ~~forth:~~forth all of the following:

(1) A name for the limited liability company that satisfies the provisions of G.S. 55D-20 and ~~G.S. 55D-21;~~G.S. 55D-21.

(2) If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability ~~company;~~company.

(3) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an ~~organizer;~~organizer.

(4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that ~~address;~~address.

(4a) The street address, and the mailing address if different from the street address, of the limited liability company's principal office, if any, and the county in which the principal office, if any, is ~~located; and~~located.

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members.

(6) If the limited liability company is formed as a low-profit limited liability company, a statement that operation of the company must meet the charitable purpose requirements of G.S. 57C-2-01(d).

(b) The articles of organization may set forth any other provision, not inconsistent with law, including any other matter that under this Chapter is permitted to be set forth in an operating agreement.

(c) The articles of organization need not set forth any of the powers enumerated in this Chapter."

SECTION 7.3. G.S. 55D-20(a) is amended by adding the following subdivision to read:

"(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C"."

SECTION7.4. This Part is effective when it becomes law.

PART VIII: ESTABLISH THE YADKIN RIVER TRUST TO DEVELOP THE RESOURCES OF THE YADKIN RIVER IN DAVIDSON, MONTGOMERY, ROWAN, AND STANLY COUNTIES

SECTION 8.1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 10.
"Yadkin River Trust.

"**§ 77-140. Yadkin River Trust.**

There is established the Yadkin River Trust as a public agency and instrumentality of the State to develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation, to ensure the equitable distribution of water for public purposes, to investigate and address issues of environmental damage in that area, and to fulfill the purpose and intent of S.L. 1885-212.

"**§ 77-141. Board of Directors.**

(a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of three directors, the Secretary of the Department of Commerce, one who shall be appointed by the Speaker of the House of Representatives, and one who shall be appointed by the President Pro Tempore of the Senate.

(b) Terms. – The term of office of directors of the Board is four years. A director may be reappointed to one successive four-year term. A director in office continues to serve until the director's successor is duly confirmed and qualified, but the holdover does not affect the expiration date of the succeeding term.

(c) Chair. – The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a chair of the Board.

(d) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any director prior to the expiration of the director's term of office, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term.

(e) Organization of the Board. – The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum consists of a majority of the members of the Board. No vacancy in the membership of the Board impairs the right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

(f) Compensation of the Board. – The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

"**§ 77-142. Powers of the Trust.**

The Trust has all the powers necessary to execute the provisions of this Article, including the following:

(1) To adopt, alter, or repeal its bylaws and adopt, amend, or repeal rules to implement the provisions of this Article.

(2) To sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(3) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business and to facilitate the business of the Trust.

(4) To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or dispose of any property, real, personal, or mixed, or any interest therein.

(5) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required.

(6) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Trust and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Trust.

(7) To develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation.

(8) To pursue efforts directed at the equitable distribution of water for public purposes.

(9) To seek enforcement of environmental laws and contribution to environmental cleanup costs, consistent with its obligations under this Article.

(10) To fulfill the purpose and intent of S.L. 1885-212, which set forth certain requirements to erect and maintain dams and other obstructions in the Yadkin River.

"**§ 77-143 through § 77-160: Reserved for future codification purposes.**"

SECTION 8.2. The Yadkin River Trust shall monitor the proceedings before the Federal Energy Regulatory Commission concerning the license for the Yadkin Project No. 2197 and report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the Environmental Review Commission on or before January 15, 2011, on the status of the matter. Upon reporting, the Trust may also provide an update on issues required to be studied pursuant to S.L. 2008-137, as deemed appropriate.

SECTION 8.3. This Part is effective when it becomes law. If the Federal Energy Regulatory Commission issues a new multiyear license to Alcoa Power Generating, Inc., for the Yadkin Project No. 2197, the provisions of this Part shall expire upon issuance of that license.

PART IX: FUNDING FOR THE DNA DATABASE AND DATABANK

SECTION 9.1. If Senate Bill 1383 or House Bill 1403, 2010 Regular Session, 2009 General Assembly, become law, then G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(9) For the support and services of the State Bureau of Investigation DNA Database and DNA Databank, the sum of three dollars ($3.00), to be remitted to the Department of Justice. This cost shall be assessed and collected only if the defendant has been convicted of a felony or misdemeanor."

SECTION 9.2. This Part becomes effective October 1, 2010, and applies to court costs imposed or collected on or after that date, except that in misdemeanor cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2) in which the citation or other criminal process was issued before that date, the cost shall be the lesser of the cost specified in G.S. 7A-304(a), as amended by this act, or the cost specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

PART X: EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 1973:
Various Economic Incentives

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 1, 2010
Introduced by:	Reps. Owens, Gibson, Wainwright, Brubaker	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	PCS to Fourth Edition H1973-CSRBx-96		

SUMMARY: The Senate PCS for House Bill 1973 would do the following:

1. *It would extend the sunset for Article 3J from 1/1/11 to 1/1/13, modify the definition of agrarian growth zones, modify what types of environmental events disqualified a taxpayer from qualifying for certain economic incentives, and reduce the credit for investments in business property under Article 3J.*
2. *It would enhance the film production tax credits by increasing the per production cap fro $7.5 million to $20 million.*
3. *It would create a new tax credit for interactive digital media.*
4. *It would extend the sunset for the credit for recycling oyster shells from 1/1/11 to 11/1/13.*
5. *It would create economic development incentives and favorable tax treatment for Eco-Industrial Parks.*
6. *It would exempt from certain wood chippers from sales tax.*
7. *It would recognize a new type of corporate designation known as a low-profit limited liability company (L3C).*
8. *It would establish the Yadkin River Trust to develop the resources of the Yadkin River I Davidson, Montgomery, Rowan, and Stanley counties.*
9. *It would provide funding for the DNA Database and Databank, provided the General Assembly enacts either Senate Bill 1383 or House Bill 1403, "Collect DNA Sample on Arrest".*

PART I: EXTEND AND MODIFY ARTICLE 3J TAX CREDITS

Under current law, Article 3J for growing businesses is repealed for business activities that occur on or after 1/1/11. In order to qualify for a number of economic incentives[1] offered by the State, including Article 3J, a taxpayer must meet an environmental impact test. In addition, under Article 3J, a taxpayer may receive a credit for investing in business property if the investment meets a specified threshold. The amount of the credit varies, depending upon the tier designation. Activities that occur in an agrarian growth zone may receive enhanced economic incentives.

Sunset Extension: Section 1.1 would extend the sunset for the Article 3J tax credits from 1/1/11 to 1/1/13.

Agrarian Growth Zone: An agrarian growth zone is a zone that meets each of the following conditions: (i) it is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census, (ii) all of the area is located in whole within a county that has

[1] These incentives include site infrastructure development, JMAC (Job Maintenance and Capital Development Fund), and any tax incentive that incorporates, by reference, the environmental test set forth in Art. 3J.

to municipality with a population in excess of 10,000, and (iii) every census tract and census block group that comprises the area has more than 20% of its population below the poverty level according to the most recent federal census. Section 1.2 of the bill would make a technical change to what meets the definition of an agrarian zone by modifying the third requirement by allowing every census tract to either have more than 20% of its population below the poverty level or to be adjacent to another census tract or census block group in the zone that has more than 20% of its population below the poverty level according to the most recent federal census and by requiring that the zone, as a whole, have more than 20% of its population below the poverty level according to the most recent federal census. This section is effective for taxable years beginning on or after January 1, 2011.

Environmental Impact: Under various provisions, a taxpayer qualifies for certain economic incentives only if the taxpayer certifies that it has no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any DENR-implemented programs and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any DENR-implemented program within the last five years. These are civil and criminal violations with associated penalties. While Article 3J has a definition for what constitutes a "significant" violation, some confusion has arisen as to whether violations should be considered "significant" or "non-significant," and Revenue has interpreted the current language to make no distinction between civil and criminal violations or on the basis of whether the violation was knowing or knowing and willful. Sections 1.3 through 1.6 of the bill would clarify that an environmental disqualifying event occurs when (i) a civil penalty is assessed by DENR for failure to comply with an order to abate or remediate a violation of any DENR program, (ii) a criminal penalty was imposed in connection with any DENR-implemented program, or (iii) DENR finds a taxpayer knowingly and willfully committed a violation of a DENR-implemented program or an assessment for damages to fish or wildlife is made or a judicial order for injunctive relief was issued in connection with a violation of any DENR-implemented program.[2] This is designed to ensure that minor violations do not inadvertently disqualify a taxpayer that would otherwise be eligible for a tax incentive and has been vetted with the Departments of Commerce and Revenue. Sections 1.3 and 1.4 would become effective for credits claimed for taxable years beginning on or after January 1, 2007. Sections 1.5 and 1.6 become effective when they become law and apply all agreements in effect on or entered into on or after that date.

Credit for Investing in Business Property: Section 1.7 would modify the tax credit for investing in business property by both increasing the threshold level of investment that must be met to qualify for the credit in a tier 3 development area and by reducing the credit amount for an area development tier 2 and 3 as shown in the table below: This section is effective for taxable years beginning on or after January 1, 2011.

Area Development Tier	Applicable Credit Percentage	Applicable Threshold Amount
Tier One	7%	-0-
Tier Two	Reduce from 5% to 4%	$1,000,000
Tier Three	Reduce from 3.5% to 2%	Increase from $2,000,000 to $3,000,000

[2] The first two apply only for the tax year in which the activity occurred; the last includes the current tax year as well as the prior two tax years.

Part II: Expand Tax Credits for Production Companies

In 2005, the General Assembly replaced the film industry development grant program with a refundable income tax credit calculated based on the qualifying expenses spent by a production company in connection with a production. In 2009, the credit was modified to provide a production company with the choice of two different credit amounts: either a credit equal to 15% of qualifying expenses[3] or an alternative credit equal to 25% of qualifying expenses, less the difference between the amount of tax paid on purchases subject to the privilege tax on mill machinery under G.S. 105-187.51, which has historically been applied to cameras, film, props, building materials used in construction of sets, and chemicals/equipment used to develop and edit film, and the amount of tax the company would have paid on those purchases if they had been subject to the combined general rate of sales tax under G.S. 105-164.4.

The refundable film credit is capped at $7.5 million. In order to obtain the credit, the taxpayer's qualifying expenses must exceed $250,000, which cannot include any amount in excess of $1,000,000 paid in compensation to an individual. The credit is claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit.

Sections 2.1 and 2.2 would do the following, effective for taxable years beginning on or after January 1, 2011:

- Increase the applicable percentage used to calculate the credit from 15% of the amount of qualifying expenses to 25% of the amount of qualifying expenses and eliminate the alternative credit.
- Allow a taxpayer to include as qualifying expenses both employee fringe contributions (including health, pension, and welfare contributions) and per diems, stipends, and living allowances paid for work being performed in the State.
- Increase the cap of the film credit from $7.5 million to $20 million.

Section 2.3 would clarify that the scope of mill machinery for privilege tax purposes does not include purchases of cameras, film, props, building materials used in construction of sets, and chemicals/equipment used to develop and edit film. This would result in these purchases being subject to the general rate of sales tax.

Part III: Economic Incentives for Interactive Digital Media

North Carolina does not provide any statutory incentives programs for companies that produce virtual world, flight, or training simulations or engines, platforms or other programmed components of such simulations. Effective for taxable years beginning on or after 1/1/11 Section 3.2 would create an economic incentive to help to recruit those producers of interactive digital media to North Carolina. The term "interactive digital media" would be defined as products that meet all of the following requirements:

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[3] Qualifying expenses are the total amount spent in North Carolina on (i) goods and services leased or purchased by a production company in connection with a production, (ii) compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense, and (iii) the cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

- Produced for distribution on electronic media, including distirubiton by file download over the Internet.
- Contains a computer-controlled virtual universe with which an individual wo uses the program may interact in order to achieve a goal.
- Contains a significant amount of at least three of the following: text, sound, fixed images, animated, images, and 3D geometry

The credit would be equal to a percentage of the taxpayer's expenses paid during the taxable year in developing the media, platform, or engine that exceed $50,000. The percentage amount would vary as follows:

- For expenses paid to a research university, 20%.
- For expenses incurred to develop training and educational applications, 15%.
- For all other allowable expenses, 10%.

The credit is available only if the taxpayer meets the wage standard, health insurance, environmental impact, safety and health programs, and no-tax-delinquencies requirements of Article 3J. IDM credits may be taken against either franchise or income tax liability. The taxpayer must elect when filing the return which tax the credit will be claimed against, and that election is binding (including with respect to carryfowards). IDM credits may not exceed 50% of the amount of tax against which the credit is claimed, and unused portions of a credit may be carried forward for eight years. If a producer claims or has claimed an IDM credit with respect to a facility, that taxpayer is ineligible for One NC Fund and JDIG grants. This credit would 1/1/14.

'art IV. Extend Tax Credit for Recycling Oyster Shells

Section 5.1 would extend the sunset on the tax credit for recycling oyster shells fro 1/1/11 to 1/1/13.

Part V: Eco-Industrial Parks

This Part of the bill provides that any Eco-Industrial Park has a development tier one designation for purposes of economic development programs. An Eco-Industrial Park meets the following requirements (i) it has at least 100 developable acres, (ii) it is located in a county that is not subject to motor vehicles emissions inspections, (iii) each building in the park meets the energy-efficiency and water usage standards established in G.S. 143-135.37, and (iv) each business in the park is in a clean industry. If these requirements are met, the Eco-Industrial Park enjoys certain other favorable treatment with existing economic incentives. First, for purposes of the Job Development Investment Grant Program and the NC Green Business Fund, in selecting between applicants (JDIG) and projects in a priorty area (Fund), an applicant or a project in an Eco-Industrial Park has priority over comparable projects not in an Eco-Industrial Park. Also, with respect to the NC Green Business Fund and unlike with other projects, Commerce may neither set a cap on a grant nor require matching funds for a grant from the Fund for projects in an Eco-Industrial Park. Second, under current law, the tax credit available against income, franchise, or gross premiums tax liability for taxpayers investing in renewable energy property for nonresidential property has a ceiling of $2.5 million per installation. The bill would increase that limitation for renewable energy property for nonresidential property located in an Eco-Industrial Park to $5 million per installation. Third, under current law, a taxpayer that has qualified research expenses is allowed a credit equal to the percentage of the expenses ranging from 1.25% to 3.25% (North Carolina ··niversity research expenses get a credit equal to 20% of the expenses). The applicable percentage for ĸpenses with respect to research performed in an Eco-Industrial Park would be 35% of the expenses.

Part VI: Sales Tax Exemption for Wood Chippers

Under current law, companies that produce wood chippers that are for use by out-of-state customers and that are immediately removed from North Carolina and are delivered to the customer's out-of-state location are required to collect sales tax for certain sales. This practice has, in practical effect, put these companies at a competitive disadvantage with similarly situated companies located in other States. These taxable sales included, *inter alia*, (i) where a customer's employee picks up the chipper at the company location using the customer's vehicle, (ii) where the customer pays a drive-away service driver to pick up the chipper at the company, and (iii) where the customer pays a drive-away service driver to pick up the chipper at the company using the customer's vehicle. These chippers are commercial units that are towed behind another vehicle and are assigned a vehicle identification number.

Section 7.1 would exempt from sales tax a wood chipper that meets all of the following requirements:

- Is designed to be towed by a motor vehicle.
- Is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association.
- Is sold to a person who purchases a motor vehicle in this State that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered.

This Part would become effective July 1, 2009, and apply to sales made on or after that date.

Part VII. Low Profit Limited Liability Company

Chapter 57C provides for the formation of a limited liability company (LLC). A low-profit limited liability company is a LLC that is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with these three requirements:

- To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code.
- To operate so that no significant purpose of the company is the production of income or the appreciation of property.
- To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code.

Under current law, a LLC could choose to put these conditions on its operations by including them in its articles of organization and by operating in accordance with them. However, current North Carolina law does not provide a designation specific to a company that does so. Part VIII would recognize the formation of a low-profit limited liability company and allow that company to use the designation "L3C". Like a LLC, a L3C is subject to federal and State tax and investments in a L3C are not tax deductible. This Part would become effective when it becomes law. The Senate passed this provision last year, 2009, in Senate Bill 308. Senate Bill 308 is in House Finance.

Vermont became the first state to recognize the L3C as an official legal structure in April 2008 and Michigan become the second state in January 2009. The formation of a L3C is designed to facilitate program-related investments (PRI) by private foundations. Private foundations must distribute at least 5% of their capital for charitable purposes to maintain their nonprofit status. Although foundations often expend these funds through grants, they may also meet the expenditure requirement with IRS-sanctioned PRIs. A PRI is an investment that supports charitable activities but may involve the potential return of capital. An example of a PRI is a loan, a loan guarantee, and an equity investment in a charitable organization.

Foundations do not usually make PRIs without an IRS private letter ruling that the investment meets the IRS requirements as an acceptable PRI. The expense of obtaining a private letter ruling deters foundations from this form of investment. The founders of the L3C designation hope that the IRS or Congress will choose to treat an investment in a L3C as a PRI without the need for a private letter ruling because the three requirements to form as a L3C mirror the IRS requirements for a PRI. Neither the IRS nor Congress has evidenced any movement on this issue.

Part VIII. Establish the Yadkin River Trust to Develop the Resources of the Yadkin River in Davidson, Montgomery, Rowan, and Stanley Counties

Part IX would authorize creation of the Yadkin River Trust (Trust) as a public agency and instrumentality of the State. The Trust would have a Board of Directors and be authorized to do the following:

- Develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation.
- Pursue efforts directed at the equitable distribution of water for public purposes.
- Seek enforcement of environmental laws and contribution to environmental cleanup costs, consistent with the purposes for which the Trust was created.
- Fulfill the purpose and intent of S.L. 1885-212, which set forth certain requirements to erect and maintain dams and other obstructions in the Yadkin River.
- Monitor the proceedings before the Federal Energy Regulatory Commission concerning the license for the Yadkin Project No. 2197 and report on the status of those proceedings, as well as other relevant issues, to several legislative oversight commissions.

This Part would become effective when it becomes law, and would expire if the Federal Energy Regulatory Commission issues a new multiyear license to Alcoa Power Generating, Inc., for the Yadkin Project No. 2197.

Part IX. Funding for the DNA Database and Databank

Senate Bill 1383 and House Bill 1403 would make two significant changes to the State's laws on DNA sampling: DNA samples would be taken from persons upon arrest for specified offenses, and the general method of sampling would be changed from blood sample to cheek swab for all DNA sampling. This Part provides for a three dollar ($3.00) criminal court cost, to be assessed in every criminal case in Superior or District Court where the defendant is convicted, enters a guilty or nolo contendere plea, or when costs are assessed against the prosecuting witness. The cost does not apply to infractions. The funds would be remitted to the State Treasurer, for the support and services of the SBI's DNA Database and DNA Databank.

IF THIS PART BECOMES EFFECTIVE, the increased court cost would become effective October 1, 2010, and applies to court costs imposed or collected on or after that date, except that in misdemeanor cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2) in which the citation or other criminal process was issued before that date, the cost shall be the lesser of the cost specified in G.S. 7A-304(a), as amended by this act, or the cost specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

The changes proposed by this Part would only become effective if the 2010 Session of the 2009 General Assembly enacts either Senate Bill 1383 or House Bill 1403.

Part X. Effective Date

H1973-SMRB-106(CSRBx-96) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 1, 2010

TO: Senate Finance Committee

FROM: Rodney Bizzell, Sandra Johnson, Kristin Walker, Sarah Stone and Tazra Mitchell
Fiscal Research Division

RE: PCS to H1973 v.4n1

	Yes (X)	No ( )	No Estimate Available ( )		
REVENUES:	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
Part I.–Art. 3J Changes	$0.0	-$4.6	-$10.3	-$20.6	-$20.6
Part II–Film Credit	$0.0	-$14.4	-$4.9	$0.0	$0.0
Part III–IDM Credits	$0.0	-$0.5	-$1.0	-$1.5	-$2.0
Part IV- Sales Tax Refund	-$0.024	-$0.025	-$0.023	-$0.023	-$0.024
Part V – Oyster Shell Tax Credit	$0.0	-$0.1	-$0.1	-$0.1	$0.0
Part VI –Eco-Park			*No estimate available*		
Part VII–Woodchipper			*No significant impact*		
Part VIII – L3C			*No estimate available*		
Part IX – DNA Database	$1.24	$1.65	$1.65	$1.65	$1.65
EXPENDITURES:					
Part VIII – L3C	$30,500	$0	$0	$0	$0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC DOR; NC Department of Commerce; Judicial Branch

EFFECTIVE DATE: Becomes effective when law except where otherwise specified.

BILL SUMMARY:
Part I extends the sunset for the Article 3J Credits for Growing Businesses from January 1, 2011 to January 1, 2013. It also lowers the credit rate percentage from 5% to 4% for Tier II business investments and from 3.5% to 2.0% for Tier III business investments. The minimum investment threshold for Tier III investment is increased from $2 million to $3 million.

Part II of the bill makes the following changes to the film production credit:

- Increases the applicable percentage used to calculate the credit from 15% of the amount of qualifying expenses to 25% and eliminates the alternate credit;
- Increases the cap on the amount of credit per feature film from $7.5 million to $20 million;
- Allows employee fringe contributions and per diems to be included as eligible expenses.

Part III of the bill establishes a tax credit for digital interactive media productions. The credit is equal to 10% of eligible expenses, or 20% if the production is in collaboration with a university. The credit is 15% for certain eligible applications. Taxpayers may take annual credits of up to 50% of tax liability and unused credits can be carried forward for eight years. The minimum cost of an eligible production is $50,000.

Part IV of the bill adds to the types of joint governmental agencies eligible for a sales tax refund under G.S.105-164.14(c). The agency must be an agency created by an interlocal agreement pursuant to G.S. 160A-462. The agency must also operate a public broadcast station or "communication system that provides high-speed broadband Internet access service or other Internet access service" or provide other video programming services.

Part V of the bill would extend the tax credit for recycling oyster shells to 2013. The credit amount is $1 per bushel of oyster shells donated to the Division of Marine Fisheries of the NC Department of Environment and Natural Resources.

Part VI would create economic development incentives and favorable tax treatment for Eco-Industrial Parks.

Part VII of the PCS to HB 1973 is formative in nature. The goal of this legislation is to clarify that companies are not liable for erroneous sales and use tax assessments on wood-chipping equipment. The legislation would apply if said equipment has an assigned seventeen-digit vehicle identification number (VIN) from the National Highway Transportation Safety Association.

Part VIII would recognize a new type of corporate designation known as a low-profit limited liability company (L3C). The PCS removes the provisions from the bill that would have provided enhanced tax incentives to an endangered manufacturer.

Section IX of the PCS creates the Yadkin River Trust as a public agency and instrumentality of the State with a three-member board of directors. The Trust is given several powers and directed to report to three legislative commissions by January 15, 2011 regarding the Federal Energy Regulatory Commission's license renewal for the Yadkin Project No. 2197.

ASSUMPTIONS AND METHODOLOGY:

Part I extends the Article 3J credits from January 1, 2011 to January 1, 2013. The Article 3J Credits for Growing Businesses replaced the William S. Lee Act credits effective January 1, 2007 and includes credits for creating jobs, investing in business property and investing in real property. The credits can be used to offset up to 50 percent of the taxpayer's state income and/or franchise tax liability and must be taken in four (jobs and business property) or seven (real property) annual installments. Unused credits can be carried forward for five years for the jobs and business investment credits. The real property investment credits can be carried forward for fifteen years.

The annual impact of Article 3J is based on the two annual reports available from the Department of Revenue. The 2009 report provides credits generated and taken for the first year of Article 3J. The amount of activity for the first year is assumed to be relatively low because taxpayers were allowed for that year only to elect to take either Bill Lee or Article 3J credits. Therefore, the credits generated from the 2010 report are considered to be more reflective of future activity.

For purposes of this analysis, a simulation was developed to estimate the potential impact of the Article 3J extension. The simulation assumes that credits continue to be generated each year at the same level as in the 2010 report. The assumption for the percentage of credits taken each year is based on the percentage taken in the 2009 report (data for credits taken in the 2010 report is not yet available). Credits taken represented 10.7% of credits generated for that year; thus, the installments for each tax year are calculated by multiplying the credits generated (based on the 2010 report) by the percentage taken ($112,579,981 * 10.7% = $12,082,452). The annual impacts for each fiscal year of the credit extension are calculated by adding the credit installments that would be taken each year as shown in Table 1.

The Article 3J extension would have no impact on revenues in FY 2010-11 because taxpayers cannot take any credits until the tax year following the year they are generated. Credits would be generated beginning in calendar year 2011 and would be taken for tax year 2012. FY 2011-12 revenues would be impacted by taxpayers who reduce April and June estimated payments in 2012. This impact is estimated to be 45% of the full-year impact of the credit extension.

Table 1. Fiscal Impact of Art. 3J Credit Extension by Fiscal Year ($millions)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Tax Year					
2012	$0.0	$5.4	$12.1	$12.1	$12.1
2013	$0.0	$0.0	$0.0	$12.1	$12.1
Total Impact	**$0.0**	**$5.4**	**$12.1**	**$24.2**	**$24.2**

Finally, the fiscal impacts are adjusted to reflect the change in credit percentage for Tier II and III business investments and the threshold for Tier III investments. Department of Revenue Article 3J reports were used to determine the impact of the threshold adjustment. Any projects less than $3 million were removed from the list of eligible projects. Furthermore, because the amount of the threshold is not included as an eligible expense, each remaining project was reduced by $1 million to reflect the $1 million increase in the amount of the threshold ($2 million to $3 million). When the new credit rate percentage of 2% is applied to the Tier III investments meeting the $3 million

threshold and the 4% rate is applied to Tier II investments, the result is a 15% reduction in Article 3J costs. The final step in the fiscal analysis of the Article 3J extension is to apply this percentage reduction to the impacts in Table 1. The results are shown in Table 2 below:

Table 2. Fiscal Impact of Credit Rate Reduction and Threshold Increase on Article 3J Impacts ($millions)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Current Law w/ Sunset Extension	$0.0	-$5.4	-$12.1	-$24.2	-$24.2
4% Credit Rate for Tier II; 2% Credit Rate and $3 million Threshold for Tier III	$0.0	-$4.6	-$10.3	-$20.6	-$20.6

Part II: Currently, the film production credit is 15% of eligible expenses, with an alternate credit equal to 25% of eligible expenses, less the difference between the amount of tax paid on purchases subject to the privilege tax on mill machinery and the amount of tax that would be paid if the purchases had been subject to the combined general rate of sales tax. The bill eliminates this alternate credit and increases the credit from 15% to 25%. This portion of the bill has an insignificant impact because eligible expenses are already subject to the 25% rate under the alternate credit, and the add-back of the sales tax differential has a minimal effect.

The fiscal impact of the remaining changes in the bill was determined using an analysis provided by the Department of Commerce. The Department used actual studio budgets to estimate the impact of projected changes based on the number and size of additional film productions resulting from the bill. The analysis assumes that without the proposed expansion, baseline film production activity would include one episodic television production with $22 million in-state spending and five $10-million film productions with $6 million in-state spending.

The estimates for film production activity under the proposed expansion assume the same current film activity, plus two $40-million productions and one $100-million production. Based on the studio budget information, the Department was able to determine the amount of eligible spending attributable to each film, including the spending on fringe benefits and per diems, which are included as eligible expenses under the bill. Fiscal Research agrees with the Department's analysis.

Based on the expected production cycles of the films, and the amount of eligible expenses incurred for each, there is no expected fiscal impact in FY 10-11, a revenue loss of $14.4 million in FY 11-12 and $4.9 million in FY 12-13.

Part III: This section would provide a 10% to 20% tax credit for eligible expenses related to the production of digital interactive media productions. The credit is taken against the income or franchise tax; the maximum credit for a single production is $7.5 million. IDM credits may not exceed 50% of tax liability and unused credit can be carried forward for 8 years.

Based on discussions with industry representatives, there are approximately thirty companies in North Carolina that would potentially qualify for the credit. Production cycles average from one to three years and expenses range from $200,000 to several million per production.

A simulation was developed to explore the potential fiscal impact of the credit. Because of the duration of the production cycle, it is unexpected that any productions would qualify for the credit in FY 2010-11. The simulation assumes a total of $30 million annually (an average of $1 million per company) in qualified expenditures beginning in FY 2011-12 with credits taken evenly over a period of nine years (initial tax year, plus eight carryforward years). The average credit rate percentage is assumed to be 15%

Based on these assumptions, the following fiscal impacts result:

Interactive Digital Media Fiscal Impacts Based on Simulation				
FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
$0.0	-$0.5	-$1.0	-$1.5	-$2.0

Part IV: Reduces General Fund availability by roughly $25,000 per fiscal year. In addition to the state impact, expanding the definition of agencies eligible for a sales and use tax refund under G.S. 105-164.14(c) would reduce local sales and use tax revenue by roughly $5,000 each year.

Part V: The estimate for extending the credit for recycling oyster shells is based on estimates in the 2009 Department of Revenue Tax Expenditure Report. Based on past experience, the credit costs less than $100,000 per year.

Part VI: Section 6.1 would designate certain Eco-Industrial Parks as Tier One economic development projects. If such a Park were located in a Tier Two or Three County, this new designation would change their status and requirements for grants from the Job Development Investment Grant (JDIG), the Industrial Fund, the Utility Fund, and the Article 3J Tax Credits for Growing Businesses. At this point, it is not known how many parks exist or where they are located, so Fiscal Research cannot provide an estimate as to the potential impact. It is expected that there would be no impact in FY 2010-11 and FY 2011-12.

Section 6.2 requires that the Green Business Fund give priority to projects in an Eco-Industrial Park. Additionally, it allows Commerce to create a cap on the grant size and allows Commerce to require matching funds for the grant, except for those grants given to Eco-Industrial Parks. This section would change the way Green Business Fund grants are prioritized; however the Fund did not receive an appropriation for FY 2010-11 or future years. This section will have no impact until such time as the Green Business Fund receives an appropriation.

Section 6.3 gives priority for JDIG awards to projects that are Eco-Industrial Parks. This section would change the way JDIG grants are prioritized but will not have an impact on appropriations.

Section 6.4 would give Eco-Industrial Parks a ceiling of $5 million for renewable energy tax credits per installation for renewable energy property that is placed in service in a certified Eco-

Industrial Park for non-residential purposes. Fiscal Research does not have an estimate as to how many Eco-Industrial Parks might qualify and for what amount of credit.

Section 6.5 adds language to G.S. 105-129.16D(d) to repeal the credit for constructing renewable fuel facilities for facilities in a certified Eco-Industrial Park in service after January 1, 2012. Fiscal Research does not have an estimate for this section but anticipates the impact to be minimal.

Part VII: Although some fiscal impact would result if assessments for wood-chipping equipment are pending, the amount is expected to be minimal.

Part VIII: Low-Profit Limited Liability Company

The proposed committee substitute provides that a low-profit limited liability (L3C) company is a limited liability company (LLC) under North Carolina law. Low-profit limited liability companies (L3Cs) have been proposed as a means for encouraging investment in struggling business enterprises. Under this theory, non-profit organizations that are required to spend a certain percentage of their assets each year to maintain their non-profit status would invest in L3Cs that have some social purpose. If structured correctly, it is possible that the IRS could treat this investment as a program-related investment that would count towards the percentage that must be spent in order to maintain non-profit status. Because non-profits do not face the same pressures as for-profit investors, the theory states that non-profits would be willing to accept a lower rate of return than would be required for a for-profit investor. Struggling businesses might then be able to stay in business, providing jobs to employees and other community benefits, because the pressure to produce market-rate profit levels had been removed. One of the benefits of L3Cs is that no special legal structure, other than the LLC structure, is needed to establish an L3C.

Low Profit Limit Liability Companies will be a new category of business entity in North Carolina. The agency estimates that it will incur $30,000 in one-time start-up costs for programming. This programming will require a month of work and include the following technical changes that are necessary to include this category in the agency's system: 1) amend the LLC profile to include the low profit corporate ending (L3C) that will be able to be queried; 2) write a document to include certification statement that the entity's purpose satisfies the requirements of 57C-1-03(12a); 3) create a document to be available within agency's Knowledge Base, with all examination/rejection parameters; 4) create a document for placement on the schedule of fees/documents for LLC's online; and 5) provide documents that will be searchable and viewable online under the profile. Additionally, two weeks are required for text development of document at a cost of $50. The agency estimates total one time costs of $30,050 and no additional personnel or recurring funding is required.

As with the Limited Liability Companies (LLC), revenue is anticipated from fees charged to the L3Cs in the amount of $125 per entity upon organization, and $200 per entity for the annual reporting fee. However, these fees will be deposited into the General Fund and not into the agency's budget as a receipt. Therefore, an appropriation would be required to provide the $30,050 in one time costs. However, as this is a new category of business entity, neither the Department of the Secretary of State nor the Fiscal Research Division (FRD) has been able to determine the number of business entities that may be established.

Part IX: DNA Database

The Administrative Office of the Courts (AOC) reports that based on the current number and rate of offender compliance in criminal judgments, the new $3.00 fee on criminal cases upon conviction for all felonies and misdemeanors could be expected to yield approximately $1.24 million in the first year and $1.65 million in subsequent years. A majority of this revenue would be generated by Chapter 20 (traffic) misdemeanors. The revenue from felony convictions would be minimal in the first year due to the priority order of costs due the State and the number of probationers who take more than one year to pay all fees owed or who are revoked prior to paying all fees. Revenue from felony convictions would increase slightly in the second and subsequent years.

SOURCES OF DATA:

North Carolina Department of Revenue, "Tax Credits for Growing Businesses," Available at: http://www.dornc.com/publications/growing_businesses.html

2009 Tax Expenditure Report, North Carolina Department of Revenue; Moody's Economy.com

NC Department of Commerce

Section 7: 1) 2007 Economic Census. Sector 31: EC0731A1: Manufacturing: Geographic Area Series: Industry Statistics for the States. 2) Oregon Environmental Quality Commission Meeting. August 2008. Attachment F, "Certified Wood Chipper Report, January 1, 2008 through June 30, 2008." Available at: http://www.deq.state.or.us/about/eqc/agendas/attachments/2008aug/K-AttAEF-TaxCreditWorksheets.pdf

Judicial Branch

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1973-CSRBx-96 DATE _____

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Clodfelter

moves to amend the bill on page 17, lines 30-32

( ) WHICH CHANGES THE TITLE

by Rewriting these lines to read:

"remitted to the Department of Justice. Notwithstanding the provisions in subsection (e) of this section, this ~~fee~~ shall not apply to infractions."

~~Change~~
Cost

SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1973

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

H1973-ARB-70 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H1973-CSRBx-96

Date _____,2010

Senator Jenkins

moves to amend the bill on page 4, lines 30 through 34, and on page 6, lines 37 through 41, by rewriting those lines to read:

"(1) Highly compensated individual. – An individual who directly ~~or indirectly~~ receives compensation in excess of one million dollars ($1,000,000) from a production company ~~for personal services~~ with respect to a single production. ~~An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.~~"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE FINANCE COMMITTEE
Wednesday, July 7, 2010 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Senate Finance Committee met at 1:00 PM on July 7, 2010, in Room 544 of the Legislative Office Building. Thirty-four members of the committee were present. Senator Clodfelter presided as chair.

Senator Clodfelter thanked Senators Albertson, Soles, Shaw and Boseman for their service to the Senate Finance Committee.

H.B. 1905 – Fire Safe Cigarettes

Representative Insko was recognized to bill which amends the Fire-Safety Standard and Firefighter Protection Act to codify that the $250 fee paid by cigarette manufacturers to the Commissioner of Insurance will be paid for each "brand style" and not for each certification form. The bill also requires that the form describe the brand style and defines the term "brand style". Senator Purcell moved for a favorable report and the motion carried. A copy of the bill, the summary and the fiscal note is attached.

H.B. 1944 – Bermuda Run Debt Collection/Gates & Fences

Representative Howard was recognized to explain the bill. It authorizes the Town of Bermuda Run to assess gate operation and maintenance fees and to place liens on real property for unpaid fees that may be collected as delinquent property taxes. Senator Tillman moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1717 – Modernization of the State ABC System

Representative Warren and Senator Vaughan were recognized to explain the bill. Senator Jenkins moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS would make a number of changes to the State's ABC laws, many of which were recommended by a joint legislative study committee on Alcoholic Beverage Control issues. It does not change any ABC permit fees or taxes. The PCS would reinsert into the bill changes to G.S. 18B-1213 concerning the obligations of the purchaser of a winery. It also amends the definition of winery in Section 26. These two sections would become effective September 15, 2010 and apply to all existing wine distribution agreements. The changes would not apply to an administrative action pending before the ABC Commission or to pending litigation or claims that accrued before the effective date of the act. Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the PCS's change in bonding. Tina Hall, a Rowan County Commissioner, spoke in opposition to Section 28 which limits the Rowan ABC Board appointments and the county's authority. Jon Williams, the ABC Commission Chair, was recognized to answer questions. Senator Hartsell moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal memo is attached.

The meeting adjourned at 2:29 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 07, 2010

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

FAVORABLE

H.B. **1905** Fire Safe Cigarettes.
Sequential Referral: None
Recommended Referral: None

H.B. **1944** Bermuda Run Debt Collection/Gates & Fences.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

H1905 – Sen Purcell
H1944 – Sen. Brock

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 07, 2010

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1717** Modernization of the State ABC System.

Draft Number:	50973
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Vaughan

Principal Clerk ____
Reading Clerk ____

Corrected: H1944 – Bermuda Run Debt Collection/Gates & Fences has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 7, 2010	1:00 PM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren
HB 1905	Fire Safe Cigarettes.	Representative England, M.D. Representative Insko
HB 1944	Bermuda Run Debt Collection/Gates & Fences.	Representative Howard

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
BILL SPONSOR NOTICE

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HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Principal Clerk
Reading Clerk

Corrected: H1905 – Fire Safe Cigarettes has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	July 7, 2010	1:00 PM	544 LOB

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HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren
HB 1905	Fire Safe Cigarettes.	Representative England, M.D. Representative Insko

Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Senate Finance Committee
Wednesday, July 7, 2010, 1:00 PM
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1717	Modernization of the State ABC System.	Rep. Bell Rep. Lucas Rep. Warren
HB 1905	Fire Safe Cigarettes.	Rep. England Rep. Insko
HB 1944	Bermuda Run Debt Collection/Gates & Fences.	Rep. Howard

Adjournment

HOUSE BILL 1905:
Fire Safe Cigarettes

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 7, 2010
Introduced by:	Reps. Insko, England	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1905 amends the Fire-Safety Standard and Firefighter Protection Act to codify that the $250 fee paid by cigarette manufacturers to the Commissioner of Insurance will be paid for each "brand style" and not for each certification form. HB 1905 requires that the form describe the brand style and defines the term "brand style".***

House Bill 1905 is a recommendation of the Public Health Study Commission. The companion bill, Senate Bill 1338, introduced by Sen. Purcell, was given a favorable report in Senate Commerce and is currently in Senate Finance.

CURRENT LAW: The Fire-Safety Standard and Firefighter Protection Act was enacted by the General Assembly in 2007, and became effective January 1, 2010.[1] The Act requires all cigarettes sold in North Carolina to be made with a special type of paper that slows the rate at which the cigarette burns to lessen the risk of a cigarette igniting bedding or other surfaces.

Each manufacturer must submit to the Commissioner of Insurance a written certification that the cigarette has been tested and meets the performance standards required by the Act. The certification must include the cigarette's brand name; style; length and circumference; flavor; filter or non-filter; package description; marking under the Act; name, address, and telephone number of the laboratory; and date of testing. The fee for each certification form is $250. Each cigarette must be recertified every three years. The fees are deposited into a nonreverting fund established in the State treasury. The fund is available to the Commissioner solely to support processing, testing, enforcement and oversight activities. The Commissioner is given the authority to annually adjust the fee to ensure that it defrays the actual costs to support the above activities.

BILL ANALYSIS: House Bill 1905 requires that each cigarette listed in the certification be described with the brand style and defines the term "brand style". House Bill 1905 also requires that a manufacturer pay the $250 fee for each brand style listed in a certification. Current law requires that the fee be paid for each certification form, and that each cigarette that is certified be recertified every three years. According to the Department of Insurance, it has been collecting the fee for each brand style. House Bill 1905 codifies this practice.

"Brand style" is defined as a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

EFFECTIVE DATE: July 1, 2010.

Tim Hovis, counsel to Senate Commerce, and Martha Walston, counsel to House Finance, substantially contributed to this summary.

H1905-SMRB-108(e1) v1

[1] The Act is based on model legislation that has been passed in all fifty states, including the District of Columbia.

HOUSE BILL 1905*

Short Title:	Fire Safe Cigarettes.	(Public)
Sponsors:	Representatives Insko, England (Primary Sponsors); M. Alexander, Glazier, Harrison, Hughes, Luebke, and Martin.	
Referred to:	Insurance, if favorable, Finance.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FIRE-SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, AS RECOMMENDED BY THE PUBLIC HEALTH STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-92-10 reads as rewritten:

"**§ 58-92-10. Definitions.**

For the purposes of this Article:

(1) "Agent" means any person authorized by the Department of Revenue to pay the excise tax on packages of cigarettes.

(1a) "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(2) "Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than leaf tobacco.

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes.

(5) "Distributor" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person, or a distributor as defined in G.S. 105-113.4(3)a.

(6) "Manufacturer" means:

a. Any entity ~~which~~ that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that ~~such~~ the manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

b. The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original

manufacturer or maker does not intend to be sold in the United States; or

c. Any entity that becomes a successor of an entity described in sub-subdivision a. or b. of this subdivision.

(7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in G.S. 58-92-15(g) for all test trials used to certify cigarettes in accordance with this Article.

(8) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.

(9) "Retail dealer" means any person, other than a manufacturer or distributor, engaged in selling cigarettes or tobacco products.

(10) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(11) "Sell" means to sell, or to offer or agree to do the same."

SECTION 2. G.S. 58-92-20 reads as rewritten:

"**§ 58-92-20. Certification and product change.**

(a) Each manufacturer shall submit to the Commissioner a written certification attesting both of the following:

(1) Each cigarette listed in the certification has been tested in accordance with G.S. 58-92-15.

(2) Each cigarette listed in the certification meets the performance standard set forth in G.S. 58-92-15.

(b) Each cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package.

(2) ~~Style, such as light or ultralight.~~ Brand style, as defined in G.S. 58-92-10(1a).

(3) Length in millimeters.

(4) Circumference in millimeters.

(5) Flavor, such as menthol or chocolate, if applicable.

(6) Filter or nonfilter.

(7) Package description, such as soft pack or box.

(8) Marking pursuant to G.S. 58-92-25.

(9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.

(10) The date that the testing occurred.

(c) Certifications shall be made available to the Attorney General for purposes consistent with this Article and the Commissioner for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be recertified every three years.

(e) For each ~~certification form,~~ brand style listed in a certification, a manufacturer shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00). The Commissioner may

annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this Article.

(f) There is established in the State treasury a separate, nonreverting fund to be known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers and shall, in addition to any other monies made available for such purpose, be available to the Commissioner solely to support processing, testing, enforcement, and oversight activities under this Article.

(g) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Article, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in G.S. 58-92-15 and maintains records of that retesting as required by G.S. 58-92-15. Any altered cigarette ~~which~~ that does not meet the performance standard set forth in G.S. 58-92-15 ~~may~~ shall not be sold in this State."

SECTION 3. This act becomes effective July 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1905 (First Edition)

SHORT TITLE: Fire Safe Cigarettes.

SPONSOR(S): Representatives Insko and England

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES			**None Anticipated**		
EXPENDITURES			**None Anticipated**		
POSITIONS (cumulative):			**None Anticipated**		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY:

House Bill 1905 amends the Fire-Safety Standard and Firefighter Protection Act to codify that the $250 fee paid by cigarette manufacturers to the Commissioner of Insurance will be paid for each "brand style" and not for each certification form. Under current law, manufacturers must submit a certification form describing the cigarette, including the style of the cigarette.

The bill also adds a definition of "brand style" to define the term as "a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration of the cigarette, or packaging." The bill makes other conforming changes.

Source: Bill Summary H.B. 1905 (06/29/2010).

BACKGROUND INFORMATION:

The Fire-Safety Standard and Firefighter Protection Act was enacted by the General Assembly in 2007, and became effective January 1, 2010. The Act requires all cigarettes sold in North Carolina

to be made with a special type of paper that slows the rate at which the cigarette burns to lessen the risk of a cigarette igniting bedding or other surfaces.

Each manufacturer must submit to the Commissioner of Insurance a written certification that the cigarette has been tested and meets the performance standards required by the Act. The certification must include the cigarette's brand name; style; length and circumference; flavor; filter or non-filter; package description; marking under the Act; name, address, and telephone number of the laboratory; and date of testing.

The fee for each certification form is $250 and each cigarette must be recertified every three years. The fees are deposited into a nonreverting fund established in the State treasury. The fund is available to the Commissioner solely to support processing, testing, enforcement and oversight activities. The Commissioner is given the authority to annually adjust the fee to ensure that it defrays the actual costs to support the above activities.

Source: Bill Summary H.B. 1905 (06/29/2010).

ASSUMPTIONS AND METHODOLOGY:

Revenue
HB 1905 clarifies that the $250 fee paid by cigarette manufacturers to the Commissioner of Insurance will be paid for each "brand style" and not for each certification form. Since the cigarette manufacturers are already paying the $250 fee per "brand style," Fiscal Research does not anticipate that the bill will generate any additional revenue.

Administrative Costs
The Department of Insurance anticipates that HB 1905 will have no fiscal impact on its current operations since the bill clarifies and simplifies paperwork for certification by cigarette manufacturers.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 29, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1944

Short Title:	Bermuda Run Debt Collection/Gates & Fences.	(Local)
Sponsors:	Representative Howard.	
Referred to:	Local Government II, if favorable, Finance.	

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BERMUDA RUN TO ASSESS GATE OPERATION AND MAINTENANCE FEES AND TO PLACE LIENS ON REAL PROPERTY FOR UNPAID FEES THAT MAY BE COLLECTED AS DELINQUENT PROPERTY TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Bermuda Run shall have the authority to assess a fee for the costs of gate operations and fence maintenance on all real property situated in the area of the town which is zoned Club Residential. The fee shall be established annually and incorporated into the local budget ordinance.

SECTION 2. A fee assessed under this act shall be a lien on the real property on which it has been assessed as of the date of the billing of the fee and shall be collected as delinquent property taxes. However, the lien shall not be enforced under the collection methods set out in the Machinery Act of North Carolina until such time as the fee remains unpaid for a period of 30 days from the date of its initial billing.

SECTION 3. This act is effective when it becomes law. Any unpaid fees previously billed by the Town of Bermuda Run for gate operations and fence maintenance shall be a lien on the real property on which the fees were assessed as of the effective date of this act and may be enforced under the provisions of this act no sooner than 30 days after the date this act becomes law.

HOUSE BILL 1944:
Bermuda Run Debt Collection/Gates & Fences

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 7, 2010
Introduced by:	Rep. Howard	**Prepared by:**	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1944 is a local act that would authorize the Town of Bermuda Run to assess gate operation and maintenance fees and to place liens on real property for unpaid fees that may be collected as delinquent property taxes.

BILL ANALYSIS: House Bill 1944 would permit the Town of Bermuda Run to assess a fee for the costs of gate operations and fence maintenance on all real property situated in the area that is zoned Club Residential. The fee would have to be established annually and incorporated into the local budget ordinance. The fee would be a lien on the real property on which it has been assessed as of the date of the billing of the fee and would be collectable as delinquent property taxes. The lien could not be enforced under collection methods until the fee remains unpaid for 30 days from the date of its initial billing.

Tax collectors may collect delinquent property taxes using the remedies provided in G.S. 105-366 through G.S. 105-375:

- Levy upon and sell or attach personal property.
- Attachment and garnishment of wages and other compensation[1], rents, bank deposits, the proceeds of property subject to levy, or any other intangible property.
- Foreclosure of real property.

EFFECTIVE DATE: This act is effective when it becomes law. Any unpaid fees previously billed by the Town of Bermuda Run for gate operations and fence maintenance would be a lien on the real property on which the fees were assessed as of the effective date of this act and could be enforced under the provisions of this act no sooner than 30 days after the date this act becomes law.

BACKGROUND: Town of Bermuda Run was incorporated July 1, 1999, as a fully gated residential community. (S.L. 1999-94). Bermuda Run is located in Davie County and has a population of 1,470 with an area of 1,094 acres. It currently collects a monthly fee from property owners who either reside in or own property within gated residential neighborhoods in the Town. The fee is applied toward the cost of gate operations and fence maintenance. Some people who are required to pay the fee have not done so. This local act would place a lien on the properties of individuals who refuse to pay the assessment and enable the Town to collect the unpaid assessments using the remedies available to a tax collector for delinquent property taxes. On March 9, 2010, the Town of Bermuda Run passed a resolution requesting that the General Assembly pass this local act.

The General Statutes authorize wages to be garnished by the following governmental entities for the stated purposes[2]:

- Department of Revenue for overdue tax debts. G.S. 105-242.
- DHHS for fraudulent public assistance payments. G.S. 108A-25.3.
- DHHS for child support payments. G.S. 110-136.
- Public hospitals for past due amounts. G.S. 131E-49

[1] The tax collector may not garnish more than 10% of wages and other compensation.

[2] The list may not be exhaustive.

- Counties and cities for delinquent tax debts and solid waste disposal fees: G.S. 153A-147; 153A-293; 160A-207; 160A-314.1.

The General Assembly has passed many local acts[3] granting various local entities the ability to collect past due amounts in the same manner as delinquent property taxes:

- S.L. 1993-768: Durham for delinquent water and sewer fees resulting from leaking pipes or fixtures.
- S.L. 2003-270: Columbus, Davie, Duplin, and Lenoir Counties for unpaid fees for water and sewer service.
- S.L. 2005-441: Clemmons and Kernersville for delinquent stormwater utility fees.
- S.L. 2009-402: Montgomery County for unpaid fees for water and sewer services.
- House Bill 1736 (passed 2nd and 3rd reading in the Senate 7/6/10): Locust, New London, and Stanfield for unpaid fees for sewer services.

Brad Krehely and Martha Walston substantially contributed to this summary.

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[3] The list is not exhaustive.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1717*

Committee Substitute Favorable 6/9/10
Committee Substitute #2 Favorable 6/16/10
Fourth Edition Engrossed 6/22/10
Senate Judiciary II Committee Substitute Adopted 6/29/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1717-CSMA-39 [v.6]

7/7/2010 12:19:00 PM

Short Title: Modernization of the State ABC System. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL SYSTEM, TO ENSURE THE INTEGRITY OF THE THREE-TIER SYSTEM, TO REQUIRE MINIMUM AGE STANDARDS FOR LAW ENFORCEMENT, AND TO REQUIRE THAT THE CITY OF KANNAPOLIS, THE CITY OF SALISBURY, AND ROWAN COUNTY HAVE EQUAL REPRESENTATION ON THE ROWAN/KANNAPOLIS ABC BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 reads as rewritten:

"**§ 18B-101. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

(6a) "Finance officer" means the local board employee, other than a general manager, who is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7a) "General manager" means the local board employee who is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

~~(7a)~~(7b) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).

c. Is located within 15 miles of a national scenic highway.

d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

~~(7b)~~(7c) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

...."

SECTION 2. G.S. 18B-201 reads as rewritten:

"**§ 18B-201. Conflict of ~~interest.~~interest; gifts.**

(a) Financial Interests Restricted. – No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to ~~him~~ the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:

(1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.

(d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and local boards.

(e) Conflicts of Interest for the Commission. – The provisions of Article 4 of Chapter 138A of the General Statutes shall apply to the Commission.

(f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board

member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.

(g) For purposes of subsection (f) of this section, 'business with which associated' shall have the same meaning as in G.S. 138A-3(3). For purposes of this section, 'financial benefit' shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:

(1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.

(3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member's ability to protect the public interest and perform the local ABC board member's duties would not be compromised.

(4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.

(5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.

(6) When action is ministerial only and does not require the exercise of discretion.

(7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.

(j) A local board member shall not improperly use or improperly disclose any confidential information.

(k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest."

SECTION 3. G.S. 18B-202 reads as rewritten:

"**§ 18B-202. Discharge upon conviction.**

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an individual convicted of a violation of this Chapter, or of any felony, from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency which holds a contract to enforce the ABC laws for a local board. A judge may also prohibit an individual convicted of a violation of this Chapter, or of any felony, from being designated as an officer that enforces the ABC law under a contract with any local board for a period of not longer than three years."

SECTION 4. G.S. 18B-203(a) is amended by adding new subdivisions to read:

"**§ 18B-203. Powers and duties of the Commission.**

(a) Powers. – The Commission shall have authority to:

...

(20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.

(21) Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. If personal attendance is required, the Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training.

(22) Provide for the purchase of spirituous liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent, closes, or is closed by the Commission and the county or municipality in which the system is located has approved the sale of mixed beverages."

SECTION 5. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the designated officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An agency contracted to provide ABC law enforcement shall designate no more than five officers to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement."

SECTION 6. G.S. 18B-501 is amended by adding a new subsection to read:

"(f1) Accountability; Enforcement Reports. – To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

(1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.

(2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.

(3) The number of agencies assisted with ABC law or controlled substance related matters.

(4) The number of alcohol education and responsible server programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet Web site maintained by the Commission."

SECTION 7. G.S. 18B-501(g) reads as rewritten:

"(g) Discharge. – Local ABC officers and the designated officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge and ineligibility provisions of G.S. 18B-202."

SECTION 7.1. G.S. 18B-600(d) reads as rewritten:

"(d) City ABC Store Elections. – A city may hold an ABC store election only if:

(1) The city has at least ~~500~~ 1,000 registered voters; and

(2) The county in which the city is located does not operate ABC stores."

SECTION 8. G.S. 18B-600(e) reads as rewritten:

"(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only if:~~if the city has at least 500 registered voters. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the city may purchase liquor from the ABC store designated by the local ABC board that has been approved by the Commission for this purpose.

~~(1) The city has at least 500 registered voters; and~~

~~(2) Either:~~

~~a. The city already operates a city ABC store; or~~

~~b. A city ABC store election is to be held at the same time as the mixed beverage election; or~~

~~c. The city does not operate a city ABC store but:~~

~~1. The county operates an ABC store;~~

~~2. The county has already held a mixed beverage election; and~~

~~3. The vote in the last county election was against the sale of mixed beverages.~~"

SECTION 9. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of three or five members appointed for three-year ~~terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or~~ terms unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. ~~One~~ If the board is a three-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. If the board is a five-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, two members for two-year terms, and two members for one-year terms. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. If a

board is initially a three-member board and the appointing authority determines a five-member board is preferable, the terms of the two new members shall be for three years. If a local board has five members and the appointing authority determines a three-member board is preferable, the appointing authority shall not reduce the size of the board except upon the expiration of a member's term and only with the approval of the Commission. The appointing authority shall designate one member of the local board as chairman."

SECTION 10. G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

SECTION 11. G.S. 18B-700(g) reads as rewritten:

"(g) ~~Salary.~~Compensation of Board Members. – A local board member ~~may be compensated as determined by the appointing authority.~~shall receive compensation in an amount not to exceed one hundred fifty dollars ($150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section."

SECTION 12. G.S. 18B-700 is amended by adding a new subsection to read:

"(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager."

SECTION 13. G.S. 18B-700 is amended by adding a new subsection to read:

"(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval."

SECTION 14. G.S. 18B-700(i) reads as rewritten:

"(i) Bond. – Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~fifty thousand dollars ($50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may ~~exempt from this bond requirement any board member who does not handle~~

~~board funds, and it may also~~ increase the amount of the bond required for any member or employee who ~~does handle~~handles board funds."

SECTION 15. G.S. 18B-700 is amended by adding a new subsection to read:

"(k) Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations."

SECTION 16. G.S. 18B-700 is amended by adding a new subsection to read:

"(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 17. G.S. 18B-701 reads as rewritten:

"**§ 18B-701. Powers and duties of local ABC boards.**

(a) Powers. – A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
(2) Adopt rules for its ABC system, subject to the approval of the Commission;
(3) Hire and fire employees for the ABC system;
(4) Designate one employee as manager of the ABC system and determine his responsibilities;
(5) Require bonds of employees as provided in the rules of the Commission;
(6) Operate ABC stores as provided in Article 8;
(7) Issue purchase-transportation permits as provided in Article 4;
(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
(9) Borrow money as provided in G.S. 18B-702;
(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
(11) Invest surplus funds as provided in G.S. 18B-702;
(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
(13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal."

SECTION 18. G.S. 18B-702 reads as rewritten:

"**§ 18B-702. Financial operations of local boards.**

(a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of

budget officer on the chairman or any member of the local board or any other employee of the board.

(c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

(d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, explain important features of the activities anticipated in the budget, set forth the reasons for stated changes from the previous year in appropriation levels, and explain any major changes in fiscal policy.

(e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

(f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

(g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Working capital funds set aside pursuant to G.S. 18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the

budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.

(4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

(5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.

(6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

(h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

(i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

(j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board also to be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager also to be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.

(k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:

(1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, preaudit obligations, and disbursements as required by this section.

(3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.

(4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.

(5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.

(6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.

The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

(l) Accounting System. – Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

(m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizes the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

(1) The finance officer determines the amount to be payable; and

(2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

(o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance

and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars ($50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

~~(c)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance

of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

(v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

~~(f)~~(w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

(x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 19. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-704. Removal of local board members and employees.**

(a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.

(c) Cause for Removal. – (i) Disqualification of a local board member or employee under the law, (ii) a violation of the ABC laws, (iii) failure to complete training required by this Chapter or the Commission, or (iv) engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board member or employee with notice of the availability of a hearing before the Commission to review the removal.

(e) Removal Hearing. – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or the employee's counsel may examine all evidence used against the employee and present evidence in the employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(f) Hearing Procedure. – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.

(g) Commission Authority. – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.

(h) Appeal. – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review for an appeal shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.

(i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.

(j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 20. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-705. Compliance with performance standards; remedies.**

(a) Local Board Compliance. – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.

(b) Performance Improvement Plans. – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission and the local board, shall develop and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.

(c) Remedies. – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance

improvement plan has been implemented and adequate time has been given, but in no case less than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board. Prior to taking action pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 21. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-706. Ethics requirements for local boards.**

(a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.

(2) The need to uphold the integrity and independence of the local board member or employee's position.

(3) The need to avoid impropriety in the exercise of official duties.

(4) The need to faithfully perform the duties of the position.

(5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or another qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.

(c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section."

SECTION 22. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected.

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(3) The proximity of the new location to existing ABC stores operated by the local board or any other board."

SECTION 23. G.S. 18B-801(c) reads as rewritten:

"(c) Closing of Stores. – Subject to the provisions of ~~subsection (a),~~ subsection (a) of this section, a local board may ~~close,~~ close a store, or the Commission may order a local board to ~~close,~~ close any store when the local board or the Commission determines that:

~~(1) The operation of the store is not sufficiently profitable to justify its continuation;~~

(2) The store is not operated in accordance with the ABC law; or

(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates."

SECTION 24. G.S. 18B-803 reads as rewritten:

"**§ 18B-803. Store management.**

(a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~ fifty thousand dollars ($50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

(c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 25. G.S. 18B-1213 reads as rewritten:

"**§ 18B-1213. Obligations of purchaser.**

The purchaser of a ~~winery~~winery, and any successor to the import rights of a winery, is obligated to all the terms and conditions of an agreement in effect on the date of the ~~purchase,~~purchase or other acquisition of the right to distribute a brand, except for good cause, which includes,

(1) Revocation of the wholesaler's permit or license to do business in this State,

(2) Bankruptcy or insolvency of the wholesaler,

(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, or

(4) Failure by the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon ~~him~~ the wholesaler by the winery.

As used in this Article, "purchase" includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation."

SECTION 26. G.S. 18B=1201(4) reads as rewritten:

"(4) "Winery" means any holder of an unfortified winery permit, fortified winery permit, limited winery permit, or nonresident wine vendor permit issued under the authority of this Chapter who sells at least ~~1,000~~ 1250 cases of wine in North Carolina per year."

SECTION 27. G.S. 93B-9 reads as rewritten:

"**§ 93B-9. Age requirements.**

Any other provision notwithstanding, except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Chapters 17C, 17E, 74E, and 74G of the General Statutes, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license."

SECTION 28. Section 4 of S.L. 2004-92 reads as rewritten:

"**SECTION 4.** ~~If an election is held pursuant to this act and the operation of ABC stores in the City of Kannapolis is approved, the~~The Rowan County ABC Board shall be renamed the

Rowan/Kannapolis ABC Board. ~~The terms of the current members of the Rowan County ABC Board shall not be affected by this act, and the Rowan County Board of Commissioners shall continue to appoint three members for staggered, three-year terms on the same schedule as is now followed.~~There shall be three board members appointed for staggered three-year terms. One member shall be appointed by each of the following governing bodies: Rowan County Board of Commissioners, Kannapolis City Council, and the Salisbury City Council. Appointments shall be made in the following order as current board member terms expire: Salisbury City Council, Kannapolis City Council, and the Rowan County Board of Commissioners. The chair of the Rowan/Kannapolis ABC Board shall be determined by a vote of the members of the Rowan/Kannapolis ABC Board. A member of the Rowan/Kannapolis ABC Board may be removed for cause at anytime by the appointing authority. Members and employees of the Rowan/Kannapolis ABC Board are subject to the removal provisions of G.S. 18B-202."

SECTION 29. Section 6 of this act becomes effective January 1, 2011. Sections 12 and 15 of this act become effective October 1, 2010, and apply to general managers and employees hired on or after that date. Section 16 of this act becomes effective October 1, 2011. Section 18 of this act becomes effective May 1, 2011, and is applicable for local board fiscal years beginning July 1, 2011. The ABC Commission shall offer training and education to local boards to assist local boards in complying with Section 18 of this act, and such training and education shall be offered at least once annually after the effective date of this act; however, the Commission shall have no obligation to provide such training and education after December 31, 2013. Section 25 of this act is effective September 15, 2010, and its provisions shall apply to all existing wine distribution agreements. A supplier's shipment of wine to a wholesaler in North Carolina following the effective date of Section 25 of this act shall constitute acceptance by the supplier of the terms of this act and shall be incorporated into the distribution agreement between the supplier and wholesaler. Section 25 of this act shall be effective prospectively only and shall not apply to any administrative action pending before the ABC Commission or to pending litigation or claims that accrued before the effective date of this act. Section 26 of this act is effective September 15, 2010. Section 27 of this act is effective when it becomes law. Section 28 of this act is effective when it becomes law and applies to appointments and vacancies that occur on or after that date. The remainder of this act becomes effective October 1, 2010. Nothing in this act shall be deemed to repeal or amend S.L. 1997-224 applicable to Mecklenburg County. Nothing in this act shall be deemed to repeal or amend Chapter 886 of the 1985 Session Laws applicable to the Greensboro ABC Board.

HOUSE BILL 1717:
Modernization of the State ABC System

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 7, 2010
Introduced by:	Reps. R. Warren, Bell, Lucas	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Fifth Edition H1717-CSMA-39		Committee Counsel

SUMMARY: House Bill 1717[1] makes a number of changes to the State's ABC laws, many of which were recommended by a joint legislative study committee on Alcoholic Beverage Control issues. The bill does not change any ABC permit fees or taxes.

The proposed committee substitute would reinsert into the bill changes to G.S. 18B-1213 concerning the obligations of the purchaser of a winery, in Section 25 of the PCS. It also amends the definition of winery in Section 26. These two sections would become effective September 15, 2010, and apply to all existing wine distribution agreements. The changes would not apply to an administrative action pending before the ABC Commission or to pending litigation or claims that accrued before the effective date of the act.

BILL ANALYSIS: **Section 1** of the bill would provide definitions for the finance officer and the general manager of local ABC boards. The finance officer is the person responsible for keeping the accounts of the local board, including receiving and depositing receipts and disbursing funds. The general manager is the person responsible for the oversight of daily operations of the ABC system. *(Note: Section 18 of the bill requires the local board to designate an employee other than the general manager to be the finance officer of the local board. For good cause, the Commission may allow the board's general manager to also be the finance officer.)*

Section 2 of the bill would amend the law pertaining to conflicts of interest and gifts. Current law prohibits a person who has a financial interest in a commercial ABC enterprise from being appointed to or employed by the State ABC Commission, a local board, or the Alcohol Law Enforcement (ALE) Division, and current criminal prohibitions against public officers or employees benefiting from public contracts apply to the ABC Commission and local ABC boards. The bill would apply the provisions of G.S. 133-32 to the ABC Commission and local ABC boards, making it unlawful for contractors or suppliers who have or seek to have a contract with the Commission or local board to make gifts or to give favors to any Commission or local board officers or employees; it would also be unlawful for an officer or employee to accept such gifts. The bill would make the ABC Commission subject to the Ethical Standards of the State Ethics Acts, which prohibits the use of public position for private gain, prohibits certain gifts and other compensation, prohibits the use of information for private gain, and sets other rules of conduct for public servants. The bill would provide specific guidelines pertaining to conflicts of interest for local ABC boards, prohibiting a local board member from knowingly using his or her position in a manner that would result in financial benefit to the local board member, to his or her spouse or near relative, or to any business with which the local board member is associated. The bill would prohibit a local board member from improperly using or disclosing any confidential information, and would impose an affirmative duty on every local board member to promptly disclose in writing to the local board any actual or potential conflict of interest.

Section 3 of the bill would amend the law concerning judicial authority to remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent

[1] As introduced, this bill was identical to S1112, as introduced by Sen. Vaughan, which is currently in Senate Judiciary II.

who violates the State's alcohol laws or commits any felony. The bill would make the discharge provision applicable to local law enforcement officers who serve as the designated officer of an agency which holds a contract to enforce the ABC laws for a local board, giving the judge authority to prohibit the officer from being designated as an officer that enforces the ABC law, for a period up to 3 years.

Section 4 of the bill would give the ABC Commission authority to adopt rules to establish performance standards for local boards, including standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service. The Commission would also have authority to adopt rules setting mandatory training requirements for local board members, finance officers, and general managers and to provide for the purchase of liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent or closes.

Section 5 of the bill would limit the number of officers that a contracting law enforcement agency may designate to conduct inspections of ABC-licensed premises. Under current law, instead of hiring local ABC officers a local board may contract to pay its enforcement funds to a local law enforcement agency for enforcement of the ABC laws within the agency's territorial jurisdiction. Officers of contracting law enforcement agencies have the same authority to inspect that an ABC officer employed by that local board would have, including viewing the entire premises and examining the books and records of the permittee. The bill would require that a contracting law enforcement agency designate not more than five officers to conduct ABC inspections. The effective date clause of the PCS would preserve local acts applicable to Greensboro and Charlotte.

Section 6 of the bill would require local board ABC officers and law enforcement agencies subject to enforcement agreements with a local board to provide monthly reports to the local board, including information on the number of arrests made for ABC law and controlled substance violations and other violations at ABC-permitted outlets and other locations, the number of agencies assisted with ABC law or controlled substance related matters, and the number of alcohol education and responsible server programs presented. The local board would be required to submit a copy of the report to its appointing authority and to the ABC Commission; and the ABC Commission would be required to publish the information on a public Internet website. This section would become effective January 1, 2011.

Section 7 of the bill would make a conforming change to the statute pertaining to local ABC officers, making it clear that designated officers of agencies that contract with local boards for enforcement of the ABC laws are subject to statutory provisions concerning discharge from those duties.

Section 7.1 of the bill would require that a city have at least 1,000 registered voters to hold an ABC store election. The current threshold is 500 registered voters.

Section 8 of the bill would allow any city that has at least 500 registered voters to hold a mixed beverage election. It would eliminate the current requirement that the city already operate a city ABC store in order to hold the mixed beverage election or if not, the county either operates an ABC store or has already held a mixed beverage election and the vote was against the sale of mixed beverages.

Section 9 of the bill would amend the law concerning the membership of local ABC boards. The bill provides that a local ABC board may consist of 3 or 5 members and provides for staggered terms.

Section 10 of the bill would define the mission of local ABC boards and their employees: controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores.

Section 11 of the bill would limit the compensation of local ABC board members to not more than $150 per meeting, unless a different level of monetary compensation is approved by the board's appointing authority. If a different level of compensation is approved, the appointing authority would be required to provide written notice to the ABC Commission.

Section 12 of the bill would limit the compensation of general managers of local ABC boards. The salary authorized for the board's general manager could not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated. Under G.S. 7A-101, the salaries of clerks of superior court are based on the population of the county, according to the following schedule:

Population	Annual Salary
Less than 100,000	$ 82,401
100,000 to 149,999	92,468
150,000 to 249,999	102,536
250,000 and above	112,607

The bill provides that a different level of monetary compensation may be approved by the board's appointing authority. If a different level of compensation is approved, the appointing authority would be required to provide written notice to the ABC Commission. The bill provides that no employee of a local board may receive a salary in excess of the amount authorized for the salary of the general manager. This section would become effective October 1, 2010 and apply to general managers and employees hired on or after that date.

Section 13 of the bill provides for members and employees of local ABC boards to be reimbursed for travel on official business in accordance with the statutory travel allowances of State officers and employees. With approval of the appointing authority, a local board may adopt a travel policy that conforms to the travel policy of the appointing authority. The local board would be required to annually provide to the Commission a copy of its travel policy along with the appointing authority's written confirmation of its approval. Excess expenses not covered by the local board's travel policy would be paid only with written authorization of the appointing authority's finance officer, and the local board would be required to submit a copy of the authorization to the ABC Commission within 30 days of approval.

Section 14 of the bill would increase the minimum amount of the bond required for local ABC board members and for the employees designated as the general manager or finance officer of the local board, raising it from $5,000 to $50,000. No board member would be exempt from the requirement, and the appointing authority could require a higher bond amount for any board member or employee who handles board funds

Section 15 of the bill would prohibit members of an immediate family or members of the same household from being employed within a local board if the employment would result in one family or household member supervising another, or if one family or household member would occupy a position that has influence over the employment, promotion, or salary administration of another. The provision would apply to local board members and employees. This section would become effective October 1, 2010 and apply to employees hired on or after that date.

Section 16 of the bill would make the provisions of G.S. 18B-700 regarding the appointment and organization of local ABC boards applicable to all local ABC boards, notwithstanding any local acts that may provide otherwise. This section would become effective October 1, 2011.

Section 17 of the bill would require a local ABC board to comply with all rules adopted by the ABC Commission pursuant to its authority under the State's ABC laws, and to meet all standards set by the Commission for performance and training. Failure to comply with Commission rules would be grounds for removal.

Section 18 of the bill would amend the statute pertaining to the financial operations of local boards. A local board would be required to operate under an annual balanced budget in accordance with provisions in the bill. All monies received and expended by a local board would be included in the budget, and no local board could expend any monies except in accordance with the budget. The general manager of the local board, as budget officer, would prepare a budget for consideration by the local board. The proposed budget would be submitted to the local board, its appointing authority, and the ABC Commission by June 1; and a copy would be made available for public inspection. Before adopting the budget, the board would be required to hold a public hearing. This section of the bill would establish specific directions and limitations that a local board must comply with in adopting its budget. Once the budget is adopted, it must be filed with the board's finance officer and budget officer, the board's appointing authority, and the ABC Commission. The bill provides for amendments to an adopted budget and for an interim budget in case adoption of the budget is delayed until after the start of the fiscal year. The bill requires the local board to designate an employee other than the general manager to be the finance officer of the local board, and sets out the duties and powers of the finance officer. For good cause, the Commission may allow the board's general manager to also be the finance officer. Each local board would be required to establish and maintain an accounting system designed to show in detail its assets, liabilities, revenues, and expenditures. The bill contains specific provisions relative to incurring obligations, disbursements, and local board approval of bills, invoices, or claims. All checks or drafts must be signed by the finance officer or a properly designated deputy finance officer, and countersigned by the chair of the local board or the general manager, except where the requirement for dual signatures is waived by the Commission. Audits and reports currently required to be submitted to the ABC Commission must also be submitted to the local board's appointing authority. The bill would give the ABC Commission specific authority to inquire into and investigate the internal control procedures of a local board, and to require any modifications necessary or desirable to prevent the embezzlement or mishandling of public monies. The finance officer and sureties on the official bond would be liable for any sums committed or disbursed in violation of the law. The provisions pertaining to financial operations of local boards would apply to all local boards, notwithstanding any local acts. This section would become effective May 1, 2011 and apply to local board fiscal years beginning July 1, 2011. The ABC Commission would be required to offer training and education to assist local boards in complying with this section.

Section 19 of the bill would prohibit the ABC Commission or its individual members from attempting to coerce any appointing authority to appoint a particular person as a member of a local board, or attempting to coerce a local board to employ a particular applicant. It would give the ABC Commission authority to remove any member or employee of a local board for disqualification under the law, violation of the ABC laws, failure to complete required training, or engaging in conduct constituting moral turpitude or which brings the local board of the ABC system into disrepute. The bill sets out a removal process that requires written findings of fact upon which the decision for removal is based, and provides for an informal removal hearing before the ABC Commission. The Commission would have authority to discharge the board member or employee if two-thirds of the Commission's members vote for removal. The Commission would have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission, and the Commission's decision would be final. The local board member or employee could appeal the Commission's final decision to the Court of Appeals. The standard of review is abuse of discretion, and the sole remedy would be reinstatement with back pay. Awards for back pay would be paid by the local board from which the board member or employee was removed. These provisions would apply to all local boards.

Section 20 of the bill would require the ABC Commission to establish performance standards, and to ensure that all local boards comply with those standards by conducting regular or special audits, performance evaluations, monitoring ABC law enforcement efforts, or taking other measures including inspections by Commission auditors or alcohol law enforcement agents. When a local board fails to meet established performance standards, the Commission would be required to meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority would, in consultation with the Commission, develop and deliver a performance improvement plan to the local board. The plan would include recommendations for improved performance, and state a period of time in which improvements are to occur and what actions will be taken by the Commission if performance standards are not met within the prescribed time limits. The appointing authority may allow no more than 12 months for the local board to implement and show improvement under the plan; however, upon a showing of good cause and in consultation with the ABC Commission, the appointing authority may allow up to an additional 6 month period of time for the local board to meet all requirements in the improvement plan and to establish that performance standards are met. If the Commission determines that the established performance standards cannot be met after a performance improvement plan has been implemented and adequate time has been given, the Commission would be required to take appropriate action to avoid insolvency. The Commission would have authority to close the local board or one or more of its stores, or to merge the local board with another local board in order to maintain solvency. The Commission would also have authority to seize the assets of the local board and liquidate assets necessary to satisfy debt and maintain solvency of the local board.

Section 21 of the bill would require each local ABC board to adopt a policy containing a code of ethics consistent with statutory provisions concerning conflicts of interests and gifts. *(See Section 2 of the bill.)*

Each member of a local board would be required to receive a minimum of 2 hours of ethics education within 12 months after initial appointment to the board, and again within 12 months after each subsequent appointment to the office. The education may be provided by the ABC Commission or by some other qualified source approved by the Commission. A local board may require appropriate ethics training and education for its employees. The ABC Commission is required to develop a model ethic polity that local ABC boards may adopt in compliance with the requirements of the bill.

Section 22 of the bill would authorize the ABC Commission to consider the proximity of a new ABC store location to existing ABC stores when making its decision regarding approval of the new location.

Section 23 of the bill would amend the law with regard to the closing of ABC stores, eliminating specific authority of a local ABC board or the ABC Commission to close a store when the Commission determines that the store is not sufficiently profitable to justify its continuation.

Section 24 of the bill would increase the minimum amount of the bond required for ABC store managers, raising it from $5,000 to $50,000. An appointing authority may require a bond that exceeds the minimum amount.

Section 25 of the bill would amend G.S. 18B-1213 concerning the obligations of the purchaser of a winery, making it clear that the purchaser as well as *any successor to the rights of a winery* is obligated to all the terms and conditions of an agreement in effect on the date of the purchase *or other acquisition of the right to distribute a brand.* This section would become effective September 15, 2010, and apply to all existing franchise agreements. A supplier's shipment of wine to a wholesaler in this State following the effective date would constitute acceptance by the supplier of the terms of the bill and be incorporated into the agreement between the supplier and wholesaler. The section would not apply to any administrative action pending before the ABC Commission or to pending litigation or claims that accrued before the effective date of this act.

Section 26 of the bill would change the definition of winery. Under current law, a winery means the holder of an unfortified winery permit, fortified winery permit, limited winery permit, or nonresident wine vendor permit who sells at least 1,000 cases of wine in North Carolina each year. The PCS would change the number of cases of wine that must be sold in this State each year to be considered a nonresident wine vendor from 1,000 cases annually to 1,250 cases annually. This section would become effective September 15, 2010.

Section 27of the bill would create an exception to the law that prohibits occupational licensing boards from requiring that an individual be more than 18 years of age as a requirement for receiving a license. The exception would apply to certifications issued by the Criminal Justice Education and Training Standards Commission and the North Carolina Sheriff's Education and Training Standards Commission. This section would be effective when it becomes law.

Section 28of the bill would provide for the appointment of 3 members to the Rowan Kannapolis ABC Board. The Rowan County Board of Commissioners, the Kannapolis City Council, and the Salisbury City Council would each appoint one member of the ABC board. This provision would be effective when it becomes law and apply to appointments and vacancies occurring on or after that date.

EFFECTIVE DATE: Except as otherwise specified, the bill would become effective October 1, 2010.

Brenda Carter, Shirley Iorio, and Theresa Matula substantially contributed to this summary.

H1717-SMRB-110(CSMA-39) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 30, 2010
TO: Senate Finance
FROM: Lanier McRee
Fiscal Research Division
RE: Modernization of the State ABC System

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
General Fund	$0	$0	$0	$0	$0
ABC Commission	$0	$0	$0	$0	$0
Local ABC Boards	$0	$0	$0	$0	$0
EXPENDITURES:					
General Fund	$0	$0	$0	$0	$0
ABC Commission	Indeterminate Fiscal Impact – See Assumptions and Methodology				
Local ABC Boards					
POSITIONS (cumulative):	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
ABC Commission
Local ABC Boards

BILL SUMMARY

The proposed committee substitute for House Bill 1717 (HB 1717) modernizes the North Carolina Alcoholic Beverage Control System. The changes proposed in HB 1717 include, but are not limited to: applying ethics requirements to ABC Boards; expanding certain power and duties of the ABC Commission; changing contracting and reporting requirements for contracts with local law enforcement; changing requirements related to city ABC elections and mix beverage permits; altering Board membership terms and compensation; increasing bonding requirements from $5,000 to $50,000; requiring a balanced budget and transparent budget process; providing a uniform system for the removal of board members and employees; and renaming the Rowan County ABC Board the Rowan/ Kannapolis ABC Board.

ASSUMPTIONS AND METHODOLOGY:

The changes proposed in the HB 1717 should have no fiscal impact on the General Fund or ABC Commission but may impact local ABC boards.

State ABC Commission

The ABC Commission is an enterprise fund and thus wholly receipt-supported. Its expenditures and revenue collections do not impact North Carolina's General Fund. However, H1717 will impact the ABC Commission's operations. Specifically, Section 20 of HB 1717, which requires the Commission to establish performance standards and to ensure local board compliance, could impact the operating budget of the Commission. This section requires that the Commission ensure compliance by conducting regular or special audits, conducting performance evaluations, or taking other measures such as inspections. These are new duties for the Commission.

The ABC Commission already provides some performance and management oversight of local boards. It compiles local annual audited financial reports, monitors local board sales data, and performs investigative audits of local board issues on an ad hoc basis. These steps allow the Commission to monitor key metrics like overhead costs and inventory turnover. The ABC Commission has staff capable of conducting the required performance audits. By reorganizing existing staff and filling vacancies, the Commission expects to be able to perform the new duties within its existing budget. This is possible in part because of the recent relaxation in alcohol to food ratios. This makes it easier to meet current standards and has reduced the workload for current Commission auditors.

In addition, H1717 authorizes the Commission to develop training requirements and specifies that failure to comply with training requirements is grounds for the removal of a local board member or employee (Section 19). The Commission notes that it has the flexibility to use its training staff "to address the changing priorities in education program needs under the bill. This includes both developing rules that establish mandatory training requirement and providing training at convenient locations around the State, if necessary. Therefore, the Commission expects to perform these duties within existing budget.

Local ABC Boards

In addition, certain provisions of the bill could impact the operating expenses of local ABC Boards. Three issues appear to impact local board budgets:

1) Bonding: The requirement that the General Manager, the Finance Officer, and Store Managers be bonded in an amount not less than $50,000 (up from $5,000) could increase operating expenses for local boards that currently bond these employees at a level below $50,000. The Fiscal Research Division does not have data on the number of local boards that currently bond these employees below the $50,000 level or data regarding the cost of bonding an employee at the $50,000 level.

2) Performance, Training, and Other ABC Commission Rules: The requirement to comply with all rules adopted by the ABC Commission and meet standards for performance and training could impact local board budgets. However, without information on ABC Commission performance and training requirements and current local board performance and training requirements, it is impossible to determine the fiscal impact of this change to G.S. 18B-701.

3) Budgeting: HB 1717 requires each board to: (a) operate under an annual balanced budget; (b) submit that proposed budget to the local board along with a budget message; (c) provide a copy of the budget for public inspection; (d) hold a public hearing to take public comment on the proposed budget; and (e) adopt a budget no earlier than 10 days after the budget is originally presented to the board and not later than July 1. Depending on a local board's current budget process, the requirement to hold a public hearing and, potentially, have additional board meetings could increase costs by the amount of the public hearing and the amount of the compensation per board member per additional meeting. Without specific data on the budget process for each local board, fiscal impact of these requirements cannot be determined.

Other requirements that appear to impact the operating budgets of local boards, such as the compensation, travel, and per diem requirements defined in Sections 11, 12, and 13, each have language that allows the local appointing authority to approve deviations from the recommended levels; the local board must provide the ABC Commission with the appointing authority's written confirmation of approval of any deviations.

SOURCES: ABC Commission

TECHNICAL CONSIDERATIONS: None

SENATE FINANCE COMMITTEE
Wednesday, July 7, 2010 at 4:00 PM
Senate Floor

MINUTES

The Senate Finance Committee met at 4:00 PM on July 7, 2010, on the Senate Floor. Thirty-one members of the committee were present. Senator Clodfelter presided as chair.

S.B. 354 – Continuing Care Retire. Community/Home Care

Senator Dickson was recognized to explain the bill, which was back in the Senate for concurrence with House changes. The House replaced the contents of the original bill with the contents of the House Committee Substitute (HCS). The HCS would also allow continuing care retirement communities to provide or arrange for home care services for an individual who has entered into a continuing care contract, but who is not receiving lodging. It would also increase the application fee for a continuing care license from $500 to $1,000. The fee is a one-time fee paid at the time an application is submitted. Senator Soles moved to concur and the motion carried. A copy of the bill, the summary and the fiscal memo is attached.

The meeting adjourned at 4:03 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 07, 2010

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

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #3) **354** Continuing Care Retire. Community/Home Care.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 6

SENATE BILL 354

Appropriations/Base Budget Committee Substitute Adopted 4/23/09
House Committee Substitute Favorable 5/26/09
House Committee Substitute #2 Favorable 6/16/10
House Committee Substitute #3 Favorable 6/29/10
Sixth Edition Engrossed 7/6/10

Short Title: Continuing Care Retire. Community/Home Care. (Public)

Sponsors:

Referred to:

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT CONTINUING CARE RETIREMENT COMMUNITIES TO PROVIDE OR ARRANGE FOR HOME CARE SERVICES WITHOUT PROVIDING LODGING WHEN THOSE SERVICES ARE PROVIDED ADJUNCT TO A CONTRACT FOR CONTINUING CARE AND TO REQUIRE THE DEPARTMENT OF INSURANCE AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY ISSUES RELATED TO CONTINUING CARE RETIREMENT COMMUNITIES PROVIDING HOME CARE SERVICES WITHOUT PROVIDING LODGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-64-5(b) reads as rewritten:

"(b) The application for a license shall be filed with the Department by the provider on forms prescribed by the Department and within a period of time prescribed by the Department; and shall include all information required by the Department pursuant to rules adopted by it under this Article including, but not limited to, the disclosure statement meeting the requirements of this Article and other financial and facility development information required by the Department. The application for a license must be accompanied by an application fee of ~~five hundred~~one thousand dollars (~~$500.00~~$1,000)."

SECTION 2. G.S. 58-64-1 reads as rewritten:

"**§ 58-64-1. Definitions.**

As used in this Article, unless otherwise specified:

(1) ~~"Continuing care" means the~~Continuing care. – The furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, under ~~an agreement~~a contract approved by the Department in accordance with this Article effective for the life of the individual or for a period longer than one year. "Continuing care" may also include home care services provided or arranged by a provider of lodging at a facility to an individual who has entered into a continuing care contract with the provider but is not yet receiving lodging.

(2) ~~"Entrance fee" means a~~ Entrance fee. – A payment that assures a resident a place in a facility for a term of years or for life.

(3) ~~"Facility" means the~~Facility. – The retirement community or communities in which a provider undertakes to provide continuing care to an individual.

(4) ~~"Health-related services" means, at~~Health-related services. – At a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(4a) Home care services. – Defined in G.S. 131E-136.

(5) ~~"Living unit" means a~~Living unit. – A room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(5a) Lodging. – A living unit as set forth in a contract approved by the Department in accordance with this Article.

(6) ~~"Provider" means the~~Provider. – The promoter, developer, or owner of a facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents himself, herself, or itself as providing continuing care or "life care."

(7) ~~"Resident" means a~~Resident. – A purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) ~~"Hazardous financial condition" means a~~Hazardous financial condition. – A provider is insolvent or in eminent danger of becoming insolvent."

SECTION 3. G.S. 58-64-25(b)reads as rewritten:

"(b) Each contract shall include provisions that specify the following:

(1) The total consideration to be ~~paid;~~paid.

(2) Services to be ~~provided;~~provided.

(3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the ~~residents;~~residents.

(4) The policies to be implemented if the resident cannot pay the periodic ~~fees;~~fees.

(5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the ~~resident;~~resident.

(6) The policy regarding increasing the periodic ~~fees;~~fees.

(7) The description of the living ~~quarters;~~quarters.

(8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the ~~provider;~~provider.

(9) Any property rights of the ~~resident;~~resident.

(10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the ~~facility;~~ facility.

(11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program.

(12) The procedures for determining when the individual will transition to receiving lodging and health-related services in the event that a contract allows for the provision or arrangement of continuing care without lodging."

SECTION 4. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-7. Continuing care services without lodging.**

(a) A provider of continuing care who has obtained a license pursuant to this Article and desires to provide or arrange for continuing care services, including home care services, to an individual who has entered into a continuing care contract with the provider but is not yet receiving lodging must submit the following to the Commissioner:

(1) An application to offer continuing care services without providing lodging.
(2) An amended disclosure statement containing a description of the proposed continuing care services that will be provided without lodging, including the target market, the types of services to be provided, and the fees to be charged.
(3) A copy of the written service agreement, which must contain those provisions as prescribed in G.S. 58-64-25(b).
(4) A summary of an actuarial report that presents the impact of providing continuing care services without lodging on the overall operation of the continuing care retirement community.
(5) A financial feasibility study prepared by a certified public accountant that shows the financial impact of providing continuing care services without lodging on the applicant and the continuing care retirement facility or facilities. The financial feasibility study shall include a statement of activities reporting the revenue and expense details for providing continuing care services without lodging, as well as any impact the provision of these services will have on operating reserves.
(6) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of the General Statutes to provide home care services, or a contract with a licensed home care agency for the provision of home care services to the individuals under the continuing care services without lodging program.

(b) A provider issued a start-up certificate for the provision of continuing care services without lodging must enter into binding written service agreements with subscribers to provide continuing care services without lodging.

(c) When providing the financial statements and five-year forecasts required by G.S. 58-64-20, a provider offering continuing care services without lodging must account for the related revenue and expenses generated from the provision of these services separate from the facility's on-site operation."

SECTION 5. The Department of Insurance and the Department of Health and Human Services shall identify any statutory, regulatory, or practical barriers that prevent or discourage individuals that contract with continuing care retirement communities from receiving home care services for as long as they need home care services and are able to be safely cared for in their homes. The Departments shall jointly provide an interim status report on or before November 1, 2010, and a final report on or before September 1, 2011, to the North Carolina Study Commission on Aging and the Joint Legislative Health Care Oversight Committee. Each report shall include findings and recommendations made to date on statutory changes and a timetable for adopting rules to eliminate any identified barriers to providing appropriate levels of care.

SECTION 6. Section 1 of this act is effective when it becomes law, and applies to applications filed on or after that date, and the remainder of the act is effective when it becomes law.

SENATE BILL 354:
Continuing Care Retire. Community/Home Care

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 7, 2010
Introduced by:	Sen. Kinnaird	**Prepared by:**	Cindy Avrette
Analysis of:	Sixth Edition		Committee Counsel

SUMMARY: Senate Bill 354 is back in the Senate for concurrence in the House changes. The House replaced the contents of the original bill with the contents of the House Committee Substitute.

The House Committee Substitute for Senate Bill 354 would also allow continuing care retirement communities (CCRCs) to provide or arrange for home care services for an individual who has entered into a continuing care contract, but who is not receiving lodging. It would also increase the application fee for a continuing care license from $500 to $1,000. The fee is a one-time fee paid at the time an application is submitted.

S.L. 2010-31, The Current Operations and Capital Improvements Appropriations Act of 2010, transferred an existing position within the DOI to the Financial Evaluation Division to carry out the requirements of this bill.

CURRENT LAW: G.S. 58-64-1 (1) defines "continuing care" as the "furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, under an agreement effective for the life of the individual or for a period longer than one year." G.S. 58-64-5 requires a provider offering or providing continuing care to obtain a license from the Commissioner of Insurance. G.S. 58-64-25 specifies the continuing care contract requirements.

G.S. 131E-136 (3) defines "Home care services" as any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse.
b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home.
c. Medical social services.
d. In-home aide services that involve hands-on care to an individual.
e. Infusion nursing services.
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.
g. In-home companion, sitter, and respite care services provided to an individual.
h. Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

BILL ANALYSIS: Section 1 of the bill amends G.S. 58-64-5(b) to increase the application fee for a continuing care license from $500 to $1,000. **Section 2** amends the definitions contained in G.S. 58-64-1 as follows:

- "*Continuing care*" is amended to include the provision or arrangement of home care services by a provider of lodging at a facility to an individual who has entered into a continuing care contract with the provider, but is not yet receiving lodging.
- "*Home care services*" -- as defined in G.S. 131E-136 (see above).
- "*Lodging*" -- a living unit and meals as set forth in a contract approved by DOI.

ection 3 amends G.S. 58-64-25(b) regarding the provisions that must be contained in a continuing care contract to require that when a contract provides for the provision or arrangement of continuing care without lodging, the contract must specify the procedures for determining when the individual will transition to receiving both lodging and health related services.

Section 4 amends Article 64 of Chapter 58 by adding a new section to specify the information a continuing care retirement community (CCRC) that wishes to provide continuing care services without lodging must submit to the Department of Insurance:

- An application to offer continuing care services without lodging
- An amended disclosure statement (currently required for regular CCRC operation under G.S. 58-64-20 and G.S. 58-64-30) with a description of the proposed continuing care services that will be provided without lodging, including the target market, the types of services to be provided, and the fees to be charged.
- A copy of the written service agreement which must contain those provisions as prescribed in current law.
- A summary of an actuarial report that presents the impact of providing continuing care services without lodging on the overall operation of the continuing care retirement community.
- A financial feasibility study prepared by a certified public accountant showing the financial impact of providing continuing care services without lodging on the applicant and the continuing care retirement facility or facilities. The study must include a statement of activities reporting the revenue and expense details for providing continuing care services without lodging, as well as, any impact the provision of these services will have on operating reserves.

  Evidence of license required under Part 3, Article 6, of Chapter 131E (Home Care Agency Licensure Act) to provide home care services, or a contract with a licensed home care agency for the provision of home care services to the individuals under the continuing care services without lodging program.

Section 5 requires DOI and the Department of Health and Human Services to identify any statutory, regulatory, or practical barriers that prevent or discourage individuals who contract with continuing care retirement communities from receiving home care services for as long they need home care services and are able to be safely cared for in their homes. The Departments are required to provide an interim status report on or before November 1, 2010, and a final report on or before September 1, 2011, to the NC Study Commission on Aging and the Joint Legislative Health Care Oversight Committee.

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

Theresa Matula, Staff to House Aging, and Kory Goldsmith, Staff to House Insurance, substantially contributed to this summary

S354-SMRB-111(e6) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 354 (Fifth Edition)

SHORT TITLE: Continuing Care Retire. Community/Home Care.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES	**$1,500**	**$1,500**	**$1,500**	**$1,500**	**$1,500**
EXPENDITURES	**$111,623**	**$114,703**	**$123,732**	**$131,565**	**$137,528**
POSITIONS (cumulative):	**1**	**1**	**1**	**1**	**1**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance and Department of Health and Human Services

EFFECTIVE DATE: See Bill Summary below.

BILL SUMMARY:

SB 354 increases the application fee for a continuing care license. It would also allow Continuing Care Retirement Communities (CCRCs) to provide or arrange for home care services for an individual who has entered into a continuing care contract, but who is not receiving lodging.

Section 1 of the bill amends G.S. 58-64-5(b) to increase the application fee for a continuing care license from $500 to $1,000.

Section 2 amends the definitions contained in G.S. 58-64-1 as follows:

- "*Continuing care*" is amended to include the provision or arrangement of home care services by a provider of lodging at a facility to an individual who has entered into a continuing care contract with the provider, but is not yet receiving lodging.

- "*Home care services*" -- as defined in G.S. 131E-136.
- "*Lodging*" -- a living unit and meals as set forth in a contract approved by DOI.

Section 3 amends G.S. 58-64-25(b) regarding the provisions that must be contained in a continuing care contract to require that when a contract provides for the provision or arrangement of continuing care without lodging, the contract must specify the procedures for determining when the individual will transition to receiving both lodging and health related services.

Section 4 amends Article 64 of Chapter 58 by adding a new section to specify the information a continuing care retirement community (CCRC) that wishes to provide continuing care services without lodging must submit to the Department of Insurance:

- An application to offer continuing care services without lodging.
- An amended disclosure statement (currently required for regular CCRC operation under G.S. 58-64-20 and G.S. 58-64-30) with a description of the proposed continuing care services that will be provided without lodging, including the target market, the types of services to be provided, and the fees to be charged.
- A copy of the written service agreement which must contain those provisions as prescribed in current law.
- A summary of an actuarial report that presents the impact of providing continuing care services without lodging on the overall operation of the continuing care retirement community.
- A financial feasibility study prepared by a certified public accountant showing the financial impact of providing continuing care services without lodging on the applicant and the continuing care retirement facility or facilities. The study must include a statement of activities reporting the revenue and expense details for providing continuing care services without lodging, as well as, any impact the provision of these services will have on operating reserves.
- Evidence of the license required under Part 3, Article 6, of Chapter 131E (Home Care Agency Licensure Act) to provide home care services, or a contract with a licensed home care agency for the provision of home care services to the individuals under the continuing care services without lodging program.

Section 5 requires DOI and the Department of Health and Human Services to identify any statutory, regulatory, or practical barriers that prevent or discourage individuals that contract with continuing care retirement communities from receiving home care services for as long they need home care services and are able to be safely cared for in their homes. The Departments are required to provide an interim status report on or before November 1, 2010, and a final report on or before September 1, 2011, to the NC Study Commission on Aging and the Joint Legislative Health Care Oversight Committee.

The fee increase would become effective July 1, 2010, and apply to applications filed on or after that date. Sections 2, 3, 4, and 5 would become effective when the act becomes law. If funding is not provided in the 2010 budget for a specified position within DOI to oversee the new services, Sections 2, 3, and 4 would expire July 1, 2012. In that event, CCRCs would not be permitted to continue to enter into contracts for the provision or arrangement of continuing care without

lodging, but existing contracts executed prior to the sunset date would remain in effect, and CCRCs would be permitted to provide home care service without lodging after July 1, 2012, pursuant to the terms of such contracts.

BACKGROUND INFORMATION:

G.S. 58-64-1 (1) defines continuing care as the "furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, under an agreement effective for the life of the individual or for a period longer than one year." G.S. 58-64-5 requires a provider offering or providing continuing care to obtain a license from the Commissioner of Insurance. G.S. 58-64-25 specifies the continuing care contract requirements.

G.S. 131E-136 (3) defines "Home care services" as any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse.
b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home.
c. Medical social services.
d. In-home aide services that involve hands-on care to an individual.
e. Infusion nursing services.
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.
g. In-home companion, sitter, and respite care services provided to an individual.
h. Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

ASSUMPTIONS AND METHODOLOGY:

Revenue

Section 1 of the bill amends G.S. 58-64-5(b) to increase the application fee for a continuing care license from $500 to $1,000. Over the last five years, the Department of Insurance reports that there have been on average 2.6 applications submitted per year. Assuming that there will be 3 applications submitted per year, Fiscal Research estimates that there will be $3,000 of revenue generated each fiscal year (3 applications multiplied by the $1,000 application fee). Since there is already a $500 fee in place, the additional amount of revenue generated as a result of this bill is $1,500 per fiscal year ($3,000 of revenue generated multiplied by one-half).

Administrative Costs

The Department of Insurance (DOI) indicates that its current staff will not be able to absorb the additional workload required in order to administer SB 354. DOI anticipates that it will need one Insurance Company Examiner Manager position to fulfill the requirements of this legislation. The

Insurance Company Examiner Manager would be placed in charge of the Continuing Care Retirement Community Unit of the Financial Evaluations Division of DOI.

The Financial Evaluation Division has regulatory oversight for Continuing Care Retirement Communities (CCRCs), which serves approximately 13,000 elderly residents in North Carolina. Presently, there are 57 CCRCs in operation and 13 in various stages of development. This bill will require that CCRCs providing these additional off-site services be reviewed for compliance relative to certain disclosure standards that must be met initially for both prospective at home residents initially, and facility (on campus) residents, thereafter, on an annual basis.

DOI reports that this bill would significantly impact the operations of the Financial Evaluation Division. Presently, the Financial Evaluation Division does not have financial analysis staff dedicated to the financial oversight of CCRCs. The Insurance Company Examiner Manager would administer CCRC laws of North Carolina by evaluating the financial condition and operations of the CCRCs during the licensing process and on a continuing basis, thereafter. The Insurance Company Examiner Manager would conduct a review of annual and interim financial statements, audited reports and other financial data filed or requested by DOI to carry out these tasks.

In total, DOI estimates that it will need $111,623 for the Insurance Company Examiner Manager in FY 2010-11 (a breakdown of these expenses is provided in the chart below). Fiscal Research concurs with this estimate.

Description		Associated Cost FY 2010-11
Insurance Company Examiner Manager		
	Salary	$83,000
	Social Security	$6,388
	Retirement	$8,776
	Medical Insurance	$4,929
Operating Expenses		
	Rentals/Leases	$1,200 R
	Travel	$1,150 R
	Communications & Data Processing	$880 R
	General Administration Supplies	$1,000 R
	Equipment/Office Furniture	$3,800 NR
TOTAL		**$111,623**

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 29, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE FINANCE COMMITTEE
Wednesday, July 7, 2010 at 6:05 PM
Senate Floor

MINUTES

The Senate Finance Committee met at 6:05 PM on July 7, 2010, on the Senate Floor. Twenty-five members of the committee were present. Senator Clodfelter presided as chair.

H.B. 1814 – Catawba Energy Efficiency/Renewable

Senator Allran was recognized to explain the bill, which exempts Catawba County from competitive bidding requirements when letting contracts authorized by its Board of Commissioners to increase energy efficiency. The bill also authorizes Catawba County to enter into leases for the siting and operation of renewable energy facilities for twenty years without treating it as a sale and without giving notice by publication. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill is attached.

H.B. 2066 – Special Retirement Allowances

Senator Foriest was recognized to explain the bill. It would amend the laws governing the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to authorize the creation of special retirement allowances derived from the transfer of a member's eligible accumulated contributions to the Supplemental Retirement Income Plan. The bill also authorizes the Supplemental Board of Trustees to assess a one-time administrative fee for expenses related to the transfer. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill, the summary and the actuarial note is attached.

The meeting adjourned at 6:15 PM.

Senator Dan Clodfelter, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Wednesday, July 07, 2010

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

FAVORABLE

H.B. **1814** Catawba Energy Efficiency/Renewable.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **2066** Special Retirement Allowances.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

H1814 – Allran
H2066 - Foriest

HOUSE BILL 1814
Second Edition Engrossed 7/6/10

Short Title:	Catawba Energy Efficiency/Renewable.	(Local)
Sponsors:	Representatives R. Warren; Hughes and Setzer.	
Referred to:	Energy and Energy Efficiency, if favorable, Finance.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT EXEMPTING CATAWBA COUNTY FROM COMPETITIVE BIDDING REQUIREMENTS WHEN LETTING CONTRACTS AUTHORIZED BY ITS BOARD OF COMMISSIONERS TO INCREASE ENERGY EFFICIENCY, AND TO AUTHORIZE THAT COUNTY TO ENTER INTO LEASES FOR THE SITING AND OPERATION OF RENEWABLE ENERGY FACILITIES FOR TWENTY YEARS WITHOUT TREATING IT AS A SALE AND WITHOUT GIVING NOTICE BY PUBLICATION.

The General Assembly of North Carolina enacts:

SECTION 1. Catawba County may contract for apparatus, supplies, materials, or equipment that will be used as part of any program authorized by its Board of Commissioners aimed at increasing energy efficiency without being subject to the requirements of G.S. 143-129, 143-131, and 143-132. Notwithstanding any provision of law, the county may award a contract under this section in its sole discretion.

SECTION 2.(a) If Senate Bill 1114, 2009 Regular Session does not become law, then Section 3 of S.L. 2009-149 reads as rewritten:

"**SECTION 3.** Section 2 of this act applies to the ~~City~~ Cities of Raleigh and ~~the City of~~ Winston-Salem and Catawba County only."

SECTION 2.(b) If Senate Bill 1114, 2009 Regular Session becomes law, then Section 3 of S.L. 2009-149 as rewritten by that act reads as rewritten:

"**SECTION 3.** Section 2 of this act applies to the Cities of Asheville, Raleigh and Winston-Salem and the Towns of Chapel Hill and Carrboro. This act also applies to Catawba County."

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

HOUSE BILL 1814:
Catawba Energy Efficiency/Renewable

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	July 7, 2010
Introduced by:	Rep. R. Warren	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 1814 exempts Catawba County from competitive bidding requirements for apparatus, supplies, and equipment used in pilot programs aimed at improving energy efficiency and from certain requirements for entering into a long-term lease for a renewable energy facility.

CURRENT LAW: The competitive bidding requirements for construction contracts and contracts for the purchase of apparatus, supplies, equipment and materials are set out in G.S. 143-129, 143-131, and 143-132 of the General Statutes.

G.S. 160A-272 requires a lease in excess of ten years to be treated as sale of real property, usually requiring competitive bidding and public notice of the decision to lease the property.

BILL ANALYSIS: The bill:

- Exempts Catawba County from certain competitive bidding requirements set forth in Article 8 of Chapter 143 in contracting for apparatus, supplies, materials, or equipment to be used in any program aimed at increasing energy efficiency.
- Exempts the county from the requirements of G.S. 160A-272 for the purpose of entering into a long-term lease of up to 20 years for the siting of a renewable energy facility as defined in G.S. 62-133.8(a)(7). A "renewable energy facility" is a facility "other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:
    a. Generates electric power by the use of a renewable energy resource.
    b. Generates useful, measurable combined heat and power derived from a renewable energy resource.
    c. Is a solar thermal energy facility."

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: The City of Raleigh was given the same exemption from the competitive bidding statutes for its pilot programs for energy efficiency in 2007. (S.L. 2007-133) That exemption was made permanent in 2009. (S.L. 2009-147).

The Cities of Raleigh and Winston-Salem both obtained a similar exemption from G.S. 160A-272 for long-term leases on the siting and operation of a renewable energy facility in S.L. 2009-149.

Bills have been introduced to grant both exceptions to the Towns of Carrboro (SB 1113/HB 1887) and Chapel Hill (SB 1114/ HB 1888), and the Mecklenburg County (SB 1335/ HB 2040).

Barbara Riley, counsel to Senate State and Local Government, and Trina Griffin, counsel to the House Finance Committee, substantially contributed to this summary.

H1814-SMRB-112(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 2066
Committee Substitute Favorable 6/22/10
Committee Substitute #2 Favorable 6/30/10
Fourth Edition Engrossed 7/6/10

Short Title: Special Retirement Allowances. (Public)

Sponsors:

Referred to:

May 27, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF SPECIAL RETIREMENT ALLOWANCES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5(m1) reads as rewritten:

"(m1) Special Retirement Allowance for Law Enforcement Officers. – Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by G.S. 135-6(n). Provided, however, a member, who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina, shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly."

SECTION 2. G.S. 135-5 is amended by adding a new subsection to read:

"(m2) Special Retirement Allowance. – At any time coincident with or following retirement, a member may make a one-time election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance. Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable

under G.S. 135-18.7(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain (i) the relationship between the transferred balance and the monthly benefit; and (ii) how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n). Provided, however, a member who transfers the member's eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan. The Teachers' and State Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 135-5(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

(1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.

(2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The Board of Trustees shall report annually to the Joint Legislative Commission on Governmental Operations on the number of persons who made an election in the previous calendar year, with any recommendations it might make on amendment or repeal based on any identified problems.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection."

SECTION 3. G.S. 135-5(g1) reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. ~~For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.~~ In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the employee's voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal

representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 4. G.S. 128-27(m1) reads as rewritten:

"(m1) Special Retirement Allowance for Law Enforcement Officers. – Upon retirement, a member who is a law enforcement officer vested as of June 30, 2010, may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina to this Retirement System and receive, in addition to his basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon his eligible accumulated account balance at the date of the transfer of the assets to this System. For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of mortality tables, such other tables as may be necessary and the interest assumption rate recommended by the actuary based upon actual experience including an assumed annual post-retirement allowance increase of four percent (4%). The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five year experience study as required by ~~G.S. 128-29(o).~~ G.S. 128-28(o). Provided, however, a member who transfers his eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina shall be taxed for North Carolina State Income tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly."

SECTION 5. G.S. 128-27 is amended by adding a new subsection to read:

"(m2) Special Retirement Allowance. – At any time coincident with or following retirement, a member may make a one-time election to transfer any portion of the member's eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, from the Supplemental Retirement Income Plan of North Carolina or the

North Carolina Public Employee Deferred Compensation Plan to this Retirement System and receive, in addition to the member's basic service, early or disability retirement allowance, a special retirement allowance which shall be based upon the member's transferred balance. Notwithstanding anything to the contrary, a member may not transfer such amounts as will cause the member's retirement allowance under the System to exceed the amount allowable under G.S. 128-38.2(b). The Board of Trustees may establish a minimum amount that must be transferred if a transfer is elected. The member may elect a special retirement allowance with no postretirement increases or a special retirement allowance with annual postretirement increases equal to the annual increase in the U.S. Consumer Price Index. Postretirement increases on any other allowance will not apply to the special retirement allowance. The Board of Trustees shall provide educational materials to the members who apply for the transfer authorized by this section. Those materials shall describe the special retirement allowance and shall explain (i) the relationship between the transferred balance and the monthly benefit; and (ii) how the member's heirs may be impacted by the election to make this transfer and any costs and fees involved.

For the purpose of determining the special retirement allowance, the Board of Trustees shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and such other tables as may be necessary based upon actual experience. A single set of mortality and such other tables will be used for all members, with factors differing only based on the age of the member and the election of postretirement increases. The Board of Trustees shall modify the mortality and such other tables every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o). Provided, however, a member who transfers the member's eligible accumulated contributions from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina. The Local Governmental Employees' Retirement System shall be responsible to determine the taxable amount, if any, and report accordingly.

The special retirement allowance shall continue for the life of the member and the beneficiary designated to receive a monthly survivorship benefit under Option 2, 3 or 6 as provided in G.S. 128-27(g), if any. The Board of Trustees, however, shall establish two payment options that guarantee payments as follows:

(1) A member may elect to receive the special retirement allowance for life but with payments guaranteed for a number of months to be specified by the Board of Trustees. Under this plan, if the member dies before the expiration of the specified number of months, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary will receive the benefit only for the remainder of the specified number of months. If the member's designated beneficiary dies before receiving payments for the specified number of months, any remaining payments will be paid to the member's estate.

(2) A member may elect to receive the special retirement allowance for life but is guaranteed that the sum of the special allowance payments will equal the total of the transferred amount. Under this payment option, if the member dies before receiving the total transferred amount, the special retirement allowance will continue to be paid to the member's designated beneficiary for the life of the beneficiary, if Option 2, 3 or 6 is selected. If Option 2, 3 or 6 is not selected, the member's designated beneficiary or the member's estate shall be paid any remaining balance of the transferred amount.

The Supplemental Retirement Board of Trustees established under G.S. 135-96 may assess a one-time flat administrative fee not to exceed the actual cost of the administrative expenses relating to these transfers.

The Board of Trustees shall report annually to the Joint Legislative Commission on Governmental Operations on the number of persons who made an election in the previous calendar year, with any recommendations it might make on amendment or repeal based on any identified problems.

The General Assembly reserves the right to repeal or amend this subsection, but such repeal or amendment shall not affect any person who has already made the one-time election provided in this subsection."

SECTION 6. G.S. 128-27(g1) reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. ~~For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.~~In the event that a retiree is receiving a Special Retirement Allowance under subsection (m1) of this section, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina or the North Carolina Public Employee Deferred Compensation Plan to this Retirement System over the total of the Special Retirement Allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" excludes any amount transferred under subsection (m2) of this section.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to

the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 7. This act becomes effective January 1, 2011. Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. Any administrative fees accessed by the Boards of Trustees may be used to hire additional personnel to administer this act.

HOUSE BILL 2066:
Special Retirement Allowances

2009-2010 General Assembly

Committee:	Senate Pensions & Retirement & Aging	**Date:**	July 7, 2010
Introduced by:	Rep. Bryant	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 2066 would amend the laws governing the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to authorize the creation of special retirement allowances derived from the transfer of a member's eligible accumulated contributions to the Supplemental Retirement Income Plan. The bill also authorizes the Supplemental Retirement Board of Trustees to assess a one-time administrative fee for expenses related to the transfer.

CURRENT LAW:

Under existing law, State and local law enforcement officers are allowed to transfer the entire balance of their accumulated contribution, excluding Roth after-tax contributions, from the Supplemental Retirement Income Plan (401(k) Plan) to the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System. The member is then eligible to receive a special retirement allowance, in addition to the member's basic service allowance, in the form of an annuity based on the transferred account balance and the member's age at the time of the transfer.

BILL ANALYSIS:

Sections 1 and 4 of House Bill 2066 would authorize law enforcement officers who are vested on June 30, 2010, to transfer a portion of their accumulated contributions rather than the entire balance.

The remaining sections of the bill authorize the creation of special retirement allowances for all members of both retirement systems. The members would be allowed to make a one-time transfer of any portion of a member's eligible accumulated contributions (excluding Roth after-tax contributions) from the Supplemental Retirement Income Plan or the Public Employees Deferred Compensation Plan to the appropriate retirement system. However, the Board of Trustees is authorized to establish a minimum amount that must be transferred. The member could make the election at or at any time following retirement. The member would then be eligible to receive a special retirement allowance similar to what is currently available to law enforcement officers. The special retirement allowance shall receive the same tax treatment as if paid by the Supplemental Retirement Income Plan.

The special retirement allowance would be paid for the life of the member and also for the life of a beneficiary if the member elected to provide a survivorship benefit under Option 2, 3, or 6 at retirement. The Board of Trustees is directed to establish two payment options that guarantee payments. One option would guarantee payments for a specified number of months to be determined by the Board, and another option would guarantee that the sum of payments would equal the total of the amount transferred. In both cases, the member would receive the special retirement allowance for life with the provision that if the member dies prior to the guaranteed event, the special retirement allowance would continue to be paid to a beneficiary or to the member's estate.

The bill also authorizes the Supplemental Retirement Board of Trustees to assess a one-time administrative fee, not to exceed the actual cost of the administrative expenses related to the transfer.

EFFECTIVE DATE: This act becomes effective January 1, 2011. Any beneficiary who retired prior to January 1, 2011, will not be allowed to make the one-time election until July 1, 2011. any administrative fees assessed by the Board of Trustees may be used to hire additional personnel to administer the act.

H2066-SMRO-190(e4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

RETIREMENT

BILL NUMBER: House Bill 2066 (Third Edition)

SHORT TITLE: Special Retirement Allowances.

SPONSOR(S): Representative Bryant

FUNDS AFFECTED: Any State or local employee who has funds in the Supplemental Retirement Income Plan and the Public Employee Deferred Compensation Plan.

SYSTEM OR PROGRAM AFFECTED: Teachers' & State Employees' Retirement System, Local Governmental Employees' Retirement System, the Supplemental Retirement Income Plan and the Public Employee Deferred Compensation Plan.

EFFECTIVE DATE: January 1, 2011 for retirees on or after that date and July 1, 2011 for retirees as of December 31, 2010.

BILL SUMMARY:
Sections 1 and 4. Presently all State and local law enforcement officers are eligible to transfer the entire balance of the Supplemental Retirement Income Plan {401(k) Plan}to either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System and receive a life annuity based on their age. This bill allows for the transfer of any portion of the fund balance rather than the entire fund balance. Any State or local officer with five or more years of service as of June 30, 2010 will continue to have this benefit.

Sections 2,3, 5 and 6: Creates a Special Retirement Allowance. This will allow all members of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to transfer any portion of their fund balances in either the Supplemental Retirement Income Plan or the Public Employee Deferred Compensation Plan on a onetime election at any time at or after retirement and receive a special retirement allowance which will be based on the amount of funds and age of the member.

The Board of Trustees may establish a minimum amount that must be transferred. The Board shall adopt straight life annuity factors on the basis of yields on U.S. Treasury Bonds and mortality and other tables as may be necessary based upon actual experience. A single set of mortality and other tables will be used for all members based on the age of the member and the election of post-retirement allowance. The Board shall modify the mortality and such other tables every five years based upon the five-year experience study as required. A member shall be taxed for North Carolina State Income Tax purposes on the special retirement allowance the same as if that special retirement allowance had been paid directly by the Supplemental Retirement Income Plan of North Carolina.

Requires the Board of Trustees to provide educational materials to members who apply for the one-time contributions transfer under the section that describe the special retirement allowance, and explain the relationship between the transferred balance and the monthly benefit, and explain how the member's heirs may be impacted by the member's election, including any costs or fees. The bill also allows the Supplemental Retirement Board of Trustees to assess a one-time flat administrative fee not to exceed the actual cost required to administer the transfers.

The special retirement allowance shall be paid to the member for life. The Board of Trustees shall allow a member two payment plan options. The first to be for life with a guaranteed number of months and the second for life with a guaranteed return of the amount transferred.

ESTIMATED IMPACT ON STATE: Both, Buck Consultants, the Retirement Systems' actuary, and Hartman & Associates, the General Assembly's actuary, agree that the changes would not be expected to produce a significant financial impact to the retirement systems.

ASSUMPTIONS AND METHODOLOGY:

Teachers' & State Employees' Retirement System

The cost estimates of the System's Actuary are based on the employee data, actuarial assumptions and actuarial methods used to prepare the December 31, 2008 actuarial valuation of the fund. The data included 325,618 active members with an annual payroll of $13.3 billion, 151,353 retired members in receipt of annual pensions totaling $3.1 billion and actuarial value of assets equal to $55.1 billion. Significant actuarial assumptions used include (a) an investment return rate of 7.25%, (b) average salary increase rate of 6.25%, (c) the 1994 Group Annuity Mortality Tables (tables are not adjusted for male teachers, set forward one year for female teachers, set forward two years for general employees and law enforcement officers and set forward two years for the beneficiaries of deceased member), and (d) rates of separation from active service based on System experience. The actuarial cost method used was the entry age normal cost method and a frozen liquidation period of nine years. Detailed information concerning these assumptions and methods is shown in the actuary's report, which is available upon request from Stanley Moore.

Local Governmental Employees' Retirement System

The cost estimates of the System's Actuary are based on the employee data, actuarial assumptions and actuarial methods used to prepare the December 31, 2008 actuarial valuation of the fund. The data included 123,524 active members with an annual payroll of $4.97 billion, 44,311 retired members in receipt of annual pensions totaling $744.7 million and actuarial value of assets equal to $17.1 billion. Significant actuarial assumptions used include (a) an investment return rate of 7.25%, (b) salary increase rate of 6.25%, (c) the 1994 Group Annuity Mortality Tables, (tables are forward three years for males, set forward two years for females and set forward two years for the beneficiaries of deceased members and special mortality tables are used for period after disability retirement), and (d) rates of separation from active service based on System experience. The actuarial cost method used was the projected benefit method with aggregate level normal cost and frozen accrued liability. Gains and losses are reflected in the normal rate. Detailed information concerning these assumptions and methods is shown in the actuary's report, which is available upon request from Stanley Moore.

SOURCES OF DATA: Buck Consultants
Hartman & Associates, LLC

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910. The above information is provided in accordance with North Carolina General Statute 120-114 and applicable rules of the North Carolina Senate and House of Representatives.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stanley Moore

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 1, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE FINANCE COMMITTEE
Friday, July 9, 2010 at 4:08 PM
Senate Floor

MINUTES

The Senate Finance Committee met at 4:08 PM on July 9, 2010, on the Senate Floor. Eighteen members of the committee were present. Senator Jenkins presided as chair.

H.B. 455 – Sales Tax Changes/Study Competing Systems

Senator Clodfelter was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS allows a sales tax refund to a joint governmental agency created to operate a cable television system and directs the Revenue Laws Study Committee to continue its review of local government owned and operated communication systems. The PCS also clarifies a seller's obligation with regard to the overcollection of sales and use tax. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS is attached.

The meeting adjourned at 4:14 PM.

Senator Clark Jenkins, Presiding Chair
Senate Finance Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Daniel G. Clodfelter, Co-Chair
Senator Clark Jenkins, Co-Chair

Friday, July 09, 2010

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

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

H.B. **455** Designate Kidney Month.

Draft Number:	70586
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Clodfelter

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 455
PROPOSED SENATE COMMITTEE SUBSTITUTE H455-CSSV-89 [v.2]

Short Title: Sales Tax Changes/Study Competing Systems. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A SALES TAX REFUND TO A JOINT GOVERNMENTAL AGENCY CREATED TO OPERATE A CABLE TELEVISION SYSTEM; TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO CONTINUE ITS REVIEW OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SYSTEMS, AND TO CLARIFY A SELLER'S OBLIGATION WITH REGARD TO THE OVERCOLLECTION OF SALES AND USE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. A joint agency created by an interlocal agreement pursuant to G.S. 160A-462 to operate a cable system that provides video programming services is allowed a refund of sales and use tax paid by it on purchases made on or after July 1, 2007, and before June 30, 2010, to the same extent allowed to a city under G.S. 105-164.14(c). Notwithstanding G.S. 105-164.14, the joint agency must make a request for a refund in writing before January 1, 2011.

SECTION 2.(a) Continue Study of Local Government Owned and Operated Communication Systems – The Revenue Laws Study Committee may continue its study begun in 2009 of local government owned and operated communication systems and to report its findings and any recommended legislation on this subject to the 2011 General Assembly by March 1, 2011. As part of its study, the Committee shall determine the following:

(1) The extent to which current law authorizes units of local government to offer communication services not traditionally thought of as cable television services.

(2) The requirements and standards that should apply to a unit of local government and to a private provider when the local unit offers a communication service that is offered by a private provider.

(3) Whether varying or different provisions are needed to accommodate communication systems placed in service or financed under G.S. 160A-20 by cities before the effective date of this act.

(4) Policies and incentives that can be established to facilitate the offering and expansion of communication service by both public and private service providers, including public-private ventures and other opportunities.

SECTION 2.(b) In conducting the study described in subsection (a) of this section, the Revenue Laws Study Committee cochairs are authorized to appoint an advisory subcommittee and to ask the Local Government Commission to designate an individual to

participate in the subcommittee's deliberations in an exofficio, nonvoting capacity. The subcommittee may consist of no more than 14 members and may include individuals who are not members of the Committee or of the General Assembly, 10 of whom represent the following interests:

(1) A cable service provider.
(2) A wireless telecommunications service provider.
(3) A local exchange provider that is not a wireless telecommunications service provider.
(4) A local exchange provider that is a wireless telecommunications service provider.
(5) A telephone membership corporation.
(6) A city that operates a cable system and an electric power system as a public enterprise.
(7) A city that operates a cable system as a public enterprise and does not operate an electric power system as a public enterprise.
(8) A city that is a member of a joint agency established under G.S. 160A-462 for the operation of a cable system as a public enterprise.
(9) The North Carolina League of Municipalities.
(10) The North Carolina Association of County Commissioners.

SECTION 3. G.S. 105-164.11(a) reads as rewritten:

"(a) Remittance of ~~Over-Collections~~ Overcollections to Secretary. – When ~~the~~ tax is collected for any period ~~is~~ on a taxable sale in excess of the total amount that should have been ~~collected,~~ collected or is collected on an exempt or nontaxable sale, the total amount collected must be ~~paid over~~ remitted to the Secretary. ~~When tax is collected for any period on exempt or nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously charged.~~ The seller who overcollected the tax is not allowed a refund of the overcollected tax unless the seller gives the purchaser credit for or a refund of the overcollected tax. If the Secretary determines that a seller who overcollected tax on a transaction is liable for use tax on the transaction rather than sales tax or is liable for sales tax on the transaction rather than use tax, the seller may apply the overcollected tax to the seller's liability for use tax or sales tax on the transaction. This ~~provision~~ subsection shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been ~~collected.~~collected and to preclude collection of both a sales tax and a use tax on the same transaction."

SECTION 4. This act is effective when it becomes law. Section 3 of this act applies to liabilities that accrue on or after that date, are not collectible as of that date, or are the subject of a final agency decision made on or after January 1, 2010.

SENATE FINANCE COMMITTEE
Legislative Office Building
Raleigh, North Carolina 27603

Senator Daniel G. Clodfelter, Co-Chair *Senator Clark Jenkins, Co-Chair*

June 2, 2010

The Honorable Kenneth R. Lay
North Carolina Department of Revenue
501 N. Wilmington St.
Raleigh, NC 27640

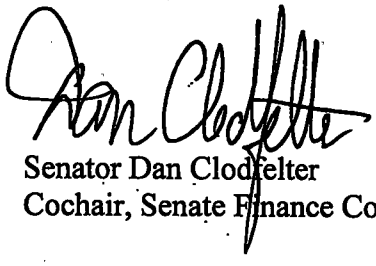
Dear Mr. Secretary,

When the Revenue Laws Study Committee heard earlier this spring the Department's presentation about the results of the Resolution Initiative and about plans for a second round of that initiative, the Committee requested some additional detail and explanation of the elements of the projected $110 million recovery from round two, such as the number of taxpayers expected to be involved, a description of the types of tax questions that were expected to dominate the second round of the initiative, and how many of the taxpayers involved in the second round were expected to choose litigation over settlement. The Senate budget's availability statement included the Department's projection of the recovery from round two, although we did this before we had yet received the supplemental information requested by the Revenue Laws Study committee.

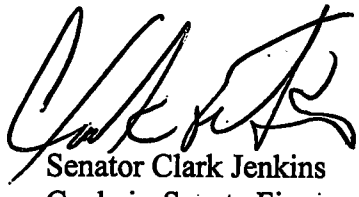
Because questions have now been raised about the impact of Section 31.10 of the Senate budget on the projected recovery from round two of the resolution initiative, we believe it is even more important to obtain the additional information requested earlier. As you and Senator Clodfelter discussed, we are planning to take up SB 1172 in the Senate Finance Committee next week, even though the same provision was included in the Senate budget, so that the Department and members can have a chance to review the questions that have recently surfaced about that provision. We offer you an opportunity to speak to the Committee when the bill is taken up and very much hope you can do so. We would ask that in addition to any other thoughts and comments you may have about the bill that you also address in your remarks the information items requested at the Revenue Laws meeting from April. In addition, we would be interested in knowing what portion of the projected $110 million from round two of the initiative is expected to come from penalties, as distinguished from principal and interest.

Thank you for attention to our request.

Very truly yours,



Senator Dan Clodfelter
Cochair, Senate Finance Committee



Senator Clark Jenkins
Cochair, Senate Finance Committee

ReynoldsAmerican

Brennan M. Dawson
Senior Vice President
Government Relations

336-741-7336
336-728-8959 Fax

May 11, 2010

Senator David W. Hoyle
Co-Chair, Senate Finance Committee
300-A Legislative Office Building
Raleigh NC 27603

Dear Senator Hoyle:

The Enhanced Cigarette Exportation Tax (Part 1 of Article 4 of Chapter 105 of the General Statutes) requires:

> "Any corporation that takes a credit under this section must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports required under this section are due by May 1, 2006."

R. J. Reynolds Tobacco Company is claiming approximately $6.0 million during the 2009 tax year. This amount does not include any carry-forwards from previous years.

The percentage of domestic tobacco used in R. J. Reynolds Tobacco Company's cigarette production is 40.4 percent.

If you need additional information or more details, please do not hesitate to contact me directly.

Sincerely yours,

Brennan Dawson