

**2011-2012**

**HOUSE  
COMMERCE & JOB  
DEVELOPMENT -  
SUBCOMMITTEE ON  
BUSINESS & LABOR**

**MINUTES**

# MINUTES

## Business and Labor Subcommittee

Wednesday, May 11, 2011

10:00 a.m.

Room 424 LOB

The Business and Labor Subcommittee met on Wednesday, May 11, 2011 at 10:00 a.m. in Room 424 of the Legislative Office Building. Representative Harold Brubaker presided. Chairman, Representative Darrell McCormick was in Judiciary A presenting legislation.

The following members were present:

- |                                   |                                       |
|-----------------------------------|---------------------------------------|
| 1. Representative Kelly Alexander | 10. Representative Tim Moffitt        |
| 2. Representative Harold Brubaker | 11. Representative Rodney Moore       |
| 3. Representative Becky Carney    | 12. Representative Efton Sager        |
| 4. Representative Jeff Collins    | 13. Representative Mitchell Setzer    |
| 5. Representative Jerry Dockham   | 14. Representative Phillip Shepard    |
| 6. Representative Elmer Floyd     | 15. Representative Mike Stone         |
| 7. Representative Charles Graham  | 16. Representative William Wainwright |
| 8. Representative Mike Hager      | 17. Representative Winkie Wilkins     |
| 9. Representative Stephen LaRoque |                                       |

Meeting was called to Order at 10:00 a.m.

Introduction of Sergeant at Arms:

- |                 |             |
|-----------------|-------------|
| • Carlton Adams | • Ken Kirby |
|-----------------|-------------|

Introduction of Pages:

- Ali Smith, TarHeel Challenge – Moore County – Sponsor: Speaker Thom Tillis

Bills:

BILL NO.	SHORT TITLE	SPONSOR
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes

Representative Brubaker informed the committee that they will NOT be voting on this bill today. Representative Edgar Starnes explained HB 450.

Public Speakers:

- Paul Stock, Banker's Association spoke in opposition to the bill
- Leslie Hines, Bank Card Source spoke in favor of the bill
- Jerrel Olive, Bank Card Source spoke in favor of the bill

Representative Brubaker recommended a subcommittee be formed to discuss HB 450

Subcommittee HB 450:

- Rep. Brubaker, Chair
- Paul Stock, Banker's Association; Rep. Stone; Rep. Graham; Rep. Collins; Rep. Carney

Business and Labor Subcommittee Wednesday, May 11, 2011 Meeting – continued (page 2)

Representative Harold Brubaker called on Representative Jerry Dockham to chair the Business and Labor Subcommittee while Representative Brubaker presented his bill, HB 484.

HB 484	Transfer Emergency Foreclosure Program to HFA.	Representative Brubaker
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Representative Harold Brubaker explained HB 484.

Public Speakers:

- Joseph A Smith, Jr. - Commissioner of Banks spoke in favor of the bill.
- Robert Kucab - Executive Director, NC Housing Finance Agency spoke in favor of the bill.

Representative Mitchell Setzer motioned for a favorable report for HB 484. – Passed

**HB 484 – Received a favorable report.**

**Adjournment**

Meeting adjourned at 10:35 am

Respectfully submitted



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Representative Darrell McCormick  
Chairman

---

Anne Murtha  
Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, May 11, 2011

**TIME:** 10:00 am

**LOCATION:** 424 LOB

**COMMENTS:**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes
HB 484	Transfer Emergency Foreclosure Program to HFA.	Representative Brubaker

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12 PM** o'clock on **May 10, 2011**.

☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)



# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, May 11, 2011**

**10:00 a.m.**

**Room 424 LOB**

**Chair: Representative Harold Brubaker**

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Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes
HB 484	Transfer Emergency Foreclosure Program to HFA.	Representative Brubaker

Adjournment

Brubaker - Chair for McCormick

PUBLIC BILL

Not Voting on this today.

H.B. 9450

SESSION LAW \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING CONTRACTS.

Normal Business Model.  
10s of thousands of these contracts.

Introduced by Representative(s): Starnes. <sup>ES</sup>

These are complicated contracts.

Opposition: Paul Stock - "Convinced"

\* Banker's Association \*

Business to Business transactions

Industry Norm - 1 yr renewal = Cancel Fee - (250 (about))

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

PASSED 1st READING

MAR 24 2011

AND REFERRED TO COMMITTEE  
ON Commerce

Law Banking

The Committee/Subcommittee on  
Commerce refer

bill to Sub. Committee

on Bus. & Labor

Rep. McCormick  
For the Committee

referred to Committee/Subcommittee

Bus. & Labor

APR 13 '11

Daniel -  
create a  
Subcommittee for this  
bill - Lots of  
discussion

Guest Speakers

Leslie Hines - Bank Card Source

Terrel Olive - Bank Card Source

MSP  
Wells Fargo Bank

- Merit/Demerit -

3 year agreement

Cancellation Fee

- limited \$50 Max

- Thom. Rep. Stone - Woodcock -

Questions

Stone - has several  
New fees added

Program - Outline any changes -

Incurrs more fees

- Rules change w/o clear notification

- Review this close

- Reasonable fee to get out of contract

- Mike Stone - Charles Graham Jeff Collins  
- ask Paul Stock about any changes.

Moore: What is average penalty for early cancellation?

Arkansas Law is good.

Graham: What is the notice requirement law?

(Currently Scam)

- Edgar Starnes = typical length - 3 years.  
no forewarning of expiration

Alexander: Situation merits are obvious. (Favorable Report)

Collins: Who will disagree with this.

Carney: Anyone hear in opposition?

Graham: Opt out fees - can they be addressed?

LaRogue: Arkansas Law - What happens to equipment?  
- Merchant has bought/leased equipment.

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~~Paul Stock~~ - Major Corporations - have depts. to handle these  
Stone - this will help small business

LaRogue - Change / <sup>help</sup> small business - high termination fees.  
- needs com

Collins - Notices -

Carney - Who does this effect? Small/Large business.

Collins - Notice - compromise - default

Wilkins - Bill has merit - create subcommittee -

Stone - consider small business. focused

Rep Dockham

PUBLIC BILL

KNOW of No Opposition

Came out of Appropriations  
Transfer from.

H.B. 0485

SESSION LAW

A BILL TO BE ENTITLED

1035am

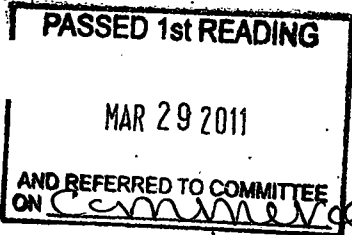
AN ACT TO STIMULATE NEW HOME PURCHASES.

Rep John Johnson Barnhart

Introduced by Representative(s): Brubaker, Gillespie, Johnson, and Barnhart (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only



Law Finance

The Committee/Subcommittee on  
Commerce refer-  
red to Sub. Comm. on  
Bus. & Labor  
Rep. McCoskey  
For the Committee

referred to Committee/Subcommittee  
Bus & Labor  
APR 13 '11

Setzer - Favor - 484 Favorable  
Commissioner of Banks - Report  
(No referral).  
Bob Kucab - good bill  
Floyd - Perfect Fit.  
154 M to assist  
Wainwright - Understand  
Kucab - Authority granted  
Clarifies authority -



## HOUSE BILL 450: No Automatic Renewal of Credit Card Contracts

2011-2012 General Assembly

**Committee:** House Commerce and Job Development  
Subcommittee on Business and Labor

**Date:** May 4, 2011

**Introduced by:** Rep. Starnes

**Prepared by:** Brad Krehely

**Analysis of:** First Edition

Committee Counsel

**SUMMARY:** *House Bill 450 would prohibit the automatic renewal of merchant credit card processing contracts.*

**CURRENT LAW:** A contract is an agreement between two or more parties which creates legal obligations. By statute, the following contracts are void and unenforceable because they are against public policy: (1) construction indemnity agreements (provisions which purport to hold someone harmless for negligence arising out of construction contracts), (2) contracts to improve real property if it makes the contract subject to laws of another state or provides that another state is the exclusive forum for resolving the contract, (3) certain contracts with forum selection clauses (but not non-consumer loan transactions or arbitration in another state with the agreement of the parties), and (4) contracts waiving jury trials (except for statutes allowing agreements to arbitrate disputes). If a portion of a contract is deemed to be void against public policy, the remainder of the contract may be enforceable to the extent it is severable from the void portion.

**BILL ANALYSIS:** House Bill 450 would provide that any provision in a contract to provide credit card or other payment system processing for merchants for the automatic renewal of the contract is against public policy, void, and unenforceable. However, the bill does not prohibit the renewal of contracts following a 60-day notice of an upcoming expiration from the processing company and an acceptance of the renewal signed by the merchant.

**EFFECTIVE DATE:** The act becomes effective October 1, 2011, and applies to contracts entered into on or after that date and to contracts currently scheduled to renew automatically on or after that date.

H450-SMRN-36(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 450

Short Title: No Automatic Renewal of Credit Card Contracts. (Public)

Sponsors: Representative Starnes (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Banking.

March 24, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD  
PROCESSING CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 22B of the General Statutes is amended by  
adding a new section to read:

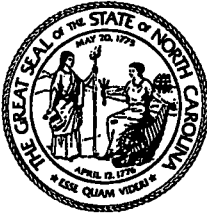
**"§ 22B-4. Automatic renewal of merchant credit card processing contracts.**

**Any provision in a contract to provide credit card or other payment system processing for  
merchants that provides for the automatic renewal of the contract is against public policy and is  
void and unenforceable. Nothing in this section shall be construed to prohibit the renewal of  
contracts following a 60-day notice of an upcoming expiration from the processing company  
and an acceptance of the renewal signed by the merchant."**

SECTION 2. This act becomes effective October 1, 2011, and applies to contracts  
entered into on or after that date and to contracts currently scheduled to renew automatically on  
or after that date.



\* H 4 5 0 - V - 1 \*



# HOUSE BILL 484: Transfer Emergency Foreclosure Program to HFA

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	May 11, 2011
<b>Introduced by:</b>	Rep. Brubaker	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 484 would transfer management of the State Home Foreclosure Prevention Project and Fund to the North Carolina Housing Finance Agency, would exempt the Housing Finance Agency from complying with Articles 6 and 7 of Chapter 146 of the General Statutes, and would authorize the Commissioner of Banks to acquire property subject to approval of the State Banking Commission.*

**CURRENT LAW AND BACKGROUND:** Article 11 of Chapter 45 of the General Statutes addresses the Emergency Program to Reduce Home Foreclosures and was originally enacted in 2008. S.L. 2008-226 established a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure and submit information on those loans to a database housed within the Administrative Office of the Courts (AOC). The Commissioner of Banks uses the information from the database to attempt to find solutions for homeowners to avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days in appropriate cases.

S.L. 2010-186 amended the law by eliminating the restrictions on the types of loans subject to the law and made it applicable to all home loans in the State in which the borrower is facing foreclosure. S.L. 2010-186 also created the State Home Foreclosure Prevention Project and Trust Fund and provided that the Fund should be managed by the Commissioner of Banks. Finally, it extended the sunset for the Emergency Program to Reduce Home Foreclosures from October 31, 2010 until May 31, 2013.

**BILL ANALYSIS:** House Bill 484 does all of the following:

- Transfers the administration of State Home Foreclosure Prevention Project and Fund to the North Carolina Housing Finance Agency.
- Directs the Commissioner to deposit funds received from mortgage servicers into a separate account and then transfer funds no less than monthly to the Fund.
- Directs funds remaining in the Fund on June 30, 2011 and any funds remaining in the Fund at the expiration of each subsequent fiscal year to the North Carolina Housing Trust Fund until expiration.
- Authorizes the Commissioner to establish and maintain offices as the Commissioner deems necessary.
- Allows the Commissioner to deal with real property and utilities in the same manner as a private person or corporation, subject to approval by the State Banking Commission.
- Deletes the requirement that the Housing Finance Agency comply with Article 6 and Article 7 of Chapter 146 governing the acquisition of office space.

**EFFECTIVE DATE:** The act becomes effective July 1, 2011.

H484-SMRN-45(e1) v6

Karen Cochrane-Brown contributed to this summary.

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

H

1

HOUSE BILL 484

Short Title: Transfer Emergency Foreclosure Program to HFA. (Public)

Sponsors: Representative Brubaker (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER MANAGEMENT OF THE STATE HOME FORECLOSURE PREVENTION PROJECT AND FUND TO THE NORTH CAROLINA HOUSING FINANCE AGENCY, TO EXEMPT THE NORTH CAROLINA HOUSING FINANCE AGENCY FROM THE REQUIREMENTS OF ARTICLES 6 AND 7 OF CHAPTER 143 OF THE GENERAL STATUTES, AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO ACQUIRE PROPERTY SUBJECT TO APPROVAL OF THE STATE BANKING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-101 reads as rewritten:

"§ 45-101. (For expiration date, see note) Definitions.

The following definitions apply throughout this Article:

...

(3b) Housing Finance Agency. – The North Carolina Housing Finance Agency.

...."

SECTION 2. G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The Commissioner of Banks shall design and develop the database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database."

SECTION 3. G.S. 45-104 reads as rewritten:

"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention Project and Fund.

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for home loans. In developing the Project, the Commissioner may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.



\* H 4 8 4 - V - 1 \*



1 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed  
2 and maintained by the ~~Office of the Commissioner of Banks, Housing Finance Agency~~. The  
3 funds shall be held separate from any other funds received by either the Office of the  
4 Commissioner of Banks or the Housing Finance Agency in trust for the operation of the State  
5 Home Foreclosure Prevention Project.

6 (c) Upon the filing of the information required under G.S. 45-103, the mortgage  
7 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure  
8 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered  
9 by this act. ~~The collection of this fee shall be managed by the Office of the Commissioner of~~  
10 ~~Banks shall collect the fee, in a manner so as to minimize burdens on mortgage servicers in~~  
11 ~~complying with the requirements of this section. Upon receipt of the fee the Commissioner~~  
12 shall deposit the funds into a separate account. The funds shall be transferred no less than  
13 monthly into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency  
14 shall manage the State Home Foreclosure Prevention Trust Fund.

15 (d) ~~The Commissioner of Banks Housing Finance Agency~~ shall ~~allocate~~ use funds from  
16 the State Home Foreclosure Prevention Trust Fund to compensate performance-based service  
17 contracts or other contracts and grants necessary to implement the purposes of this act in the  
18 following manner:

- 19 (1) An amount, not to exceed the greater of two million two hundred thousand  
20 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover  
21 the administrative costs of the operation of the program by the Office of the  
22 Commissioner of ~~Banks, Banks and the Housing Finance Agency~~, including  
23 managing on behalf of the Administrative Office of the Courts the database  
24 identified in G.S. 45-103, expenses associated with informing homeowners  
25 of State resources available for foreclosure prevention, expenses associated  
26 with connecting homeowners to available resources, and assistance to  
27 homeowners and counselors in communicating with mortgage servicers.
- 28 (2) An amount, not to exceed the greater of three million four hundred thousand  
29 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or  
30 reimburse nonprofit housing counseling agencies for providing foreclosure  
31 prevention counseling services to homeowners involved in the State Home  
32 Foreclosure Prevention Project.
- 33 (3) An amount, not to exceed thirty percent (30%) of the total funds collected  
34 per year, to make grants to or reimburse nonprofit legal service providers for  
35 services rendered on behalf of homeowners in danger of defaulting on a  
36 home loan to avoid foreclosure, limited to legal representation such as  
37 negotiation of loan modifications or other loan work-out solutions,  
38 defending homeowners in foreclosure or representing homeowners in  
39 bankruptcy proceedings, and research and counsel to homeowners regarding  
40 the status of their home loans.
- 41 (4) ~~Any funds remaining upon the expiration of the State Home Foreclosure~~  
42 ~~Prevention Project in the State Home Foreclosure Prevention Trust Fund as~~  
43 of June 30, 2011, and any funds remaining in the State Home Foreclosure  
44 Prevention Trust Fund upon the expiration of each subsequent fiscal year  
45 shall be directed to the North Carolina Housing Trust Fund.

46 (e) ~~The Commissioner of Banks Housing Finance Agency~~ shall have the discretion to  
47 enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of  
48 this section in a manner that complements or supplements other State and federal programs  
49 directed to prevent foreclosures for homeowners participating in the State Home Foreclosure  
50 Prevention Project."

51 **SECTION 4.** G.S. 45-105 reads as rewritten:

**"§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

The Commissioner of Banks upon referral from the Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination."

**SECTION 5. G.S. 45-106 reads as rewritten:****"§ 45-106. (For expiration date, see note) Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

**SECTION 6. G.S. 53-102 reads as rewritten:****"§ 53-102. Offices.**

~~Suitable offices shall be provided for the Commissioner of Banks in some state-owned public building in Raleigh. Notwithstanding any other provision of law, the Commissioner of Banks may establish and maintain offices for the transaction of business at such place or places as the Commissioner deems advisable or necessary in carrying out the purposes of this Chapter. The Commissioner may acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the State Banking Commission. The Commissioner may, with the approval of the State Banking Commission, pledge or encumber funds available to the State Banking Commission to secure financing for real property."~~

**SECTION 7. G.S. 122A-5 reads as rewritten:****"§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out the provisions of this Chapter, ~~including, but without limiting the generality of the foregoing, including the~~ power:

...

- (18) To establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of directors deems advisable or necessary in carrying out the purposes of this Chapter; ~~provided, however, that the Agency shall comply with the provisions of Articles 6 and 7 of Chapter 146 of the General Statutes governing the acquisition of office space;~~

1

...."

2

**SECTION 8.** This act becomes effective July 1, 2011.

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

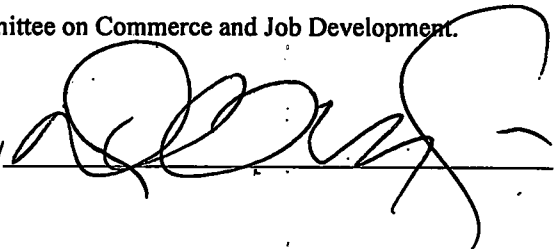
**HB 484** A BILL TO BE ENTITLED AN ACT TO TRANSFER MANAGEMENT OF THE STATE HOME FORECLOSURE PREVENTION PROJECT AND FUND TO THE NORTH CAROLINA HOUSING FINANCE AGENCY, TO EXEMPT THE NORTH CAROLINA HOUSING FINANCE AGENCY FROM THE REQUIREMENTS OF ARTICLES 6 AND 7 OF CHAPTER 143 OF THE GENERAL STATUTES, AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO ACQUIRE PROPERTY SUBJECT TO APPROVAL OF THE STATE BANKING COMMISSION.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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

H.B. 0450

SESSION LAW \_\_\_\_\_

## A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING CONTRACTS.

Introduced by Representative(s): Starnes. ES

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

PASSED 1st READING

MAR 24 2011

AND REFERRED TO COMMITTEE  
ON Commerce

Law Banking

The Committee/Subcommittee on  
Commerce referBill to Sub. Committee  
on Bus. & Labor  
Rep. McCoskey  
For the Committee

referred to Committee/Subcommittee

Bus. &amp; Labor

APR 13 '11

Results from

Moffit moves to hear PCS

Sub cmte -  
Paul Stock

- Study =

= problem needs to be addressed =

Speaker

Paul Stock =

Rules = go

Dollar = Motion to fail report  
cmte substitute

referral to cmte on rules =

PUBLIC BILL

H.B. 7654

SESSION LAW \_\_\_\_\_

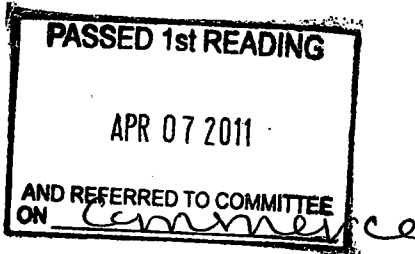
A BILL TO BE ENTITLED

AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

*Introduced by Representative(s):*   McCormick and LaRoque (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only



~~The Committee/Subcommittee on~~  
~~Commerce & Job Development~~ refers  
the bill to Subcommittee on  
Business and Labor  
Rep. Danny McConnell  
For the Committee

Referred to Committee/Subcommittee  
on Bus. & Labor

MAY 31 '11

Murry

PUBLIC BILL

H.B. 0713

SESSION LAW

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

Introduced by Representative(s): Stam, Lewis, and Murry (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill packet.

Principal Clerk's Use Only

PASSED 1st READING

APR 07 2011

AND REFERRED TO COMMITTEE  
ON

The Committee/Subcommittee on  
Commerce & Job Development  
Refers  
the bill to Sub-Committee  
on Business & Labor  
Rep. McCombs  
For the Committee

red to Committee/Subcommittee  
Business & Labor

MAY 16 2011

Sam Byasse

Dir. Purchasing  
Contracts

Collins moves to hear PCS.  
Murry presented PCS.

Staff explained technical changes.  
Brad Kehely.

Questions

Sitzer. Motioned for Favorable  
Report to PCS - unfavorable to  
original bill

Name - Speaker.  
Fiscal impact.  
"shall"  
audit findings

Graham = requests sub  
Moore = good bill  
Dolan = move forward - Adjust date

Dollar = factor in —  
Manage

Murphy Broadens con  
More effec



PUBLIC BILL

H.B. 0721

SESSION LAW

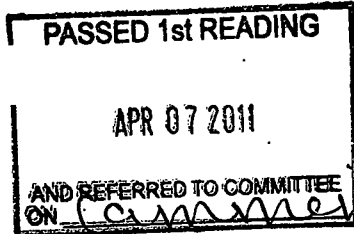
A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO EXTERMINATE BEDBUGS IN DWELLING UNITS.

Introduced by Representative(s): McCormick.

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only



The Committee/Subcommittee on  
Commerce & Job Development refers  
the bill to Subcommittee on  
Business & Labor  
Rep. McComas  
For the Committee

red to Committee/Subcommittee  
Bus. & Labor

MAY 18 '11

McComas - stepped in to Chair.  
McCormick presented bill =  
= Spoke to every side of this issue.

Garland Perce =  
= lots of responsibilities  
on tenants  
= Penalties for Landlords.  
= once tenant reports

Colleen Kochanek = Tenant Law  
addressed

= Owens = proof - Apt is clean prior  
to tenant moving in.

Moore - Who is at fault?  
Provision to inspect after  
tenant moves out.

Carney = Bed Bug task Force

Wainwright = Summary on Bill  
page 2 line 17 = PCS.

Brad Keckly: tenant must allow

Stone = adjoining units.

Who incurs the costs?

Colleen K = addressed questions.

= Motivation for tenants to report bedbugs.

Wainwright = How do you determine

= Exterminators.

Brad = pest control company would make determination.

= Who is responsible?

LaRogue = follow-up.

amendment walk-thru w/ Landlord/Tenant.

Owens Must be Clear who is responsible  
Opinion based on subject

Hager = Bed Bug Law  
Start @ Hotel/Motel.

Shepard = 4% with Landlord/Tenants.

Moore = Walk-thru. Add to Rental Contract/Disclosure.

\* Amendment = Walk-thru \*

Dierce =

Carney = Not been commenced yet - Do we have a police  
for hotel/motel industry?

Bed Bug Task Force

Health Cmte

Lots of moving targets

Sub cmte Wainwright / Carney / Owens / Hager /

PUBLIC BILL

H.B. 0813

SESSION LAW

A BILL TO BE ENTITLED

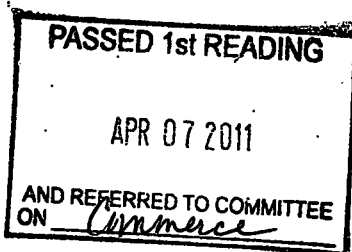
AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2 OF CHAPTER 150B OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF THE SECRETARY OF COMMERCE.

Starnes, STARNES (Primary)

Introduced by Representative(s): Howard

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only



The Committee/Subcommittee on  
Commerce refer  
the bill to Sub Committee  
on Business & Labor  
Rep. McCarver  
For the Committee

Referred to Committee/Subcommittee

on Bus + Labor

APR 13 '11

Moffit - requests to hear PCS

Howard presented HB 813.

\* Brubaker motions to move for  
favorable report unfavorable  
to original

\* Harry Payne - NC Justice Center  
- big change - effects the way business  
is done.

Slow this down -

LaRaque -

Howard - section 2.15  
discharge for misconduct

Governor Employer  
Employee  
General Public } Board appt  
by Gov.

PUBLIC BILL

H.B. 0581

SESSION LAW

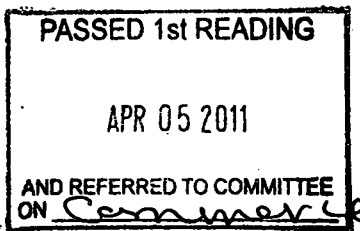
A BILL TO BE ENTITLED

AN ACT TO PROMOTE NORTH CAROLINA JOB GROWTH THROUGH REGULATORY REFORM.

Introduced by Representative(s) Bradley, H. Warren, Torbett, and Hastings (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only



The Committee/Subcommittee on  
Commerce refers  
to bill to Subcommittee  
on Business & Labor  
Rep. McCona  
For the Committee

Referred to Committee/Subcommittee  
Bus. & Labor

APR 20 2011

\* For discussion Only!

Collins moves to hear PCS  
= handout Executive Order # 70.  
= reduce =

many recommendations

Collins = stepped in to Chair  
= Stone = small business impact.

= Overhead requested to go thru bill

= Bradley = process reform  
= Forms a commission

Stone = Fiscal Note  
Regulatory Review

Carney = Where is money coming from?

Bradley - Money would come from General Fund.

Public. - It is Not part of the current budget.

Speaker:

Dan Conrad - Opposed -

Section 2 = Rule making. - Could eliminate  
- Dec

Section 3-6 = unnecessary.  
- Cost benefit analysis  
- huge undue burden =

Elizabeth Outz - opposed - say go slow

2 Concerns

Duplicative

Ample opportunity to review rules.

= Process is already underway -

Jordan Lake Rules.

= Serious impacts.

Clean Air Mercury Rule.

Lisa Martin - concerns - work w/ bill sponsor

Regulatory Reform.

more transparent - especially Fiscal Note

Closing remarks

Bradley - Good regulations

- reduce.

- Come from

- amendments to this bill =

# Daily Bulletin

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## School of Government

The University of North Carolina at Chapel Hill  
Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601  
Phone 919.733.2484 ~ Fax 919.715.3464 ~ [www.dailybulletin.unc.edu](http://www.dailybulletin.unc.edu)

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April 6, 2011

**H 654. HOMEOWNER/HOMEBUYER PROTECTION ACT.** Filed 4/6/11. *AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.*

Amends GS 47G-1, adding that the term *option contract* or *contract* does not include a contract that obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract. Amends GS 47G-2, adding that the purchaser's equitable right of redemption upon default and forfeiture will also be extinguished by the filing of a notarized memorandum of termination of option contract in the applicable office of the register of deeds, or by delivering to the option purchaser a written notice of cancellation of the option contract and specifying any material breach. Deletes provision stating that the purchaser's right of redemption is extinguished by a final judgment or court order. Amends GS 47G-3, clarifying that the provisions of GS Chapter 42 (Landlord and Tenant law) apply to covered leased agreements, *unless* the parties agree otherwise, and that the magistrate has original jurisdiction over matters involving covered lease agreements.

Amends GS 47H-2(b) (minimum contents for contracts for deed) to require a contract for deed to also include a completed residential property disclosure statement as specified. Deletes provisions requiring the contract for deed to include a description of property conditions and a statement of the amount of the lien in specified circumstances. Amends GS 47H-6 (title requirements) to permit a seller to execute a contract for deed under specified circumstances and only if the mortgage or encumbrance is in the name of the seller and meets one of the conditions under existing law, including the following condition: the mortgage or encumbrance was placed on the property by the seller before the execution of the contract for deed, if the seller is not a licensed general contractor, a licensed manufactured home dealer, or a licensed real estate broker, and the seller continues to make timely payments on the outstanding mortgage or encumbrance and notifies the purchaser as detailed (deletes language providing for notification when the property is encumbered by one or more encumbrances evidencing or securing a monetary obligation constituting a lien). Makes conforming changes. Amends GS 47H-7, prohibiting a seller from charging a late payment charge under a contract for deed more than 5% (currently, 4%) of the amount of the payment past due.

Amends GS 75-120 (definitions applicable to Article 5A: Home Foreclosure Rescue Scams), clarifying that *default* occurs whenever a notice of default is filed in the county where the property is located (currently, whenever a property owner is more than 60 days delinquent) on any loan or debt secured by the property. Clarifies that *foreclosure rescue transaction* is a transfer of residential real property that includes four features under existing law, including the requirement that the transferor retain a tenancy interest, an interest under a lease with option to purchase agreement, or an option to reacquire the property (clarifies current language). Amends GS 75-121 (pertaining to foreclosure rescue transactions), deleting the delivery timeline for the appraisal, and deleting language excepting exempt transactions from the statute.

Applies to transactions entered on or after October 1, 2011.

Intro. by McCormick, LaRoque. GS 47G, 47H, 75

Property, Land Use, and Housing

Speakers:

Harriet Worley - Attorney General's Office.

Have not had time to enact current law.

- Seem artists - road map.

- Contract for deed.

= Important Bill - Changes are necessary.

SB 1015.

Al Ripley - NC Justice Center

\* Fred Fetterhoff

NC Real Estate Commission

Investment Assoc

- Tenants

- Appraisal / Notice

Name of Bill Noteworthy.

Brubaker - Crossover Deadline.

= Brubaker motioned to original bill

Liz Wiederhold =

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 654

Short Title: Homeowner/Homebuyer Protection Act.

(Public)

Sponsors: Representatives McCormick and LaRoque (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47G-1 reads as rewritten:

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

...

- (4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement. The term does not include a contract which obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract.

...."

SECTION 2. G.S. 47G-2 reads as rewritten:

"§ 47G-2. Minimum contents of option contracts; recordation.

...

(e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's equitable right of redemption shall be extinguished by:

- (1) A mutual termination executed by the parties and recorded in the office of the register of deeds of the county in which the property is located, or
- (2) ~~A final judgment or court order entered by a court of competent jurisdiction that terminates the purchaser's rights to the property and extinguishes the equity of redemption. A certified copy of the order shall be recorded in the office of the register of deeds of the county in which the property is located pursuant to G.S. 1-228.~~
- (3) The filing of a notarized memorandum of termination of option contract in the office of the register of deeds of the county in which the property is located.
- (4) Delivering to the option purchaser a written notice of cancellation of the option contract and specifying any material breach. Any notice of cancellation must be delivered to the option purchaser by hand delivery or any manner authorized by G.S. 1A-1, Rule 4.

...."



\* H 6 5 4 - V - 1 \*



1           **SECTION 3.** G.S. 47G-3 reads as rewritten:

2   **"§ 47G-3. Application of Landlord Tenant Law.**

3       The provisions of Chapter 42 of the General Statutes apply to covered lease  
4 ~~agreements.~~agreements, unless the parties agree otherwise. The magistrate shall have original  
5 jurisdiction over matters involving covered lease agreements."

6           **SECTION 4.** G.S. 47H-2 reads as rewritten:

7   **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

8       ...  
9       (b)   Contents. – A contract for deed contract shall contain at least all of the following:

10       ...  
11       (14)   ~~A description of conditions of the property that includes whether the~~  
12           ~~property, including any structures thereon, has water, sewer, septic, and~~  
13           ~~electricity service, whether the property is in a floodplain, whether anyone~~  
14           ~~else has a legal interest in the property, and whether restrictive covenants~~  
15           ~~prevent building or installing a dwelling. If restrictive covenants are in place~~  
16           ~~that affect the property, a copy of the restrictive covenants shall be made~~  
17           ~~available to the purchaser at or before the execution of the contract.~~

18       (14a) A completed residential property disclosure statement as provided in  
19           Chapter 47E of the General Statutes.

20       ...  
21       ~~(16)   If the property being sold is encumbered by a deed of trust, mortgage, or~~  
22           ~~other encumbrance evidencing or securing a monetary obligation which~~  
23           ~~constitutes a lien on the property, and the seller is not a licensed general~~  
24           ~~contractor within the meaning of Chapter 87 of the General Statutes, or a~~  
25           ~~licensed manufactured home dealer within the meaning of Article 9A of~~  
26           ~~Chapter 143 of the General Statutes, a statement of the amount of the lien,~~  
27           ~~and the amount and due date, if any, of any periodic payments.~~

28       ...."

29           **SECTION 5.** G.S. 47H-6 reads as rewritten:

30   **"§ 47H-6. Title requirements.**

31       (a)   A seller may not execute a contract for deed with a purchaser if the seller does not  
32 hold title to the property. If the title is not held in fee simple, free from any deeds of trust,  
33 mortgages, or other encumbrances evidencing or securing a monetary obligation which  
34 constitutes a lien on the property, the seller may execute a contract for deed only if the  
35 mortgage or encumbrance is in the name of the seller and meets at least one of the following  
36 conditions:

37       (1)   It was agreed to by the purchaser, in writing, as a condition of a loan  
38           obtained to make improvements on the property.

39       (2)   It was placed on the property by the seller prior to the execution of the  
40 contract for deed if the seller is a licensed general contractor within the  
41 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
42 home dealer within the meaning of Article 9A of Chapter 143 of the General  
43 Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
44 of the General Statutes, provided that the general contractor, manufactured  
45 home dealer, or real estate broker continues to make timely payments on the  
46 outstanding mortgage or encumbrance.

47       (3)   It was placed on the property by the seller prior to the execution of the  
48 contract for deed, if the seller is not a licensed general contractor within the  
49 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
50 home dealer within the meaning of Article 9A of Chapter 143 of the General  
51 Statutes, or a licensed real estate broker within the meaning of Chapter 93A

of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, Statutes, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

(b) ~~If the property being sold is encumbered by one or more deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller must notify~~encumbrance and notifies the purchaser in a separate written disclosure, provided at or before the execution of the contract, in 14-point type, boldface, capital letters, the following statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.**

(c) In addition to any other remedies at law or equity, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear."

SECTION 6. G.S. 47H-7 reads as rewritten:

"§ 47H-7. Late fees.

No seller may charge a late payment charge under a contract for deed in excess of ~~four percent (4%)~~five percent (5%) of the amount of the payment past due. A late fee may only be charged on payments that are more than 15 days past due."

SECTION 7. G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) Default. – ~~Whenever a property owner is more than 60 days delinquent a~~notice of default is filed in the county where the property is located on any loan or debt that is secured by the property, including real estate taxes.

...  
(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

- a. The real property is the principal residence of the transferor.
- b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.
- c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
- d. The transferor retains ~~an interest in the property conveyed, including a tenancy interest, an interest under a lease-purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed property.~~

...."

SECTION 8. G.S. 75-121 reads as rewritten:

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the

1 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market  
 2 value of the property as determined by a licensed appraiser. An appraisal to determine the fair  
 3 market value of the property must be performed no more than 90 days prior to the transfer. The  
 4 appraisal shall be delivered to the transferor no more than three days after the appraisal is  
 5 performed and no less than seven days prior to the transfer of the property. This section does  
 6 not apply to exempt transactions.

7 ...."

8 **SECTION 9.** This act becomes effective October 1, 2011, and applies to  
 9 transactions entered on or after that date.

LaRogue - want thru bill line by line

\* SB 1015 (2009-2010)

Hager → Motion =

= Dallon - going to J cmte?

Speakers - Liz Weiterhold support back apples.  
 President =

= Al Ripley - NC Justice Center.

= oppose

Section 1 - exempt option contracts.

Section 2 - Land title folks - unilateral  
 damaging

Section 3 - Landlord tenant rights.  
 = rights/protections waived

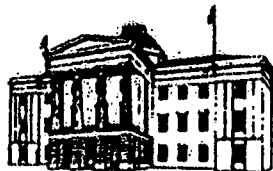
Section 4

Section 5 - property has existing liens  
 default recorded  
 narrows/limits

Section 8 - Change timeline - app  
 Homeowner given appraisal.

HB 587  
Bradley

# State of North



BEVERLY EAVES PERDUE  
GOVERNOR



REPRESENTATIVE GLEN BRADLEY  
N.C. HOUSE OF REPRESENTATIVES  
49<sup>th</sup> DISTRICT

536 LEGISLATIVE OFFICE BUILDING  
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RALEIGH, NC 27603-5925  
(919) 733-5860  
GLEN.BRADLEY@NCLEG.NET

DISTRICT ADDRESS  
144 RIDGEWOOD ROAD  
YOUNGSVILLE, NC 27394  
(919) 728-0445  
REP@NC49.ORG

## EXECUTIVE ORDER NO. 70

### RULES MODIFICATION AND IMPROVEMENT PROGRAM

**WHEREAS**, rulemaking is one of the most significant public policy actions government can take, directly affecting businesses and citizens alike; and

**WHEREAS**, improved rulemaking provides more effective protections for public health, safety, welfare, and the environment; and

**WHEREAS**, outdated, unnecessary, or vague rules often impose unnecessary costs and burdens on local governments, small businesses, and other regulated entities; and

**WHEREAS**, North Carolina citizens deserve better access to regulatory information; and

**WHEREAS**, rules, as defined by N.C. Gen. Stat. § 150B-2(8a), are required for a functioning market economy; and

**WHEREAS**, the development of rules should be informed with rigorous analysis; and

**WHEREAS**, in promulgating rules, agencies should seek to achieve statutory goals as effectively and efficiently as possible; and

**WHEREAS**, public comment is encouraged for all rules, including both new and existing rules; and

**WHEREAS**, N.C. Gen. Stat. § 150B-21.26 requires a preliminary review of certain rules before the proposed text is published in the North Carolina Register; and

**WHEREAS**, for the last fifteen years, the Office of State Budget and Management has reviewed all significant rule changes before the proposed text is published in the North Carolina Register under N.C. Gen. Stat. §150B-21.4.

**NOW, THEREFORE**, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED**:

## **Section 1. Scope of Executive Order**

This Executive Order applies to all Cabinet agencies and all boards and commission with rule-making powers located within the Cabinet agencies.

The Governor urges the heads of Council of State agencies, the Board of Governors of the University of North Carolina, the State Board of Community Colleges, the State Board of Education, and all other boards with rule-making authority to participate in this Order.

## **Section 2. Statement of Regulatory Principles**

1. The following principles shall guide the drafting, adoption, modification and review of any rules and regulations:
  - a. Rules shall only be adopted when required by federal or state law or when deemed necessary by the agency to serve the public interest.
  - b. Rules shall not impose undue burden upon those persons or entities who must comply with the rules.
  - c. Rules shall be clearly written, relevant and up-to-date.
  - d. Rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall cite this information in support of regulatory proposals.
  - e. Rules shall be designed to achieve their regulatory objective in a cost-effective and timely manner.
2. All agency heads shall implement the following requirements to ensure that regulations are drafted and adopted in accordance with the above principles.
  - a. Rules shall be subject to periodic evaluation and review in accordance with the procedures described in this Executive Order.
  - b. Agencies shall encourage public comment and involvement on all rules by posting new rule actions and rule analysis and fiscal notes online.
  - c. Agencies shall ensure citizens have better access to timely and accurate rule information.
  - d. Fiscal notes and rule analysis shall be updated to reflect any significant changes before the rule is adopted.

- e. Approved rule actions shall be completed in a timely manner to ensure proper protection of the public and clear implementation of law.
- f. Agencies shall coordinate rule actions with other agencies where rules, policies and programs overlap.
- g. Agencies shall quantify the costs and benefits to all parties of a rule to the greatest extent possible. The level of analysis shall be proportional to the significance of the rule.
- h. Agencies shall identify and assess available alternatives to regulation, including the use of economic incentives, information disclosure requirements, and performance standards.
- i. Each agency head will be held accountable for ensuring that the policies and objectives in this Executive Order are put into effect and that information requested in connection with the requirements of this Executive Order is provided on a timely basis.

### **Section 3. Review of Existing Rules**

A Rules Modification and Improvement Program ("RMIP") shall be established to annually evaluate, reform, expand, or, where necessary, repeal existing rules and associated requirements in order to promote the goals of this Executive Order. The Office of State Budget and Management ("OSBM") shall coordinate and oversee the RMIP. OSBM shall consult with experts, stakeholders and other relevant parties in implementing the RMIP.

1. The RMIP shall accomplish the following within the first 30 days after publication of this Executive Order:
  - a. Invite comment on whether any existing rules, implementation processes and associated requirements are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order. Comments may include modifying, expanding, or rescinding existing rule programs or the rule review and publication process.
  - b. Direct agencies to undertake an internal review to identify existing rules and associated requirements that are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order.
2. The RMIP shall continue to invite and consider comment on rule reforms beyond the first 30 days after publication of this Executive Order. Comments received during the first 30 days will inform the first annual report required by paragraph 8 of this section, while comments received after the first 30 days will inform future reports.

3. The State Chief Information Officer shall ensure that there is a single web portal for receiving public comments and tracking agency progress on any resulting rule reform actions.
4. OSBM shall assemble and evaluate the reform suggestions resulting from the public comment process and internal agency reviews.
5. Agencies, as requested by OSBM, shall review the merits of the reform suggestions.
6. Agencies shall prepare a report, in a form designated by OSBM, on whether reform suggestions have potential merit and justify further action. The report shall be submitted to OSBM by January 31 each year.
7. OSBM shall make final determinations on which reform suggestions have potential merit and justify further action. OSBM shall also consider and propose recommended improvements to the rule process to the Governor, including any legislation that may be necessary to achieve reforms.
8. OSBM shall publish by April 30 every year an annual report summarizing all reform comments and any resulting actions taken or planned.
9. OSBM shall receive assistance, services, or data from any state agency as it determines is reasonably necessary to carry out the purposes of this Executive Order.
10. The State CIO shall coordinate and consolidate systems across state government required to comply with existing rules at the direction of OSBM.

#### **Section 4. Review of New Rules**

Rule improvement efforts shall extend beyond an evaluation of existing rules to the current process used to promulgate new rules. Given the significant impact of rules, rule decisions shall be informed by a careful assessment of the likely consequences of rule action.

1. During OSBM's review and approval process for fiscal notes and rule analysis under N.C. Gen. Stat. §150B-21.4, OSBM shall ensure agencies adhere to the principles outlined in Section 2 of this Executive Order.
2. For significant rules, agency heads shall certify completion of a fiscal note and rule analysis and submit them to OSBM for review under N.C. Gen. Stat. § 150B-21.4 and other related statutes, at least 60 days prior to rule publication.
3. In order that an independent analysis can be made, state agencies shall not request OSBM to prepare a fiscal note and rule analysis under N.C. Gen. Stat. § 150B-21.4(b1) until the agency, working with OSBM, has exhausted all resources, internal and external, to otherwise prepare the required analysis.

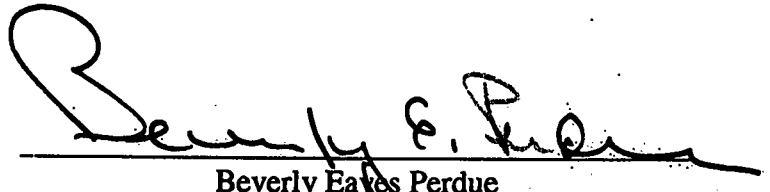
4. OSBM, as part of the Office of the Governor, shall conduct the preliminary review in N.C. Gen. Stat. § 150B-21.26 on behalf of the Governor.
5. Consistent with N.C. Gen. Stat. § 150B-21.26, agencies shall submit the required rule information to OSBM at least 60 days prior to rule publication for rules that impact local governments.

**Section 5. Effect and Duration**

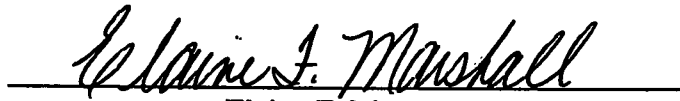
This Executive Order is effective immediately and shall remain in effect until rescinded. It supersedes and replaces all other executive orders on this subject.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of October in the year of our Lord two thousand and ten and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Business & Labor

DATE: 5.11.2011 Room: 420

\*Name: Ali Smith Tax Rec. Coordinator

County: Moore

Sponsor: Thom Tillis

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

Name: Carlton Adams 4. Name: \_\_\_\_\_

2. Name: Ken Kirby 5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_ 6. Name: \_\_\_\_\_

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, June 1, 2011

**TIME:** 10:00 am

**LOCATION:** 424 LOB

**COMMENTS:** Please plan to be here from 10am – 12pm

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes
HB 587	North Carolina Jobs Bill.	Representative Bradley, Jr. Representative Warren Representative Torbett Representative Hastings Representative Stam Representative Lewis Representative Murry Representative McCormick Representative Howard Representative Starnes
HB 713	Public Contracts/Multiple Award.	
HB 721	Landlord/Tenant/Bed Bug Liability.	
HB 813	ESC/Jobs Reform.	

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **May 26, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)

## **Corrected Notice - HB 654 added**

### **NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, June 1, 2011

**TIME:** 10:00 am

**LOCATION:** 424 LOB

**COMMENTS:** HB 654 - Homeowner/Homebuyer Protection Act has been added  
• Please plan to be here from 10am – 12pm

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes
HB 587	North Carolina Jobs Bill.	Representative Bradley, Jr. Representative Warren Representative Torbett Representative Hastings Representative McCormick Representative LaRoque
HB 654	Homeowner/Homebuyer Protection Act.	Representative Stam Representative Lewis Representative Murry Representative McCormick
HB 713	Public Contracts/Multiple Award.	Representative Howard Representative Starnes
HB 721	Landlord/Tenant/Bed Bug Liability.	
HB 813	ESC/Jobs Reform.	

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5 PM o'clock on **May 31, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)

# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 1, 2011**

**10:00 a.m.**

**Room 424 LOB**

**Chair: Representative Darrell G. McCormick**

---

Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 450	No Automatic Renewal of Credit Card Contracts.	Representative Starnes
HB 654	Homeowner/Homebuyer Protection Act.	Representative McCormick Representative LaRoque
HB 713	Public Contracts/Multiple Award.	Representative Stam Representative Lewis Representative Murry
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
HB 813	ESC/Jobs Reform.	Representative Howard Representative Starnes
HB 587	North Carolina Jobs Bill.	Representative Bradley, Jr. Representative Warren Representative Torbett Representative Hastings

Adjournment

# **AGENDA**

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HB 813	ESC/Jobs Reform.	Representative Howard Representative Starnes
HB 587	North Carolina Jobs Bill.	Representative Bradley, Jr. Representative Warren Representative Torbett Representative Hastings

Adjournment



# HOUSE BILL 450: LRC Study Auto Renewal of Credit Card Contracts

2011-2012 General Assembly

**Committee:** House Commerce and Job Development  
Subcommittee on Business and Labor  
**Introduced by:** Rep. Starnes  
**Analysis of:** PCS to First Edition  
H450-CSRN-19

**Date:** June 1, 2011  
**Prepared by:** Brad Krehely  
Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 450 would authorize the Legislative Research Commission to study automatic renewal provisions in contracts that provide credit card or other payment system processing for merchants. The Legislative Research Commission may make an interim report to the 2011 General Assembly, including any proposed legislation, when it reconvenes for the 2012 Regular Session and shall make its final report, including any legislative proposals, to the 2013 General Assembly.*

**EFFECTIVE DATE:** The act is effective when it becomes law.

H450-SMRN-53(CSRN-19) v2



# HOUSE BILL 450: LRC Study Auto Renewal of Credit Card Contracts

2011-2012 General Assembly

**Committee:** House Commerce and Job Development  
Subcommittee on Business and Labor  
**Introduced by:** Rep. Starnes  
**Analysis of:** PCS to First Edition  
H450-CSRN-19

**Date:** June 1, 2011  
**Prepared by:** Brad Krehely  
Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 450 would authorize the Legislative Research Commission to study automatic renewal provisions in contracts that provide credit card or other payment system processing for merchants. The Legislative Research Commission may make an interim report to the 2011 General Assembly, including any proposed legislation, when it reconvenes for the 2012 Regular Session and shall make its final report, including any legislative proposals, to the 2013 General Assembly.*

**EFFECTIVE DATE:** The act is effective when it becomes law.

H450-SMRN-53(CSRN-19) v2

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 450

Short Title: No Automatic Renewal of Credit Card Contracts. (Public)

Sponsors: Representative Starnes (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Banking.

March 24, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD  
PROCESSING CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 22B of the General Statutes is amended by  
adding a new section to read:

**"§ 22B-4. Automatic renewal of merchant credit card processing contracts.**

**Any provision in a contract to provide credit card or other payment system processing for  
merchants that provides for the automatic renewal of the contract is against public policy and is  
void and unenforceable. Nothing in this section shall be construed to prohibit the renewal of  
contracts following a 60-day notice of an upcoming expiration from the processing company  
and an acceptance of the renewal signed by the merchant."**

SECTION 2. This act becomes effective October 1, 2011, and applies to contracts  
entered into on or after that date and to contracts currently scheduled to renew automatically on  
or after that date.





**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 450  
PROPOSED COMMITTEE SUBSTITUTE H450-CSRN-19 [v.2]**

5/31/2011 3:49:04 PM

Short Title: LRC Study Auto Renewal Credit Card Contracts.

(Public)

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Sponsors:

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Referred to:

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March 24, 2011

**A BILL TO BE ENTITLED**

**AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY  
THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING  
CONTRACTS.**

The General Assembly of North Carolina enacts:

**SECTION 1.** The Legislative Research Commission may study automatic renewal provisions in contracts that provide credit card or other payment system processing for merchants. The Commission is authorized to review current practices in the formation of these contracts, determine whether the current practices should be amended by law, and examine any other issue the Commission deems relevant to this study.

**SECTION 2.** The Legislative Research Commission may make an interim report to the 2011 General Assembly, including any proposed legislation, when it reconvenes for the 2012 Regular Session and shall make its final report, including any legislative proposals, to the 2013 General Assembly.

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



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 450  
PROPOSED COMMITTEE SUBSTITUTE H450-CSRN-19 [v.2]**

5/31/2011 3:49:04 PM

Short Title: LRC Study Auto Renewal Credit Card Contracts.

(Public)

Sponsors:

Referred to:

March 24, 2011

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



\* H 4 5 0 - C S R N - 1 9 - V - 2 \*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**2**

**HOUSE BILL 450  
Committee Substitute Favorable 6/1/11**

Short Title: LRC Study Auto Renewal Credit Card Contracts.

(Public)

Sponsors:

Referred to:

March 24, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY  
3 THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING  
4 CONTRACTS.

5 The General Assembly of North Carolina enacts:

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7 provisions in contracts that provide credit card or other payment system processing for  
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12 the 2011 General Assembly, including any proposed legislation, when it reconvenes for the  
13 2012 Regular Session and shall make its final report, including any legislative proposals, to the  
14 2013 General Assembly.

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



\* H 4 5 0 - V - 2 \*



*Drick*  
*Levin*  
*Page*  
*Rules*  
*Regulatory*

# HOUSE BILL 587: NC Job Growth through Regulatory Reform

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	May 31, 2011
<b>Introduced by:</b>	Reps. Bradley, H. Warren, Torbett, Hastings	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	PCS to First Edition H587-CSRO-17		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute for House Bill 587 amends the Administrative Procedure Act (APA) to require State agencies to prepare cost benefit analyses and small business regulatory flexibility analyses when adopting certain administrative rules. The bill also increases the oversight of the Office of State Budget and Management (OSBM) in the rulemaking process and directs OSBM to conduct an annual review of rules. The bill strengthens the standards used by the Rules Review Commission (RRC) and directs the RRC to oversee the annual review of rules conducted by OSBM. Finally, the bill creates the Legislative Study Commission on Occupational Licensing.*

## BILL ANALYSIS:

**Section 1.** - adds two new definitions to the APA. "Significant rule change" is defined as a rule that has a significant effect on the economy, State or local funds, creates an inconsistency with actions of another agency, or raises novel policy issues. The term "small business" means a business entity that is independently owned and operated and either has gross annual sales of less than \$6,000,000 or employs fewer than 500 full-time employees.

**Section 2.** - prohibits State agencies from adopting rules that exceed standards or requirements established by a federal law unless expressly required by an act of the General Assembly.

**Section 3.** - expands the requirements of what must be included in a Notice of Text which is filed with the Office of Administrative Hearings by an agency as the first step in the rulemaking process under the APA. The agency must include a summary of the proposed rule in plain language and must provide a detailed explanation of its statutory authority to adopt the rule.

**Section 4.** - amends the APA with regard to fiscal notes. Under current law, an agency must do three different fiscal analyses and prepare a fiscal note when appropriate when it proposed to adopt a rule. The agency must determine whether the proposed rule affects State funds or local fund, or has a substantial economic impact. A substantial economic impact is defined as an aggregate financial impact on all persons affected of at least \$3,000,000 in a 12-month period. If the rule would have a substantial economic impact, the agency must prepare a fiscal note that contains (i) a description of the persons affected, (ii) a description of the types of expenditures these persons would have to make to comply with the rule, (iii) a description of the purpose and benefits of the rule, and (iv) an explanation of how the expenditures were computed.

The bill eliminates the substantial economic impact fiscal note and substitutes a requirement that the agency prepare a cost-benefit analysis for any significant rule change. The OSBM must approve the cost-benefit analysis before the rule can proceed. The OSBM must reject the cost-benefit analysis if (i) the projected costs exceed projected benefits, (ii) an alternative to the proposed rule is less costly, or (iii) the proposed rule would not achieve the stated purpose. However, OSBM is authorized to approve the

analysis under certain circumstances, such as an emergency, an act of the General Assembly or Congress expressly requiring the rule, a change in budgetary policy, or a court order.

The OSBM is also directed to conduct ongoing annual reviews of existing rules. Each agency must review its rules each year to insure that the rules minimize their economic impact. The agencies must submit a list of its rules including economic impact to OSBM annually. OSBM can direct an agency to amend or repeal a rule that is unnecessary, burdensome, too complex, or duplicative.

Agencies are also required to prepare a small business regulatory flexibility analysis for any rule that would have an adverse impact on small businesses. The agency must consider and provide various methods of reducing the impact on small businesses. OSBM must reject the rule if the agency has not taken reasonable steps to reduce the impact on small businesses.

Section 5. – amends the standards for review of rules by the Rules Review Commission. The bill requires that in determining if an agency has statutory authority to adopt a rule, the RRC must find that there is no reasonable argument that authority does not exist, and in determining that a rule is necessary, the RRC must determine that the General Assembly intended for the agency to adopt such a rule. The RRC must also determine that OSBM properly approved the cost-benefit analysis or the small business regulatory flexibility analysis. Under current law, entry of a rule into the Administrative Code after review by the RRC creates a rebuttable presumption that the rule was properly adopted. This bill deletes this provision.

Section 6. – adds a new section to the APA directing the RRC to participate in the annual review of existing rules. OSBM is directed to forward an annual summary of its findings to the RRC. The RRC must review the summary and direct OSBM to have a rule repealed or amended if the RRC does not feel that the agency has met the standard established in the statute.

Section 7. – authorizes a person to seek judicial review to determine if a rule was properly adopted, within one year of the effective date of a final rule. Under current law, only an aggrieved person who has exhausted all administrative remedies is entitled to seek judicial review of an administrative action.

Section 8. – creates the Legislative Study Commission on Occupational Licensing. The Commission would consist of 12 members; 4 appointed by the Governor, 4 appointed by the Speaker, including 2 House members and 2 public members; and 4 appointed by the President Pro Tempore, including 2 Senators and 2 public members. The Commission is charged to study issues relating to occupational licensing, including identifying outdated and unnecessary licensing law, studying alternatives to occupational licensing, and studying the extent to which licensing laws create barriers for low-income individuals entering new occupations. The Commission must make its final report to the General Assembly on the convening of the 2012 Regular Session.

The bill appropriates \$50,000 for the 2011-2012 fiscal year to fund the work of the Commission.

**EFFECTIVE DATE:** This act would become effective July 1, 2011.

*H587-SMRO-27(CSRO-17) v1*



## HOUSE BILL 713: Public Contracts/Multiple Award

2011-2012 General Assembly

<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 1, 2011
<b>Introduced by:</b>	Reps. Stam, Lewis, Murry	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H713-CSRN-17		Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 713 would require the Department of Administration to use multiple award scheduling contracts for the purchase of all ground maintenance, construction, and forestry equipment. The PCS makes the following technical changes: (1) on page 1, line 12, it deletes the word "catalogue" and substitutes the word "catalogues" and (2) on page 2, line 4, it adds the word "equipment" in two places where it was inadvertently left out.*

[As introduced, this bill was identical to S767, as introduced by Sens. Brock, Rouzer, which is currently in Senate Commerce.]

**CURRENT LAW:** Article 3 of Chapter 143 of the General Statutes governs purchases and contracts for State government.

**BILL ANALYSIS:** The PCS for House Bill 713 would require the use of multiple award schedule contracts for the acquisition of ground maintenance equipment, construction equipment, and forestry equipment. It would require the Department of Administration to issue requests for proposals for multiple award schedule contracts for ground maintenance equipment, construction equipment, and forestry equipment not later than June 30, 2011. Contracts awarded under the act must be for a term not less than 3 years with annual product and pricing update periods.

Any contracts awarded under the act are in addition to any existing term contracts for ground maintenance equipment, construction equipment, and forestry equipment. Nothing in the act limits the Department of Administration from issuing additional term contracts for the purchase of equipment otherwise available through a multiple award schedule contract.

A **multiple award schedule award contract** is "a contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina." The intent of multiple award schedule award contracts is to evaluate vendors based on a variety of factors, including discounts, total lifecycle costs, and past vendor performance.

**EFFECTIVE DATE:** The act is effective when it becomes law.

H713-SMRN-52(CSRN-17) v4

*Dept of Administration,  
Additional Support.*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 654

Short Title: Homeowner/Homebuyer Protection Act. (Public)

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Sponsors: Representatives McCormick and LaRoque (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

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Referred to: Commerce and Job Development.

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April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 47G-1 reads as rewritten:

5 "§ 47G-1. Definitions.

6 The following definitions apply in this Chapter:

7 ...

- 8 (4) Option contract or contract. – An option contract for the purchase of  
9 property that includes or is combined with, or is executed in conjunction  
10 with, a covered lease agreement. The term does not include a contract which  
11 obligates the buyer to purchase the property even though the obligation may  
12 be subject to one or more contingencies or unilateral rights to terminate the  
13 contract.

14 ...."

15 SECTION 2. G.S. 47G-2 reads as rewritten:

16 "§ 47G-2. Minimum contents of option contracts; recordation.

17 ...

18 (e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and  
19 intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's  
20 equitable right of redemption shall be extinguished by:

- 21 (1) A mutual termination executed by the parties and recorded in the office of  
22 the register of deeds of the county in which the property is located, or  
23 (2) ~~A final judgment or court order entered by a court of competent jurisdiction~~  
24 ~~that terminates the purchaser's rights to the property and extinguishes the~~  
25 ~~equity of redemption. A certified copy of the order shall be recorded in the~~  
26 ~~office of the register of deeds of the county in which the property is located~~  
27 ~~pursuant to G.S. 1-228.~~  
28 (3) The filing of a notarized memorandum of termination of option contract in  
29 the office of the register of deeds of the county in which the property is  
30 located.  
31 (4) Delivering to the option purchaser a written notice of cancellation of the  
32 option contract and specifying any material breach. Any notice of  
33 cancellation must be delivered to the option purchaser by hand delivery or  
34 any manner authorized by G.S. 1A-1, Rule 4.

35 ...."

opposed to

Ms Weidenshold, lig



\* H 6 5 4 - V - 1 \*

KL Ripley  
nc Justice

KL Don  
Hannet  
Waley  
SB  
10/5

1           **SECTION 3. G.S. 47G-3 reads as rewritten:**

2   **"§ 47G-3. Application of Landlord Tenant Law.**

3       The provisions of Chapter 42 of the General Statutes apply to covered lease  
4 ~~agreements.~~agreements, unless the parties agree otherwise. The magistrate shall have original  
5 jurisdiction over matters involving covered lease agreements."

6           **SECTION 4. G.S. 47H-2 reads as rewritten:**

7   **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

8       ...  
9       (b)   Contents. – A contract for deed contract shall contain at least all of the following:

10       ...  
11       (14)   ~~A description of conditions of the property that includes whether the~~  
12           ~~property, including any structures thereon, has water, sewer, septic, and~~  
13           ~~electricity service, whether the property is in a floodplain, whether anyone~~  
14           ~~else has a legal interest in the property, and whether restrictive covenants~~  
15           ~~prevent building or installing a dwelling. If restrictive covenants are in place~~  
16           ~~that affect the property, a copy of the restrictive covenants shall be made~~  
17           ~~available to the purchaser at or before the execution of the contract.~~

18       (14a) A completed residential property disclosure statement as provided in  
19           Chapter 47E of the General Statutes.

20       ...  
21       ~~(16)   If the property being sold is encumbered by a deed of trust, mortgage, or~~  
22           ~~other encumbrance evidencing or securing a monetary obligation which~~  
23           ~~constitutes a lien on the property, and the seller is not a licensed general~~  
24           ~~contractor within the meaning of Chapter 87 of the General Statutes, or a~~  
25           ~~licensed manufactured home dealer within the meaning of Article 9A of~~  
26           ~~Chapter 143 of the General Statutes, a statement of the amount of the lien,~~  
27           ~~and the amount and due date, if any, of any periodic payments.~~

28       ...."

29           **SECTION 5. G.S. 47H-6 reads as rewritten:**

30   **"§ 47H-6. Title requirements.**

31       (a)   A seller may not execute a contract for deed with a purchaser if the seller does not  
32       hold title to the property. If the title is not held in fee simple, free from any deeds of trust,  
33       mortgages, or other encumbrances evidencing or securing a monetary obligation which  
34       constitutes a lien on the property, the seller may execute a contract for deed only if the  
35       mortgage or encumbrance is in the name of the seller and meets at least one of the following  
36       conditions:

37       (1)   It was agreed to by the purchaser, in writing, as a condition of a loan  
38           obtained to make improvements on the property.

39       (2)   It was placed on the property by the seller prior to the execution of the  
40       contract for deed if the seller is a licensed general contractor within the  
41       meaning of Chapter 87 of the General Statutes, a licensed manufactured  
42       home dealer within the meaning of Article 9A of Chapter 143 of the General  
43       Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
44       of the General Statutes, provided that the general contractor, manufactured  
45       home dealer, or real estate broker continues to make timely payments on the  
46       outstanding mortgage or encumbrance.

47       (3)   It was placed on the property by the seller prior to the execution of the  
48       contract for deed, if the seller is not a licensed general contractor within the  
49       meaning of Chapter 87 of the General Statutes, a licensed manufactured  
50       home dealer within the meaning of Article 9A of Chapter 143 of the General  
51       Statutes, or a licensed real estate broker within the meaning of Chapter 93A



of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, Statutes, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

(b) If the property being sold is encumbered by one or more deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller must notify encumbrance and notifies the purchaser in a separate written disclosure, provided at or before the execution of the contract, in 14-point type, boldface, capital letters, the following statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.**

(c) In addition to any other remedies at law or equity, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear."

SECTION 6. G.S. 47H-7 reads as rewritten:

"§ 47H-7. Late fees.

No seller may charge a late payment charge under a contract for deed in excess of four percent (4%) five percent (5%) of the amount of the payment past due. A late fee may only be charged on payments that are more than 15 days past due."

SECTION 7. G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) Default. – Whenever ~~a property owner is more than 60 days delinquent a~~ notice of default is filed in the county where the property is located on any loan or debt that is secured by the property, including real estate taxes.

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

- a. The real property is the principal residence of the transferor.
- b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.
- c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
- d. The transferor retains ~~an interest in the property conveyed, including~~ a tenancy interest, an interest under a lease-purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed property.

...."

SECTION 8. G.S. 75-121 reads as rewritten:

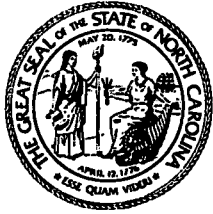
"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the

1 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market  
2 value of the property as determined by a licensed appraiser. An appraisal to determine the fair  
3 market value of the property must be performed no more than 90 days prior to the transfer. The  
4 appraisal shall be delivered to the transferor no more than three days after the appraisal is  
5 performed and no less than seven days prior to the transfer of the property. This section does  
6 not apply to exempt transactions.  
7 ...."

8 **SECTION 9.** This act becomes effective October 1, 2011, and applies to  
9 transactions entered on or after that date.

*Inclusion on a  
tenant*



## HOUSE BILL 450: No Automatic Renewal of Credit Card Contracts

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	May 4, 2011
<b>Introduced by:</b>	Rep. Starnes	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 450 would prohibit the automatic renewal of merchant credit card processing contracts.*

**CURRENT LAW:** A contract is an agreement between two or more parties which creates legal obligations. By statute, the following contracts are void and unenforceable because they are against public policy: (1) construction indemnity agreements (provisions which purport to hold someone harmless for negligence arising out of construction contracts), (2) contracts to improve real property if it makes the contract subject to laws of another state or provides that another state is the exclusive forum for resolving the contract, (3) certain contracts with forum selection clauses (but not non-consumer loan transactions or arbitration in another state with the agreement of the parties), and (4) contracts waiving jury trials (except for statutes allowing agreements to arbitrate disputes). If a portion of a contract is deemed to be void against public policy, the remainder of the contract may be enforceable to the extent it is severable from the void portion.

**BILL ANALYSIS:** House Bill 450 would provide that any provision in a contract to provide credit card or other payment system processing for merchants for the automatic renewal of the contract is against public policy, void, and unenforceable. However, the bill does not prohibit the renewal of contracts following a 60-day notice of an upcoming expiration from the processing company and an acceptance of the renewal signed by the merchant.

**EFFECTIVE DATE:** The act becomes effective October 1, 2011, and applies to contracts entered into on or after that date and to contracts currently scheduled to renew automatically on or after that date.

H450-SMRN-36(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 450

Short Title: No Automatic Renewal of Credit Card Contracts. (Public)

Sponsors: Representative Starnes (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Banking.

March 24, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD  
3 PROCESSING CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1 of Chapter 22B of the General Statutes is amended by  
6 adding a new section to read:

7 "**§ 22B-4. Automatic renewal of merchant credit card processing contracts.**

8 Any provision in a contract to provide credit card or other payment system processing for  
9 merchants that provides for the automatic renewal of the contract is against public policy and is  
10 void and unenforceable. Nothing in this section shall be construed to prohibit the renewal of  
11 contracts following a 60-day notice of an upcoming expiration from the processing company  
12 and an acceptance of the renewal signed by the merchant."

13 SECTION 2. This act becomes effective October 1, 2011, and applies to contracts  
14 entered into on or after that date and to contracts currently scheduled to renew automatically on  
15 or after that date.



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 450  
PROPOSED COMMITTEE SUBSTITUTE H450-PCS30353-RN-19**

Short Title: LRC Study Auto Renewal Credit Card Contracts.

(Public)

Sponsors:

Referred to:

March 24, 2011

1                                   A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY  
3 THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING  
4 CONTRACTS.  
5 The General Assembly of North Carolina enacts:  
6       **SECTION 1.** The Legislative Research Commission may study automatic renewal  
7 provisions in contracts that provide credit card or other payment system processing for  
8 merchants. The Commission is authorized to review current practices in the formation of these  
9 contracts, determine whether the current practices should be amended by law, and examine any  
10 other issue the Commission deems relevant to this study.  
11       **SECTION 2.** The Legislative Research Commission may make an interim report to  
12 the 2011 General Assembly, including any proposed legislation, when it reconvenes for the  
13 2012 Regular Session and shall make its final report, including any legislative proposals, to the  
14 2013 General Assembly.  
15       **SECTION 3.** This act is effective when it becomes law.



\* H 4 5 0 - P C S 3 0 3 5 3 - R N - 1 9 \*

# Daily Bulletin

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## School of Government

The University of North Carolina at Chapel Hill  
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April 6, 2011

**H 654. HOMEOWNER/HOMEBUYER PROTECTION ACT.** Filed 4/6/11. *AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.*

Amends GS 47G-1, adding that the term *option contract* or *contract* does not include a contract that obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract. Amends GS 47G-2, adding that the purchaser's equitable right of redemption upon default and forfeiture will also be extinguished by the filing of a notarized memorandum of termination of option contract in the applicable office of the register of deeds, or by delivering to the option purchaser a written notice of cancellation of the option contract and specifying any material breach. Deletes provision stating that the purchaser's right of redemption is extinguished by a final judgment or court order. Amends GS 47G-3, clarifying that the provisions of GS Chapter 42 (Landlord and Tenant law) apply to covered leased agreements, *unless* the parties agree otherwise, and that the magistrate has original jurisdiction over matters involving covered lease agreements.

Amends GS 47H-2(b) (minimum contents for contracts for deed) to require a contract for deed to also include a completed residential property disclosure statement as specified. Deletes provisions requiring the contract for deed to include a description of property conditions and a statement of the amount of the lien in specified circumstances. Amends GS 47H-6 (title requirements) to permit a seller to execute a contract for deed under specified circumstances and only if the mortgage or encumbrance is in the name of the seller and meets one of the conditions under existing law, including the following condition: the mortgage or encumbrance was placed on the property by the seller before the execution of the contract for deed, if the seller is not a licensed general contractor, a licensed manufactured home dealer, or a licensed real estate broker, and the seller continues to make timely payments on the outstanding mortgage or encumbrance and notifies the purchaser as detailed (deletes language providing for notification when the property is encumbered by one or more encumbrances evidencing or securing a monetary obligation constituting a lien). Makes conforming changes. Amends GS 47H-7, prohibiting a seller from charging a late payment charge under a contract for deed more than 5% (currently, 4%) of the amount of the payment past due.

Amends GS 75-120 (definitions applicable to Article 5A: Home Foreclosure Rescue Scams), clarifying that *default* occurs whenever a notice of default is filed in the county where the property is located (currently, whenever a property owner is more than 60 days delinquent) on any loan or debt secured by the property. Clarifies that *foreclosure rescue transaction* is a transfer of residential real property that includes four features under existing law, including the requirement that the transferor retain a tenancy interest, an interest under a lease with option to purchase agreement, or an option to reacquire the property (clarifies current language). Amends GS 75-121 (pertaining to foreclosure rescue transactions), deleting the delivery timeline for the appraisal, and deleting language excepting exempt transactions from the statute.

Applies to transactions entered on or after October 1, 2011.

Intro. by McCormick, LaRoque. GS 47G, 47H, 75

Property, Land Use, and Housing

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 654

Short Title: Homeowner/Homebuyer Protection Act. (Public)

Sponsors: Representatives McCormick and LaRoque (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47G-1 reads as rewritten:

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

...

- (4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement. The term does not include a contract which obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract.

...."

SECTION 2. G.S. 47G-2 reads as rewritten:

"§ 47G-2. Minimum contents of option contracts; recordation.

...

(e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's equitable right of redemption shall be extinguished by:

- (1) A mutual termination executed by the parties and recorded in the office of the register of deeds of the county in which the property is located, or
- (2) ~~A final judgment or court order entered by a court of competent jurisdiction that terminates the purchaser's rights to the property and extinguishes the equity of redemption. A certified copy of the order shall be recorded in the office of the register of deeds of the county in which the property is located pursuant to G.S. 1-228.~~
- (3) The filing of a notarized memorandum of termination of option contract in the office of the register of deeds of the county in which the property is located.
- (4) Delivering to the option purchaser a written notice of cancellation of the option contract and specifying any material breach. Any notice of cancellation must be delivered to the option purchaser by hand delivery or any manner authorized by G.S. 1A-1, Rule 4.

...."



**SECTION 3. G.S. 47G-3 reads as rewritten:****"§ 47G-3. Application of Landlord Tenant Law.**

The provisions of Chapter 42 of the General Statutes apply to covered lease ~~agreements.~~agreements, unless the parties agree otherwise. The magistrate shall have original jurisdiction over matters involving covered lease agreements."

**SECTION 4. G.S. 47H-2 reads as rewritten:****"§ 47H-2. Minimum contents for contracts for deed; recordation.**

...  
(b) Contents. – A contract for deed contract shall contain at least all of the following:

...  
(14) ~~A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.~~

(14a) A completed residential property disclosure statement as provided in Chapter 47E of the General Statutes.

...  
~~(16) If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.~~

...."

**SECTION 5. G.S. 47H-6 reads as rewritten:****"§ 47H-6. Title requirements.**

(a) A seller may not execute a contract for deed with a purchaser if the seller does not hold title to the property. If the title is not held in fee simple, free from any deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller may execute a contract for deed only if the mortgage or encumbrance is in the name of the seller and meets at least one of the following conditions:

(1) It was agreed to by the purchaser, in writing, as a condition of a loan obtained to make improvements on the property.

(2) It was placed on the property by the seller prior to the execution of the contract for deed if the seller is a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, provided that the general contractor, manufactured home dealer, or real estate broker continues to make timely payments on the outstanding mortgage or encumbrance.

(3) It was placed on the property by the seller prior to the execution of the contract for deed, if the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A



of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, Statutes, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

(b) ~~If the property being sold is encumbered by one or more deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller must notify~~ encumbrance and notifies the purchaser in a separate written disclosure, provided at or before the execution of the contract, in 14-point type, boldface, capital letters, the following statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.**

(c) In addition to any other remedies at law or equity, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear."

SECTION 6. G.S. 47H-7 reads as rewritten:

"§ 47H-7. Late fees.

No seller may charge a late payment charge under a contract for deed in excess of ~~four percent (4%)~~ five percent (5%) of the amount of the payment past due. A late fee may only be charged on payments that are more than 15 days past due."

SECTION 7. G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) Default. – ~~Whenever a property owner is more than 60 days delinquent a~~ notice of default is filed in the county where the property is located on any loan or debt that is secured by the property, including real estate taxes.

...

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

- a. The real property is the principal residence of the transferor.
- b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.
- c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
- d. The transferor retains ~~an interest in the property conveyed, including a tenancy interest, an interest under a lease-purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed.~~ property.

...."

SECTION 8. G.S. 75-121 reads as rewritten:

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the

1 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market  
2 value of the property as determined by a licensed appraiser. An appraisal to determine the fair  
3 market value of the property must be performed no more than 90 days prior to the transfer. The  
4 ~~appraisal shall be delivered to the transferor no more than three days after the appraisal is~~  
5 ~~performed and no less than seven days prior to the transfer of the property. This section does~~  
6 ~~not apply to exempt transactions.~~

7 ...."

8 **SECTION 9.** This act becomes effective October 1, 2011, and applies to  
9 transactions entered on or after that date.



# HOUSE BILL 713: Public Contracts/Multiple Award

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 1, 2011
<b>Introduced by:</b>	Reps. Stam, Lewis, Murry	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H713-CSRN-17		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute for House Bill 713 would require the Department of Administration to use multiple award scheduling contracts for the purchase of all ground maintenance, construction, and forestry equipment. The PCS makes the following technical changes: (1) on page 1, line 12, it deletes the word "catalogue" and substitutes the word "catalogues" and (2) on page 2, line 4, it adds the word "equipment" in two places where it was inadvertently left out.*

[As introduced, this bill was identical to S767, as introduced by Sens. Brock, Rouzer, which is currently in Senate Commerce.]

**CURRENT LAW:** Article 3 of Chapter 143 of the General Statutes governs purchases and contracts for State government.

**BILL ANALYSIS:** The PCS for House Bill 713 would require the use of multiple award schedule contracts for the acquisition of ground maintenance equipment, construction equipment, and forestry equipment. It would require the Department of Administration to issue requests for proposals for multiple award schedule contracts for ground maintenance equipment, construction equipment, and forestry equipment not later than June 30, 2011. Contracts awarded under the act must be for a term not less than 3 years with annual product and pricing update periods.

Any contracts awarded under the act are in addition to any existing term contracts for ground maintenance equipment, construction equipment, and forestry equipment. Nothing in the act limits the Department of Administration from issuing additional term contracts for the purchase of equipment otherwise available through a multiple award schedule contract.

A **multiple award schedule award contract** is "a contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina." The intent of multiple award schedule award contracts is to evaluate vendors based on a variety of factors, including discounts, total lifecycle costs, and past vendor performance.

**EFFECTIVE DATE:** The act is effective when it becomes law.

H713-SMRN-52(CSRN-17) v4

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 713

Short Title: Public Contracts/Multiple Award.

(Public)

Sponsors: Representatives Stam, Lewis, and Murry (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE  
MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL  
GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by  
adding a new section to read as follows:

**"§ 143-64.1. Multiple Award Schedule Contracts.**

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

(1) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogue for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(2) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.

(3) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.

(4) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and results in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.



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1       (c) Multiple award schedule contracts required. – The acquisition of ground  
2 maintenance, construction, and forestry equipment shall be conducted using multiple award  
3 schedule contracts, except as provided in this section. Not later than June 30, 2011, the  
4 Department of Administration shall issue requests for proposals for multiple award schedule  
5 contracts for all ground maintenance equipment product categories, construction equipment  
6 product categories, and forestry equipment product categories. Contracts awarded under this  
7 subsection shall be for a term of not less than three years with annual product and pricing  
8 update periods.

9       (d) Limitation. – Any contract awarded under subsection (c) of this section shall be in  
10 addition to any existing term contracts for ground maintenance equipment, construction  
11 equipment, and forestry equipment. Nothing in this section shall limit the ability of the  
12 Department of Administration to issue additional term contracts for the specific purchase of  
13 equipment otherwise available through a multiple award schedule contract."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 713  
PROPOSED COMMITTEE SUBSTITUTE H713-CSR-17 [v.1]

5/31/2011 9:46:48 AM

Short Title: Public Contracts/Multiple Award.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE  
3 MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL  
4 GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by  
7 adding a new section to read as follows:

8 **"§ 143-64.1. Multiple Award Schedule Contracts.**

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

10 (1) **Multiple award schedule contract.** – A contract that allows multiple vendors  
11 to be awarded a State contract for goods or services by providing their total  
12 catalogues for lines of equipment and attachments to eligible purchasers,  
13 including State agencies, departments, institutions, public school districts,  
14 political subdivisions, community colleges, and constituent institutions of  
15 The University of North Carolina.

16 (2) **Ground maintenance equipment.** – Hand-held equipment, walk-behind  
17 products, lawn tractors, lawn and garden tractors, commercial walk-behind  
18 mowers, zero turn radius mowers, front mowers, compact utility tractors,  
19 utility tractors, utility vehicles, golf and turf equipment, agricultural tractors  
20 and implements, and appropriate attachments, or equivalent products and  
21 attachments.

22 (3) **Construction equipment.** – Excavators, wheel excavators, track loaders,  
23 compact track loaders, wheel loaders, skid steer loaders, backhoe loaders,  
24 crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes,  
25 compactors, and appropriate attachments, or equivalent products and  
26 attachments.

27 (4) **Forestry equipment.** – Feller bunchers, knuckleboom loaders, forestry swing  
28 machines, harvesters, and appropriate attachments, or equivalent products  
29 and attachments.

30 (b) **Intent.** – The intent of multiple award schedule contracts is to evaluate vendors  
31 based upon a variety of factors, including discounts, total lifecycle costs, service, warranty,  
32 distribution channel, and past vendor performance. Multiple award schedule contracts allow  
33 multiple vendors to compete and be awarded a contract based upon the value of their products



\* H 7 1 3 - C S R N - 1 7 - V - 1 \*

1 or services and results in competitive pricing, transparency, administrative savings, expedited  
2 procurement, and flexibility for State purchasers.

3 (c) Multiple award schedule contracts required. – The acquisition of ground  
4 maintenance equipment, construction equipment, and forestry equipment shall be conducted  
5 using multiple award schedule contracts, except as provided in this section. Not later than June  
6 30, 2011, the Department of Administration shall issue requests for proposals for multiple  
7 award schedule contracts for all ground maintenance equipment product categories,  
8 construction equipment product categories, and forestry equipment product categories.  
9 Contracts awarded under this subsection shall be for a term of not less than three years with  
10 annual product and pricing update periods.

11 (d) Limitation. – Any contract awarded under subsection (c) of this section shall be in  
12 addition to any existing term contracts for ground maintenance equipment, construction  
13 equipment, and forestry equipment. Nothing in this section shall limit the ability of the  
14 Department of Administration to issue additional term contracts for the specific purchase of  
15 equipment otherwise available through a multiple award schedule contract."

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



# HOUSE BILL 721: Landlord/Tenant/Bedbug Liability

2011-2012 General Assembly

<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 1, 2011
<b>Introduced by:</b>	Rep. McCormick	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H721-CSRN-18		Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute (PCS) for House Bill 721 would require landlords and tenants to take certain actions to exterminate bed bugs in dwelling units. The PCS does all of the following: (1) clarifies that a landlord may obtain an inspection (was a certificate) certifying that the premises are free of bedbugs and that the inspection may be done by a licensee qualified for structural pest control, (2) provides that if the landlord did not obtain an inspection and the tenant took possession within 60 days (was 30 days) before written notification was given, then the landlord must contract to exterminate bedbugs within 5 days of receiving notice from the tenant, (3) gives the tenant 60 days (was 30 days) to exterminate bedbugs if the landlord previously obtained an inspection, (4) provides that counties and municipalities may not enact ordinances to create additional duties or remedies related to bedbugs, and (5) changes the effective date to October 1, 2011 (was effective when it becomes law).*

**CURRENT LAW:** Article 5 of Chapter 42 of the General Statutes governs residential rental agreements. Landlords must provide fit premises. This includes (1) complying with building codes, (2) making repairs to keep the premises in a fit and habitable condition, (3) keeping common areas in working order, repairing electrical, plumbing, heating, and air conditioning, (4) providing operable smoke detectors and carbon monoxide detectors, and (5) repairing imminently dangerous conditions within a reasonable period of time (though the landlord may recover costs of the repairs that are the fault of the tenant).

Tenants must maintain dwelling units. This includes (1) keeping the premises clean and safe and causing no unsafe conditions in common areas, (2) disposing of waste in a safe manner, (3) keeping plumbing fixtures clean, (4) not negligently damaging the premises and not rendering smoke and carbon monoxide detectors inoperable, (5) complying with building codes, (6) being responsible for damages unless the damages were due to ordinary wear and tear, acts of the landlord, defective products or repairs of the landlord, acts of third parties who were not invitees, or natural forces, and (7) notifying the landlord of the need to replace or repair smoke detectors or carbon monoxide detectors.

**BILL ANALYSIS:** The PCS for House Bill 721 would provide all of the following:

- Landlords may not offer for lease any premises that the landlord knows to be infested by bedbugs (at the time the landlord and tenant enter into a rental agreement).
- Permits the landlord to obtain an inspection from a licensee qualified for structural pest control. If no evidence is found, this serves as evidence of the landlord's compliance.
- Provides that tenants must notify the landlord, in writing, within 5 days of suspecting the presence of bedbugs.
  - If the landlord did not obtain an inspection and the tenant took possession within 60 days before written notification was given, then the landlord must contract to exterminate bedbugs within 5 days of receiving notice from the tenant.



# House PCS 721

Page 2

- If the landlord did obtain an inspection or if at least 60 days have passed since the tenant took possession of the premises, then the tenant must have the bedbugs exterminated.
- Provides that if the tenant is responsible for extermination, then the landlord may provide the contact information of the licensee that inspected the premises or the contact information of other licensees that are reputable.
- Provides that within 7 days of notifying the landlord of the presence of bedbugs, the tenant must do both of the following:
  - Contract with one of the licensees suggested by the landlord or, if no companies were suggested, with any licensee.
  - Have the premises treated for bedbugs. (The tenant must pay to remove the bedbugs and for damages caused by them.)
- Provide that once the premises have been treated, the tenant is responsible for all subsequent infestations. However, if a tenant notifies the landlord and a licensee determines that an adjacent unit is the source of the bedbugs, then the tenant in the source unit must exterminate the bedbugs.
- If a tenant fails to comply with these provisions, then the landlord may (1) arrange to have the bedbugs removed at the tenant's expense, (2) terminate the tenant's tenancy, or (3) seek damages from the tenant in court.
- Provides that counties and municipalities may not enact or enforce laws or ordinances creating additional duties or remedies for landlords or tenants relating to an infestation of bedbugs.
- Permits a landlord to use a security deposit for damages due to a violation of the tenant's obligations to deal with bedbug infestations.

**EFFECTIVE DATE:** The act would become effective October 1, 2011.

*H721-SMRN-54(CSRN-18) v4*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

H

1

HOUSE BILL 721

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors: Representative McCormick (Primary Sponsor).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
EXTERMINATE BEDBUGS IN DWELLING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) reads as rewritten:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(9) Not offer for lease any premises that, at the time the landlord and tenant enter into a rental agreement, the landlord knows to be infested by the species cimex lectularius, also known as bedbugs. The landlord may, prior to leasing the premises, obtain a certificate from a licensed pest control company certifying that the premises are free of an infestation of bedbugs, and the certificate shall serve as conclusive evidence of the landlord's compliance with the provisions of this subdivision."

SECTION 2. G.S. 42-43(a) reads as rewritten:

"§ 42-43. Tenant to maintain dwelling unit.

(a) The tenant shall:

...

(8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation of the species cimex lectularius, also known as bedbugs."

SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

(a) A tenant shall notify his or her landlord, in writing, within five days of suspecting the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the landlord did not obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than 30 days before the written notification was given, then, within five days of receiving the notice from the tenant, the landlord shall contract with a licensed pest control company to exterminate any bedbugs in the premises. If the landlord did obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), or if at least 30 days have passed since the tenant took initial possession of the premises, it shall be the tenant's responsibility to have the bedbugs in the premises exterminated.



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(b) Where the tenant is responsible for the extermination of bedbugs, the landlord may provide the tenant with either the name, address, and telephone number of the licensed pest control company that certified the premises were free of an infestation of bedbugs or with the name, address, and telephone number of pest control companies that the landlord deems reputable. Within seven days of notifying the landlord of the suspected presence of bedbugs, the tenant shall do both of the following: (i) contract with one of the licensed pest control companies suggested by the landlord or, if no companies were suggested, with any licensed pest control company, and (ii) have the premises treated for bedbugs by the licensed pest control company. In all situations, the tenant shall allow the landlord and the licensed pest control company access to the premises and shall carefully follow all instructions provided by the landlord or licensed pest control company to facilitate the elimination of bedbugs. Where the tenant is responsible for the extermination of bedbugs, the tenant shall be solely responsible for any fees charged by the licensed pest control company and any damages associated with the presence and elimination of bedbugs from the premises and any attached units and spaces, and the tenant shall furnish to the landlord proof from the licensed pest control company of the services performed.

(c) After a licensed pest control company has treated the premises and deemed the premises free of an infestation of bedbugs, the tenant shall be responsible for all subsequent infestations. However, whenever a tenant notifies the landlord of the presence of bedbugs, if it is determined by a licensed pest control company that the source of the bedbugs is an adjacent unit, then the tenant in the source unit shall be responsible for the extermination of the bedbugs in accordance with the provisions of this section.

(d) The failure of any tenant to comply with the provisions of this section shall be a breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of the following: (i) contract with a licensed pest control company at the tenant's expense to exterminate the bedbugs; (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for damages."

**SECTION 4.** G.S. 42-51 reads as rewritten:

**"§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 721  
PROPOSED COMMITTEE SUBSTITUTE H721-CSRN-18 [v.5]

6/1/2011 8:53:01 AM

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
EXTERMINATE BEDBUGS IN DWELLING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) reads as rewritten:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(9) Not offer for lease any premises that, at the time the landlord and tenant enter into a rental agreement, the landlord knows to be infested by the species cimex lectularius, also known as bedbugs. The landlord may, prior to leasing the premises, obtain an inspection from a licensee under G.S. 106-65.24(15). If no evidence is found, the written report of the inspection shall serve as evidence of the landlord's compliance with the provisions of this subdivision. G.S. 42-43.1 and this subdivision shall comprise the sole and exclusive duties of a landlord relating to an infestation of cimex lectularius, also known as bedbugs; no other subsection of G.S. 42-42 shall be construed to impose any duties or obligations upon a landlord relating to an infestation of bedbugs.

SECTION 2. G.S. 42-43(a) reads as rewritten:

"§ 42-43. Tenant to maintain dwelling unit.

(a) The tenant shall:

...

(8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation of the species cimex lectularius, also known as bedbugs."

SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

(a) A tenant shall notify his or her landlord, in writing, within five days of suspecting the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the landlord did not obtain an inspection from a licensee under G.S. 106-65.24(15), and the tenant took initial possession of the premises less than 60 days before the written notification was given, then, within five days of receiving the notice from the tenant, the landlord shall contract



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1 with a licensee to exterminate any bedbugs in the premises. If the landlord did obtain an  
2 inspection from a licensee under G.S. 106-65.24(15) or if at least 60 days have passed since the  
3 tenant took initial possession of the premises, it shall be the tenant's responsibility to have the  
4 bedbugs in the premises exterminated.

5 (b) Where the tenant is responsible for the extermination of bedbugs, the landlord may  
6 provide the tenant with either the name, address, and telephone number of the licensee that  
7 inspected the premises or with the name, address, and telephone number of the licensees that  
8 the landlord deems reputable. Within seven days of notifying the landlord of the suspected  
9 presence of bedbugs, the tenant shall do both of the following: (i) contract with one of the  
10 licensees suggested by the landlord or, if no companies were suggested, with any licensee, and  
11 (ii) have the premises treated for bedbugs by the licensee. Where the tenant is responsible for  
12 the extermination of bedbugs, the tenant shall be solely responsible for any fees charged by the  
13 licensee and any damages associated with the presence and elimination of bedbugs from the  
14 premises and any attached units and spaces, and the tenant shall furnish to the landlord proof  
15 from the licensee of the services performed.

16 (c) In all situations, the tenant shall allow the landlord and the licensee access to the  
17 premises and shall carefully follow all instructions provided by the landlord or licensee to  
18 facilitate the elimination of bedbugs.

19 (d) After a licensee has treated the premises, the tenant shall be responsible for all  
20 subsequent infestations. However, whenever a tenant notifies the landlord of the presence of  
21 bedbugs, if it is determined by a licensee that the source of the bedbugs is an adjacent unit, then  
22 the tenant in the source unit shall be responsible for the extermination of the bedbugs in  
23 accordance with the provisions of this section.

24 (e) The failure of any tenant to comply with the provisions of this section shall be a  
25 breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of  
26 the following: (i) contract with a licensee at the tenant's expense to exterminate the bedbugs;  
27 (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for  
28 damages.

29 (f) G.S. 42-42(a)(9), G.S. 42-43(a)(8), and this section shall form the sole and exclusive  
30 duties and responsibilities of landlords and tenants in North Carolina relating to an infestation  
31 of cimex lectularius, also known as bedbugs. Counties and municipalities shall not enact or  
32 enforce any ordinance or law that creates any additional duty or remedy for landlords or tenants  
33 relating to an infestation of bedbugs except as provided herein.

34 (g) For purposes of this section, the term "licensee" shall have the same meaning as in  
35 G.S. 106-65.24(15).

36 **SECTION 4. G.S. 42-51 reads as rewritten:**

37 **"§ 42-51. Permitted uses of the deposit.**

38 Security deposits for residential dwelling units shall be permitted only for the tenant's  
39 possible nonpayment of rent and costs for water or sewer services provided pursuant to  
40 G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations  
41 under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien  
42 against the demised property due to the tenant's occupancy, costs of re-renting the premises  
43 after breach by the tenant, costs of removal and storage of tenant's property after a summary  
44 ejectment proceeding or court costs in connection with terminating a tenancy. The security  
45 deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one  
46 and one-half months' rent if a tenancy is month to month, and two months' rent for terms  
47 greater than month to month. These deposits must be fully accounted for by the landlord as set  
48 forth in G.S. 42-52."

49 **SECTION 5. This act becomes effective October 1, 2011.**



## HOUSE BILL 813: ESC/Jobs Reform

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 1, 2011
<b>Introduced by:</b>	Reps. Howard, Starnes	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	PCS to First Edition H813-CSLR-15		Committee Counsel

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**SUMMARY:** *House Bill 813 would transfer all of the statutory powers, duties, and functions of the Employment Security Commission to the Department of Commerce. The bill would establish a Division of Employment Security within the Department of Commerce and subject that Division to the rule-making requirements under the Administrative Procedure Act. The bill also makes other modifications and conforming changes to align the employment security functions under the Secretary of Commerce. The Secretary of Commerce is directed to make a detailed written report to various offices within the General Assembly by June 30, 2012.*

*The act would become effective when it becomes law.*

[As introduced, this bill was identical to S532, as introduced by Sens. Clary, Rucho, which is currently in Senate Finance.]

### BILL ANALYSIS:

#### Part I. Transfer; General Provisions; Rulemaking

House Bill 813 would eliminate the current Employment Security Commission and transfer all of its statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds to the Department of Commerce. The bill authorizes the establishment of the Division of Employment Security, under the direction of the Secretary of Commerce, to become the successor to the Commission for purposes of all the rights, powers, duties and obligations of the Employment Security Commission. The Secretary of Commerce is made the successor for purposes of any contract, or other document which refers to the Employment Security Commission. The bill also directs that the Secretary shall also be substituted as a party in any action or proceeding pending on November 1, 2011, brought by or against the Employment Security Commission.

Under current law, the Employment Security Commission is fully exempt from the Administrative Procedure Act. This bill repeals the full exemption and subjects the Division of Employment Security to the rulemaking requirements of Article 2A of Chapter 150B. The Division is directed to adopt all existing rules in accordance with the procedures set forth in Article 2A. Any existing rule that has not been readopted by December 31, 2012, will expire. The bill exempts the Department of Commerce for hearings and appeals conducted under the Employment Security Law from the contested case provisions of Chapter 150B.

#### Part II. Substantive Amendments and Conforming Changes to the Employment Security Laws

This part of the bill rewrites Chapter 96 of the General Statutes to delete all references to the Employment Security Commission and substitutes "Department of Commerce, Division of Employment Security" or "Division". The current seven member commission is abolished. The Secretary is directed

# House PCS 813

Page 2

to appoint an Assistant Secretary to oversee the Division. A three member Board of Review, appointed by the Governor, is authorized to hear appeals arising from the decisions of the Division and to determine the policies and procedures for conducting appeals. The Board is composed of one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public must be a licensed attorney and will serve as chair of the Board. The members will each serve four-year terms and will be subject to confirmation by the General Assembly. Two working sections are created within Division. The Employment Security Section will administer the employment services functions and the Employment Insurance Section will administer the unemployment taxation and assessment functions.

Section 2.14 makes significant clarifications regarding benefit eligibility:

- No individual is eligible for benefits if incarcerated.
- An individual is not penalized for in the Trade Jobs for Success participation.

Section 2.15 rewrites the definition of misconduct connected with work to include intentional acts or omissions evidencing disregard of an employer's interest or standards of behavior which the employer has a right to expect or which has been communicated to the employee.

This section also amends the definition of "discharge for misconduct with the work" to include:

- Violating the employer's written alcohol or illegal drug policy.
- Arrest or conviction for an offense involving violence, sex crimes, illegal drugs, or other activities which could negatively affect the employer's reputation in the community or business dealings.
- Any physical violence related to an employee's work for an employer including, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment.
- Theft in connection with employment.
- Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- Violation of an employer's written absenteeism policy.
- Refusing to perform reasonably assigned work tasks.
- The failure to adequately perform any other employment duties as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination.

**Part III** Makes other conforming amendments to the General Statutes.

**Part IV** Reporting; other matters.

Section 4.1 directs that the Board of Review be appointed with staff assigned by the Department of Commerce by November 15, 2011.

# House PCS 813

Page 3

Section 4.2 directs the Secretary of Commerce to make a detailed written report to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the consolidation by June 30, 2012.

**EFFECTIVE DATE:** Except as otherwise provided, this act becomes effective when it becomes law.

*Heather Fennell, counsel to Senate Finance, contributed to this summary.*

*H813-SMRO-28(CSLR-15) v1*



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 813\***

Short Title:   ESC/Jobs Reform. (Public)

Sponsors:   Representatives Howard and Starnes (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to:   Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA  
BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE  
DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE  
EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE  
DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2 OF CHAPTER 150B  
OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND  
CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY  
FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF  
THE SECRETARY OF COMMERCE.

The General Assembly of North Carolina enacts:

**PART I.   TRANSFER; GENERAL PROVISIONS; RULE MAKING**

**SECTION 1.1.** Transfers of Agency, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Employment Security Commission are transferred to the Department of Commerce with all of the elements of a Type I transfer as defined by G.S. 143A-6.

**SECTION 1.2.** Continuation of Duties. – Any previous assignment of duties of a quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, office, bureau, or other subunit of State government transferred to the Secretary of Commerce and the Department of Commerce, Division of Employment Security, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Secretary of Commerce and the Department of Commerce, Division of Employment Security, are charged with exercising the functions of the former named entity.

**SECTION 1.3.** No action or proceeding pending on January 1, 2012, brought by or against the Employment Security Commission shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Department of Commerce, Division of Employment Security. In these actions and proceedings, the Secretary of Commerce or the Department of Commerce shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Employment Safety and Security Commission,



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or by the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on the date this act becomes effective, may be conducted and completed by the Employment Safety and Security Commission in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners, or directors thereof.

**SECTION 1.4.** G.S. 143B-431(a)(1) and (a)(2) read as rewritten:

**"§ 143B-431. Department of Commerce – functions.**

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

- (1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;
- (2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:
  - a. The State Board of Alcoholic Control,
  - b. The North Carolina Utilities Commission,
  - c. ~~The Employment Security Commission,~~
  - d. The North Carolina Industrial Commission,
  - e. State Banking Commission and the Commissioner of Banks,
  - f. Savings Institutions Division,
  - g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
  - h. Credit Union Commission,
  - i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission,
  - k. The North Carolina Rural Electrification Authority,
  - l. The North Carolina State Ports Authority,all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

...."

**SECTION 1.5.** G.S. 143B-433(1) reads as rewritten:

**"§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

- (1) The following agencies:
  - a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The North Carolina Utilities Commission.
  - c. ~~The Employment Security Commission.~~
  - d. The North Carolina Industrial Commission.
  - e. State Banking Commission.
  - f. Savings Institutions Division.
  - g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
  - h. Credit Union Commission.
  - i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.

- j. The North Carolina Mutual Burial Association Commission.
  - k. North Carolina Cemetery Commission.
  - l. The North Carolina Rural Electrification Authority.
  - m. Repealed by Session Laws 1985, c. 757, s. 179(d).
  - n. North Carolina Science and Technology Research Center.
  - o. The North Carolina State Ports Authority.
  - p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2, 2010.
  - q. Economic Development Board.
  - r. Labor Force Development Council.
  - s., t. Repealed by Session Laws 2000, c. 140, s. 76(j), effective September 30, 2000.
  - u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
  - v. Repealed by Session Laws 1993, c. 321, s. 313b.
- (2) Those agencies which are transferred to the Department of Commerce including the:
- a. Community Assistance Division.
  - b. Community Development Council.
  - c. Employment and Training Division.
  - d. Job Training Coordinating Council.

(3) The Division of Employment Security.

~~(3)~~(4) Such divisions as may be established pursuant to Article 1 of this Chapter."

**SECTION 1.6.** G.S. 143B-343(c) reads as rewritten:

(c) Advice and Staff. – The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

- (1) The Department of Administration.
- (2) The Department of Agriculture and Consumer Services.
- (3) The Division of Employment Security ~~Commission~~ Security.
- (4) The Department of Labor.
- (5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group."

**SECTION 1.7.** G.S. 143B-438.10(b)(1) reads as rewritten:

"(b) Membership; Terms. – The Commission on Workforce Development shall consist of 38 members appointed as follows:

- (1) By virtue of their offices, the following department and agency heads or their respective designees shall serve on the Commission: the Secretary of the Department of Health and Human Services, the ~~Chair Assistant Secretary of Commerce in charge of the Division of Employment Security Commission~~, Security, the Superintendent of Public Instruction, the President of the Community Colleges System Office, the Commissioner of the Department of Labor, and the Secretary of the Department of Commerce."

**SECTION 1.8.** G.S. 143B-438.16 reads as rewritten:

"§ 143B-438.16. Trade Jobs for Success initiative established; funds; program components and guidelines.

(a) There is established within the Department of Commerce the Trade Jobs for Success (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with the ~~Employment Security Commission and the~~ Community Colleges System Office.

(b) There is created in the Department of Commerce a special, nonreverting fund called the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS initiative. The Department of Commerce shall develop guidelines for administration of the TJS initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the administration of the Fund. The members of the advisory council shall include:

(1) ~~The Chairman~~ Assistant Secretary of Commerce in charge of the Division of Employment Security Commission Security or that officer's designee.

(2) The President of the Community Colleges System or that officer's designee.

(3) The State Auditor or that officer's designee.

(4) A representative of a statewide association to further the interests of business and industry in North Carolina designated by the Secretary of Commerce.

(c) At a minimum, the Trade Jobs for Success initiative shall include the following programmatic components:

(1) Displaced workers participating in the TJS initiative shall receive (i) on-the-job training to learn new job skills and (ii) educational assistance or remedial education specifically designed to help displaced workers qualify for new jobs.

(2) Displaced workers participating in the TJS initiative shall not lose their eligibility for unemployment insurance benefits while they are in the program and may receive wage supplements, as appropriate.

(3) In-State relocation assistance, in appropriate instances, where participating individuals must relocate to work for participating employers.

(4) Mentoring, both on and off the job, shall be provided to participants in a dignified manner through telephone assistance and other appropriate means.

(5) Financial assistance and other incentives may be provided to participating employers who provide jobs to participating displaced workers to help defray the costs of providing the on-the-job training opportunities.

(6) Work provided by participating employers as part of the TJS initiative must be full-time employment. Wages paid shall not be less than the hourly entry-level wage normally paid by the employer.

(7) Staff of the Division of the Employment Security Commission Security, in conjunction with other appropriate staff of the Department of Commerce, shall match participating displaced workers to the most suitable employer.

(8) Local Employment Security ~~Commission~~ offices operated by the Division of Employment Security and community colleges shall enter into partnership agreements with local chambers of commerce, and other appropriate organizations, that would encourage employer participation in the TJS initiative.

(9) Tracking of participating individuals and businesses by the Department of Commerce ~~and the Employment Security Commission~~ to assure program integrity and effectiveness and the compilation of data to generate the reports necessary to evaluate the success of the TJS initiative.

(10) Coordination and integration of existing programs in the Department of Commerce, the ~~Employment Security Commission~~, Division of Employment Security, and the North Carolina Community College System in a manner that maximizes the flexibility of these agencies to effectively assist participating individuals and businesses."

SECTION 1.9. G.S. 143B-438.17(c) reads as rewritten:

"(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the ~~Employment Security Commission~~ Division of Employment Security and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

**SECTION 1.10.(a)** G.S. 150B-1(c) reads as rewritten:

**"§ 150B-1. Policy and scope.**

(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) The Industrial Commission.
- (5) ~~The Employment Security Commission.~~
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery.
- (8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

**SECTION 1.10.(b)** G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- ...
- (18) The Department of Commerce for hearings and appeals authorized under Chapter 96 of the General Statutes."

**SECTION 1.10.(c)** The Department of Commerce, Division of Employment Security and Insurance, shall adopt all existing rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire.

**PART II. SUBSTANTIVE AMENDMENTS AND CONFORMING CHANGES TO THE EMPLOYMENT SECURITY LAWS**

**SECTION 2.1.** G.S. 96-1 reads as rewritten:

**"§ 96-1. Title.**

This Chapter shall be known and may be cited as the "Employment Security Law." Any reference to the Unemployment Compensation Commission shall be deemed a reference to the ~~Employment Security Commission~~ Department of Commerce, Division of Employment Security (DES), and all powers, duties, funds, records, etc., of the Unemployment Compensation Commission ~~are transferred to the Employment Security Commission.~~ Commission, and the Employment Security Commission, are transferred to the DES."

SECTION 2.2. G.S. 96-3 reads as rewritten:

**"§ 96-3. Employment Security Commission.Division of Employment Security.**

The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of Commerce through two coordinate sections: the Employment Security Section and the Employment Insurance Section. The Employment Security Section shall administer the employment services functions of the Division. The Employment Insurance Section shall administer the unemployment taxation and assessment functions of the Division.

(a) ~~Organization.~~ There is hereby created a commission to be known as the Employment Security Commission of North Carolina. The Commission shall consist of seven members to be appointed by the Governor on or before July 1, 1941. The Governor shall have the power to designate the member of said Commission who shall act as the chairman thereof. The chairman of the Commission shall not engage in any other business, vocation or employment. Three members of the Commission shall be appointed by the Governor to serve for a term of two years. Three members shall be appointed to serve for a term of four years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each, thereafter, and the member of said Commission designated by the Governor as chairman shall serve at the pleasure of the Governor. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Governor may at any time after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) ~~Divisions.~~ The Commission shall establish two coordinate divisions: the North Carolina State Employment Service Division, created pursuant to G.S. 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except insofar as the Commission may find that such separation is impracticable. Notwithstanding any other provision of this Chapter, administrative organization of the agency shall be in accordance with that which the Commission finds most desirable in order to perform the duties and functions of the agency.

(c) ~~Salaries.~~ The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations Act for the Secretary of Commerce, and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.

(d) ~~Quorum.~~ The chairman or his designee and three members of the Commission shall constitute a quorum."

SECTION 2.3. G.S. 96-4 reads as rewritten:

**"§ 96-4. Administration.Administration; powers and duties of the Assistant Secretary; Board of Review.**

(a) ~~Duties and Powers of Commission.~~ the Secretary and Assistant Secretary. – It shall be the duty of the ~~Commission~~ Secretary of the Department of Commerce to administer this Chapter. ~~Chapter.~~ The Secretary shall appoint an Assistant Secretary to assist in the implementation of the Employment Security Laws and the oversight of the Division of Employment Security.

(b) Board of Review. – The Governor shall appoint a three-person Board of Review to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The Board of Review shall be comprised of one member representing employers, one member representing employees, and one member representing the general public. Members of the Board of Review are subject to confirmation by the General Assembly and shall serve four-year terms. The member appointed to represent the general public shall serve as chair of the Board of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be set by the General Assembly in the current Operations Appropriations Act. ~~The Commission shall meet at least once in each 60 days and may hold special meetings at any time at the call of the chairman or any three members of the Commission, and the Commission shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of this Chapter. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Chapter, which the Commission shall prescribe. The Commission~~

(c) Procedures. – The Secretary of the Department of Commerce shall determine its own the organization and methods of procedure of the Division in accordance with the provisions of this Chapter, and shall have an official seal which shall be judicially noticed. ~~The chairman of said Commission shall, Assistant Secretary shall, except as otherwise provided by the Commission, Secretary, be vested with all authority of the Commission, Secretary under this Chapter, including the authority to conduct hearings and make decisions and determinations, when the Commission is not in session and shall execute all orders, rules and regulations established by said Commission. the Secretary. Not later than November 20 preceding the meeting of the General Assembly, the Commission Secretary shall submit to the Governor a report covering the administration and operation of this Chapter during the preceding biennium, and shall make such recommendation for amendments to this Chapter as the Commission Secretary deems proper. Such The report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission Secretary in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission Secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it the Secretary shall promptly so inform the Governor and the legislature, and make recommendations with respect thereto.~~

~~(b)(d) Regulations and General and Special Rules.~~ Rule Making. – Rules adopted to implement the Employment Security Laws in accordance with this Chapter shall be made pursuant to Article 2 of Chapter 150B of the General Statutes, the Administrative Procedures Act. ~~General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. The Commission shall not take final action on a general or special rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments.~~

1 ~~The notice shall be published in one or more newspapers of general circulation in this State at~~  
2 ~~least 10 days before the public hearing and at least 20 days prior to the proposed effective date~~  
3 ~~of the proposed permanent regulation. The published notice of public hearing shall include the~~  
4 ~~time and place of the public hearing; a statement of the manner in which data, opinions, and~~  
5 ~~arguments may be submitted to or before the Commission; a statement of the terms or~~  
6 ~~substance of the proposed regulation; a statement of whether a fiscal note has been or will be~~  
7 ~~prepared for the proposed regulation; and the proposed effective date of the regulation. Any~~  
8 ~~permanent regulation adopted after following the above procedure shall become effective on its~~  
9 ~~effective date and after it is published in the manner provided for in subsection (e) as well as~~  
10 ~~such additional publication as the Commission deems appropriate. Additionally, the~~  
11 ~~Commission shall provide notice of adoption by mail to the last known addresses of all persons~~  
12 ~~who submitted data, opinions, or arguments to the Commission with respect to the regulation.~~  
13 ~~Temporary regulations may be adopted, amended, or rescinded by the Commission and shall~~  
14 ~~become effective in the manner and at the time prescribed by the Commission but shall remain~~  
15 ~~in force for no longer than 120 days.~~

16 ~~(e)~~(e) Publication. – ~~The Commission~~Division shall cause to be printed for distribution to  
17 the public the text of this Chapter, the ~~Commission's regulations and general~~Division's rules,  
18 and any other material the ~~Commission~~Division deems relevant and suitable, and shall furnish  
19 the same to any person upon application therefor. All publications printed shall comply with  
20 the requirements of G.S. 143-170.1.

21 ~~(d)~~(f) Personnel. – Subject to other provisions of this Chapter, the ~~Commission~~Assistant  
22 Secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of  
23 such officers, accountants, attorneys, experts, and other persons as may be necessary in the  
24 performance of ~~its duties. It the Division's duties under this Chapter.~~ The Assistant Secretary  
25 shall provide for the holding of examinations to determine the qualifications of applicants for  
26 the positions so classified, and except for temporary appointments not to exceed six months in  
27 duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such  
28 examinations. All positions shall be filled by persons selected and appointed on a nonpartisan  
29 merit basis. The ~~Commission~~Secretary of Commerce may delegate to any such person so  
30 appointed such power and authority as ~~it the Secretary~~ deems reasonable and proper for the  
31 effective administration of this Chapter, and may, in ~~its~~his or her discretion, bond any person  
32 handling moneys or signing checks hereunder.

33 ~~(e)~~(g) Advisory Councils. – ~~The~~Upon recommendation of the Secretary of Commerce,  
34 the Governor shall appoint a State Advisory Council composed of men and women  
35 representing employers, employees, and the general public, in equal numbers. The ~~Chairman of~~  
36 ~~the Commission~~Assistant Secretary shall be a member of the State Advisory Council and shall  
37 serve as its chairman. There shall be 15 members of the Council (other than its chairman) who  
38 shall each be appointed for a term of four years. A quorum of the State Advisory Council shall  
39 consist of the chairman, or such appointed member as he may designate, plus one half of the  
40 total appointed members. The function of the Council shall be to aid the ~~Commission~~Division  
41 in formulating policies and discussing problems related to the administration of this Chapter.  
42 Each member of the State Advisory Council attending meetings of the Council shall be paid the  
43 same amount per diem for his or her services as is provided for the members of other State  
44 boards, commissions, and committees who receive compensation for their services, including  
45 necessary time spent in traveling to and from his place of residence within the State to the place  
46 of meeting while engaged in the discharge of the duties of his office, and his actual mileage and  
47 subsistence at the same rate allowed to State officials.

48 ~~(f)~~(h) Employment Stabilization. – ~~The Commission,~~Secretary of Commerce, in  
49 consultation with the Assistant Secretary and with the advice and aid of ~~its the~~ advisory  
50 councils, ~~and through its appropriate divisions,~~ shall take all appropriate steps to reduce and  
51 prevent unemployment; to encourage and assist in the adoption of practical methods of



1 vocational training, retraining and vocational guidance; to investigate, recommend, advise, and  
2 assist in the establishment and operation, by municipalities, counties, school districts, and the  
3 State, of reserves for public works to be used in times of business depression and  
4 unemployment; to promote the reemployment of unemployed workers throughout the State in  
5 every other way that may be feasible; and to these ends to carry on and publish the results of  
6 investigations and research studies.

7 ~~(g)~~(i) Records and Reports. –

8 (1) Each employing unit shall keep true and accurate employment records,  
9 containing such information as the ~~Commission~~Division may prescribe.  
10 ~~Such~~The records shall be open to inspection and be subject to being copied  
11 by the ~~Commission~~Division or its authorized representatives at any  
12 reasonable time and as often as may be necessary. Any employing unit doing  
13 business in North Carolina shall make available in this State to the  
14 ~~Commission~~Division such information with respect to persons, firms, or  
15 other employing units performing services for it which the ~~Commission~~  
16 Secretary deems necessary in connection with the administration of this  
17 Chapter. The ~~Commission~~Division may require from any employing unit  
18 any sworn or unsworn reports, with respect to persons employed by it, which  
19 the ~~Commission~~Secretary deems necessary for the effective administration  
20 of this Chapter.

21 (2) If the ~~Commission~~Division finds that any employer has failed to file any  
22 report or return required by this Chapter or any regulation made pursuant  
23 hereto, or has filed a report which the ~~Commission~~Division finds incorrect  
24 or insufficient, the ~~Commission~~Division may make an estimate of the  
25 information required from such employer on the basis of the best evidence  
26 reasonably available to it at the time, and make, upon the basis of such  
27 estimate, a report or return on behalf of such employer, and the report or  
28 return so made shall be deemed to be prima facie correct, and the  
29 ~~Commission~~Division may make an assessment based upon such report and  
30 proceed to collect contributions due thereon in the manner as set forth in  
31 G.S. 96-10(b) of this Chapter: Provided, however, that no such report or  
32 return shall be made until the employer has first been given at least 10 days'  
33 notice by registered mail to the last known address of such employer:  
34 Provided further, that no such report or return shall be used as a basis in  
35 determining whether such employing unit is an employer within the meaning  
36 of this Chapter.

37 (j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals  
38 referees to hear contested matters arising from the Employment Security Section and the  
39 Employment Insurance Section. Appeals from the decisions of the hearing officers or appeals  
40 referees shall be heard by the Board of Review.

41 ~~(h)~~(k) Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the  
42 ~~chairman~~Assistant Secretary, the Chair of the Board of Review, and any duly authorized  
43 representative or member of the Commission of the Division shall have power to administer  
44 oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel  
45 the attendance of witnesses and the production of books, papers, correspondence, memoranda,  
46 and other records deemed necessary as evidence in connection with a disputed claim or the  
47 administration of this Chapter. Upon a motion, the ~~chairman~~Assistant Secretary, the Chair of  
48 the Board of Review, and any duly authorized representative or member of the Commission of  
49 the Division may quash a subpoena if, after a hearing, ~~the Commission finds any of the~~  
50 following: any of the following findings are made:

- (1) The subpoena requires the production of evidence that does not relate to a matter in issue.
- (2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.
- (3) The subpoena is subject to being quashed for any other reason sufficient in law.

~~(h1)~~(l) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection ~~(h)~~(k) of this section shall be heard at least 1020 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides.

~~(i)~~(m) Subpoenas. – In case of contumacy by, or refusal to obey a subpoena issued to any person by the ~~Commission or its Secretary, the Assistant Secretary, the Board of Review, or the Division's~~ authorized representative, any clerk of a superior court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the ~~Commission, Division, or its duly authorized representatives,~~ shall have jurisdiction to issue to such person an order requiring such person to appear before the ~~Commission, Division, or its duly authorized representatives,~~ there to produce evidence if so ordered, or there to give testimony touching upon the matter under investigation or in question; and any failure to obey such order of the said clerk of superior court may be punished by ~~the said clerk of superior court any Superior Court judge~~ as a contempt of said court. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the ~~Commission, Division,~~ shall be punished by a fine of not more than fifty dollars ~~(\$50.00) or by imprisonment for not longer than 30 days. (\$50.00).~~

~~(j)~~(n) Protection against Self-Incrimination. – No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the ~~Commission Division, Board of Review,~~ or in obedience to the subpoena of the ~~Commission Division, Board of Review,~~ or any member thereof, or any duly authorized representative of the ~~Commission, Division, or Board of Review~~ in any cause or proceeding before the ~~Commission, Division,~~ on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

~~(k)~~(o) State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission Division or Board of Review~~ shall cooperate, to the fullest extent consistent with the provisions of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to administer the provisions of the Social Security Act approved August 14, 1935, as amended, shall make such reports, in such form and containing such information as such federal agency, official, or bureau may from time to time require, and shall comply with such provisions as such federal agency, official, or bureau may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by such agency, official, or bureau governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Chapter. The ~~Commission Division or Board of Review~~ shall further make its records available to the Railroad Retirement Board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the

1 Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies  
2 thereof as the Board shall deem necessary for its purposes in accordance with the provisions of  
3 section 303 (c) of the Social Security Act as amended.

4 Upon request therefor, the ~~Commission~~-Division shall furnish to any agency of the United  
5 States charged with the administration of public works or assistance through public  
6 employment, the name, address, ordinary occupation, and employment status of each recipient  
7 of benefits, and such recipient's rights to further benefits under this Chapter.

8 The ~~Commission~~-Division is authorized to make such investigations, secure and transmit  
9 such information, make available such services and facilities and exercise such of the other  
10 powers provided herein with respect to the administration of this Chapter as it deems necessary  
11 or appropriate to facilitate the administration of any employment security or public  
12 employment service law, and in like manner, to accept and utilize information, services and  
13 facilities made available to this State by the agency charged with the administration of such  
14 other employment security or public employment service law.

15 The ~~Commission~~-Division shall fully cooperate with the agencies of other states and shall  
16 make every proper effort within its means to oppose and prevent any further action which  
17 would, in its judgment, tend to effect complete or substantial federalization of State  
18 unemployment insurance funds or State employment security programs.

19 ~~(H)~~(p) Reciprocal Arrangements. –

20 (1) The ~~Commission~~-Secretary is hereby authorized to enter into reciprocal  
21 arrangements with appropriate and duly authorized agencies of other states  
22 or of the federal government, or both, whereby:

23 a. Services performed by an individual for a single employing unit for  
24 which services are customarily performed in more than one state  
25 shall be deemed to be services performed entirely within any one of  
26 the states

- 27 1. In which any part of such individual's service is performed or
- 28 2. In which such individual has his residence or
- 29 3. In which the employing unit maintains a place of business,  
30 provided there is in effect, as to such services, an election by  
31 the employing unit, approved by the agency charged with the  
32 administration of such state's employment security law,  
33 pursuant to which the services performed by such individual  
34 for such employing unit are deemed to be performed entirely  
35 within such state.

36 b. Combining wage credits. – The ~~Commission~~-Division shall  
37 participate in any arrangements for the payment of compensation on  
38 the basis of combining an individual's wages and employment  
39 covered under this Chapter with his wages and employment covered  
40 under one or more laws of the federal government and the  
41 unemployment compensation laws of other states which are approved  
42 by the United States Secretary of Labor in consultation with the state  
43 unemployment compensation agencies as reasonably calculated to  
44 assure the prompt and full payment of compensation in such  
45 situations and which include provisions for (1) applying the base  
46 period of a single state law to a claim involving the combining of an  
47 individual's wages and employment covered under two or more state  
48 unemployment compensation laws, and (2) avoiding the duplicate  
49 use of wages and employment by reason of such combining.

50 c. The services of the ~~Commission~~-Division as agent may be made  
51 available to other states in taking interstate claims for such states.

- d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the ~~Commission~~-Division finds will be fair and reasonable as to all affected interests.
- e. The services of the ~~Commission~~-Division may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.
- f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.
- g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.

(2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits for the purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission~~-Division is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

(3) To the extent permissible under the laws and Constitution of the United States, the ~~Commission~~-Division is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

~~(m)~~(q) The ~~Commission~~-Division after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The Commission shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the ~~Commission~~-Division by any employer. Hearings may be before the ~~Commission or a Deputy Commissioner~~ Board of Review or the Division and shall be held in the central office of the ~~Commission~~-Division or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the ~~Commission~~ Board of Review and a determination of the law applicable to that evidence. The ~~Commission~~-Division shall provide for the taking of evidence by a hearing officer ~~who shall be a member of the legal staff of the Commission~~-officer. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Commission~~

1 Division and such hearings shall be recorded, and he shall transmit all testimony and records of  
2 such hearings to the ~~Commission~~ Division or Board of Review for its determination. All such  
3 hearings conducted by such hearing officer shall be scheduled and held in any county in this  
4 State in which the employing unit or employer either resides, maintains a place of business, or  
5 conducts business; however, the ~~Commission~~ Division or Board of Review may require  
6 additional testimony at any hearings held by it at its office. From all decisions or  
7 determinations made by the ~~Commission or a Deputy Commissioner~~ Assistant Secretary or the  
8 Board of Review, any party affected thereby shall be entitled to an appeal to the superior court.  
9 Before ~~such a~~ party shall be allowed to appeal, ~~he the party~~ shall within 10 days after notice of  
10 such decision or determination, file with the ~~Commission~~ Board of Review exceptions to the  
11 decision or the ~~determination of the Commission~~ determination, which exceptions will state  
12 the grounds of objection to ~~such the~~ decision or determination. If any one of ~~such the~~  
13 exceptions shall be overruled then ~~such the~~ party may appeal from the order overruling the  
14 exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of  
15 his appeal. When an exception is made to the facts as found by the ~~Commission~~ Board of  
16 Review, the appeal shall be to the superior court in term time but the decision or determination  
17 of the ~~Commission~~ Division upon such review in the superior court shall be conclusive and  
18 binding as to all questions of fact supported by any competent evidence. When an exception is  
19 made to any rulings of law, as determined by the ~~Commission~~ Board of Review, the appeal  
20 shall be to the judge of the superior court at chambers. The party appealing shall, within 10  
21 days after the notice of appeal has been served, file with the ~~Commission~~ Board of Review  
22 exceptions to the decision or determination overruling the exception which statement shall  
23 assign the errors complained of and the grounds of the appeal. Upon the filing of such  
24 statement the ~~Commission~~ Board of Review shall, within 30 days, transmit all the papers and  
25 evidence considered by it, together with the assignments of errors filed by the appellant to a  
26 judge of the superior court holding court or residing in some district in which such appellant  
27 either resides, maintains a place of business or conducts business, or, unless the appellant  
28 objects after being given reasonable opportunity to object, to a judge of the Superior Court of  
29 Wake County: Provided, however, the 30-day period specified herein may be extended by  
30 agreement of parties. ~~If there be no exceptions to any facts as found by the Commission the~~  
31 ~~facts so found shall be binding upon the court and it shall be heard by the judge at chambers at~~  
32 ~~some place in the district, above mentioned, of which all parties shall have 10 days' notice.~~

33 (n)(r) The cause shall be entitled "State of North Carolina on Relationship of the  
34 ~~Employment Security Commission~~ Division of Employment Security, Department of  
35 Commerce, of North Carolina against (here insert name of appellant)," and if there are  
36 exceptions to any facts found by the ~~Commission~~ Board of Review, it shall be placed on the  
37 civil issue docket of such court and shall have precedence over other civil actions except those  
38 described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are  
39 prescribed for the trial of other civil causes. By consent of all parties the appeal may be held  
40 and determined at chambers before any judge of a district in which the appellant either resides,  
41 maintains a place of business or conducts business, or said appeal may be heard before any  
42 judge holding court therein, or in any district in which the appellant either resides, maintains a  
43 place of business or conducts business. Either party may appeal to the appellate division from  
44 the judgment of the superior court under the same rules and regulations as are prescribed by  
45 law for appeals, except that if an appeal shall be taken on behalf of the ~~Employment Security~~  
46 ~~Commission of North Carolina~~ Department of Commerce, it shall not be required to give any  
47 undertaking or make any deposit to secure the cost of such appeal and such court may advance  
48 the cause on its docket so as to give the same a speedy hearing.

49 (e)(s) The decision or determination of the ~~Commission~~ Division when docketed in the  
50 office of the clerk of the superior court of any county and when properly indexed and  
51 cross-indexed shall have the same force and effect as a judgment rendered by the superior

1 court, and if it shall be adjudged in the decision or determination of the ~~Commission-Division~~  
2 that any employer is indebted to the ~~Commission-Division~~ for contributions, penalties and  
3 interest or either of the same, then said judgment shall constitute a lien upon any realty owned  
4 by said employer in the county only from the date of docketing of such decision or  
5 determination in the office of the clerk of the superior court and upon personalty owned by said  
6 employer in said county only from the date of levy on such personalty, and upon the execution  
7 thereon no homestead or personal property exemptions shall be allowed; provided, that nothing  
8 herein shall affect any rights accruing to the ~~Commission-Division~~ under G.S. 96-10. The  
9 provisions of this section, however, shall not have the effect of releasing any liens for  
10 contributions, penalties or interest, or either of the same, imposed by other law, nor shall they  
11 have the effect of postponing the payment of said contributions, penalties or interest, or  
12 depriving the ~~said Employment Security Commission of North Carolina-Division of~~  
13 ~~Employment Security~~ of any priority in order of payment provided in any other statute under  
14 which payment of the said contributions, penalties and interest or either of the same may be  
15 required. The superior court or any appellate court shall have full power and authority to issue  
16 any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of  
17 said decision or determination of the ~~Commission-Division~~ or to collect any amount of  
18 contribution, penalty or interest adjudged to be due the ~~Commission-Division~~ by said decision  
19 or determination. In case of an appeal from any decision or determination of the ~~Commission~~  
20 ~~Division~~ to the superior court or from any judgment of the superior court to the appellate  
21 division all proceedings to enforce said judgment, decision, or determination shall be stayed  
22 until final determination of such appeal but no proceedings for the collection of any amount of  
23 contribution, penalty or interest due on same shall be suspended or stayed unless the employer  
24 or party adjudged to pay the same shall file with the clerk of the superior court a bond in such  
25 amount not exceeding double the amount of contribution, penalty, interest or amount due and  
26 with such sureties as the clerk of the superior court deems necessary conditioned upon the  
27 payment of the contribution, penalty, interest or amount due when the appeal shall be finally  
28 decided or terminated.

29 ~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations  
30 established by the ~~Commission-Secretary of Commerce~~. The manner in which appeals and  
31 hearings shall be presented and conducted before the ~~Commission-Division~~ shall be governed  
32 by suitable rules and regulations established by it- ~~the Secretary~~. The ~~Commission-Division~~  
33 shall not be bound by common-law or statutory rules of evidence or by technical or formal  
34 rules of procedure but shall conduct hearings in such manner as to ascertain the substantial  
35 rights of the parties.

36 ~~(q)~~(u) Notices of hearing shall be issued by the ~~Commission-Division~~ or its authorized  
37 representative and sent by registered mail, return receipt requested, to the last known address of  
38 any employing unit, employers, persons, or firms involved. The notice shall be sent at least  
39 ~~10~~15 days prior to the hearing date and shall contain notification of the place, date, hour, and  
40 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the  
41 ~~Commission-Division~~ or its authorized representative and shall order ~~him-the witness~~ to appear  
42 at the time, date and place shown thereon. Any bond or other undertaking required to be given  
43 in order to suspend or stay any execution shall be given payable to the ~~Employment-Security~~  
44 ~~Commission of North Carolina-Department of Commerce~~. Any such bond or other undertaking  
45 may be forfeited or sued upon as are any other undertakings payable to the State.

46 ~~(r)~~(v) None of the provisions or sections herein set forth in subsections (m)-(q) shall have  
47 the force and effect nor shall the same be construed or interpreted as repealing any of the  
48 provisions of G.S. 96-15 which provide for the procedure and determination of all claims for  
49 benefits and such claims for benefits shall be prosecuted and determined as provided by said  
50 G.S. 96-15.

1       ~~(s)~~(w) Upon a finding of good cause, the ~~Commission-Division~~ shall have the power in its  
2 sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2).

3       ~~(t)~~(x) Confidentiality of Records, Reports, and Information Obtained from Claimants,  
4 Employers, and Units of Government.

5           (1) Confidentiality of Information Contained in Records and Reports. – (i)  
6 Except as hereinafter otherwise provided, it shall be unlawful for any person  
7 to obtain, disclose, or use, or to authorize or permit the use of any  
8 information which is obtained from any employing unit, individual, or unit  
9 of government pursuant to the administration of this Chapter or  
10 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives  
11 shall be supplied with information from the records of the ~~Employment~~  
12 ~~Security Commission-Division~~ to the extent necessary for the proper  
13 presentation of claims or defenses in any proceeding under this Chapter.  
14 Notwithstanding any other provision of law, any claimant may be supplied,  
15 subject to restrictions as the ~~Commission-Division~~ may by regulation  
16 prescribe, with any information contained in his payment record or on his  
17 most recent monetary determination, and any individual, as well as any  
18 interested employer, may be supplied with information as to the individual's  
19 potential benefit rights from claim records. (iii) Subject to restrictions as the  
20 ~~Commission-Secretary~~ may by regulation provide, information from the  
21 records of the ~~Employment Security Commission-Division~~ may be made  
22 available to any agency or public official for any purpose for which  
23 disclosure is required by statute or regulation. (iv) The ~~Commission-Division~~  
24 may, in its sole discretion, permit the use of information in its possession by  
25 public officials in the performance of their public duties. (v) The  
26 ~~Commission-Division~~ shall release the payment and the amount of  
27 unemployment compensation benefits upon receipt of a subpoena in a  
28 proceeding involving child support. (vi) The ~~Commission-Division~~ shall  
29 furnish to the State Controller any information the State Controller needs to  
30 prepare and publish a comprehensive annual financial report of the State or  
31 to track debtors of the State.

32           (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is  
33 unlawful for any person to disclose any information obtained by the ~~North~~  
34 ~~Carolina State Employment Service-Division~~ from workers, employers,  
35 applicants, or other persons or groups of persons in the course of  
36 administering the State Public Employment Service Program. Provided,  
37 however, that if all interested parties waive in writing the right to hold such  
38 information confidential, the information may be disclosed and used but  
39 only for those purposes that the parties and the ~~Commission-Division~~ have  
40 agreed upon in writing. (ii) The ~~Employment Service-Division~~ shall make  
41 public, through the newspapers and any other suitable media, information as  
42 to job openings and available applicants for the purpose of supplying the  
43 demand for workers and employment. (iii) The Labor Market Information  
44 ~~Division-Unit~~ shall collect, collate, and publish statistical and other  
45 information relating to the work under the ~~Commission's~~Division's  
46 jurisdiction; investigate economic developments, and the extent and causes  
47 of unemployment and its remedies with the view of preparing for the  
48 information of the General Assembly such facts as in the  
49 ~~Commission's~~Division's opinion may make further legislation desirable. (iv)  
50 Except as provided by ~~Commission-regulation, rules adopted by the~~  
51 Division, any information published pursuant to this subdivision shall not be

- published in any manner revealing the identity of the applicant or the employing unit.
- (3) Penalties for Disclosure or Improper Use. – Any person violating any provision of this section may be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (~~\$200.00~~), ~~or imprisoned for not longer than 90 days, or both (\$200.00).~~
- (4) Regulations. – The ~~Commission~~ Division may provide by ~~regulation~~ rule for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The ~~Commission~~ Division is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.
- (5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. – All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the ~~Commission~~ Division or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the ~~Commission~~ Division, upon written request and on a reimbursable basis only, from disclosing information from the records of a proceeding ~~before an appeals referee, deputy commissioner, or other hearing officer by whatever name called,~~ compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.
- (6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.
- (7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~ Division from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the ~~Commission~~ Division, its agents, or its employees.
- (7a) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the ~~Employment Security Commission~~ Division with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the ~~Employment Security Commission's~~ compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.
- (7b) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the ~~Employment Security Commission~~ Division as may be required by



Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.

- (8) Any finding of fact or law, judgment, determination, conclusion or final order made by ~~an adjudicator, appeals referee, commissioner, the Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under authority of the ~~Commission-Division~~ pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Provided, however, any finding of fact or law, judgment, determination, conclusion, or final order made by ~~an adjudicator, appeals referee, commissioner, the Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under the authority of the Commission pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission.

~~(u)~~(v) Service of process upon the ~~Commission-Division~~ in any proceeding instituted before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment Security Commission-Division~~ by regular or courier mail.

~~(v)~~(z) Advisory rulings may be made by the ~~Commission-Division~~ with respect to the applicability of any statute or rule administered by the ~~Commission, Division~~, as follows:

- (1) All requests for advisory rulings shall be made in writing and submitted to the ~~Chief Counsel-Division~~. Such requests shall state the facts and statutes or rules on which the ruling is requested.
- (2) The ~~Chief Counsel-Division~~ may request from any person securing an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the ~~Commission Division~~ to decline to issue an advisory ruling.
- (3) The ~~Commission-Division~~ may decline to issue an advisory ruling if any administrative or judicial proceeding is pending with the person requesting the ruling on the same factual grounds. The ~~Commission-Division~~ may decline to issue an advisory ruling if such a ruling may harm the ~~Commission's Division's~~ interest in any litigation in which it is or may be a party.
- (4) All advisory rulings shall be issued no later than 30 days from the date all information necessary to make a ruling has been received by the ~~Chief Counsel-Division~~.
- (5) No advisory ruling shall be binding upon the ~~Commission-Division~~ provided that in any subsequent enforcement action initiated by the ~~Commission, Division~~, any person's reliance on such ruling shall be considered in mitigation of any penalty sought to be assessed."

SECTION 2.4. G.S. 96-5 reads as rewritten:

**"§ 96-5. Employment Security Administration Fund.**

(a) Special Fund. – There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or

1 paid into this fund shall be continuously available to the ~~Commission~~ Secretary for expenditure  
2 in accordance with the provisions of this Chapter, and shall not lapse at any time or be  
3 transferred to any other fund. The Employment Security Administration Fund, except as  
4 otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act  
5 (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys  
6 in this fund which are received from the federal government or any agency thereof or which are  
7 appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for  
8 the purposes and in the amounts found necessary by the Secretary of Labor for the proper and  
9 efficient administration of this Chapter. The fund shall consist of all moneys appropriated by  
10 this State, all moneys received from the United States of America, or any agency thereof,  
11 including the Secretary of Labor, and all moneys received from any other source for such  
12 purpose, and shall also include any moneys received from any agency of the United States or  
13 any other state as compensation for services or facilities supplied to such agency, any amounts  
14 received pursuant to any surety bond or insurance policy or from other sources for losses  
15 sustained by the Employment Security Administration Fund or by reason of damage to  
16 equipment or supplies purchased from moneys in such fund, and any proceeds realized from  
17 the sale or disposition of any such equipment or supplies which may no longer be necessary for  
18 the proper administration of this Chapter: Provided, any interest collected on contributions  
19 and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment  
20 Security Administration Fund created by subsection (c) of this section. All moneys in this fund  
21 shall be deposited, administered, and disbursed in the same manner and under the same  
22 conditions and requirements as is provided by law for other special funds in the State treasury,  
23 and shall be maintained in a separate account on the books of the State treasury. The State  
24 Treasurer shall be liable on his official bond for the faithful performance of his duties in  
25 connection with the Employment Security Administration Fund provided for under this  
26 Chapter. Such liability on the official bond shall be effective immediately upon the enactment  
27 of this provision, and such liability shall exist in addition to any liability upon any separate  
28 bond existent on the effective date of this provision, or which may be given in the future. All  
29 sums recovered on any surety bond for losses sustained by the Employment Security  
30 Administration Fund shall be deposited in said fund.

31 (b) Replacement of Funds Lost or Improperly Expended. – If any moneys received  
32 from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered  
33 balances in the Employment Security Administration Fund or any moneys granted to this State  
34 pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this  
35 State or its political subdivisions and matched by such moneys granted to this State pursuant to  
36 the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any  
37 action or contingency, to have been lost or expended for purposes other than, or in amounts in  
38 excess of those found necessary by the Secretary of Labor for the proper administration of this  
39 Chapter, it is the policy of this State that such moneys, not available from the Special  
40 Employment Security Administration Fund established by subsection (c) of this section, shall  
41 be replaced by moneys appropriated for such purpose from the general funds of this State to the  
42 Employment Security Administration Fund for expenditure as provided in subsection (a) of this  
43 section. Upon receipt of notice of such a finding by the Secretary of Labor, the ~~Commission~~  
44 Division shall promptly pay from the Special Employment Security Administration Fund such  
45 sum if available in such fund; if not available, it shall promptly report the amount required for  
46 such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to  
47 the legislature a request for the appropriation of such amount.

48 (c) There is hereby created in the State treasury a special fund to be known as the  
49 Special Employment Security Administration Fund. All interest and penalties, regardless of  
50 when the same became payable, collected from employers under the provisions of this Chapter  
51 subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly,

1 shall be paid into this fund. No part of said fund shall be expended or available for expenditure  
2 in lieu of federal funds made available to the ~~Commission-Secretary~~ for the administration of  
3 this Chapter. Said fund shall be used by the ~~Commission-Division~~ for the payment of costs and  
4 charges of administration which are found by the Secretary of Labor not to be proper and valid  
5 charges payable out of any funds in the Employment Security Administration Fund received  
6 from any source and shall also be used by the ~~Commission-Secretary~~ for: (i) extensions, repairs,  
7 enlargements and improvements to buildings, and the enhancement of the work environment in  
8 buildings used for ~~Commission-Division~~ business; (ii) the acquisition of real estate, buildings  
9 and equipment required for the expeditious handling of ~~Commission-Division~~ business; and  
10 (iii) the temporary stabilization of federal funds cash flow. The ~~Employment-Security~~  
11 ~~Commission-Division~~ may use funds either from the Special Employment Security  
12 Commission Administration Fund created by this subsection or from federal funds, or from a  
13 combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the  
14 General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest  
15 allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such  
16 interest was deposited in said fund: Provided further, that in those cases where an employer  
17 takes credit for a previous overpayment of interest on contributions due by such employer  
18 pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such  
19 overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the  
20 Special Employment Security Administration Fund. The Special Employment Security  
21 Administration Fund, except as otherwise provided in this Chapter, shall be subject to the  
22 provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel  
23 Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and  
24 disbursed in the same manner and under the same conditions and requirements as is provided  
25 by law for other special funds in the State treasury, and shall be maintained in a separate  
26 account on the books of the State treasury. The State Treasurer shall be liable on his official  
27 bond for the faithful performance of his duties in connection with the Special Employment  
28 Security Administration Fund provided for under this Chapter. Such liability on the official  
29 bond shall be effective immediately upon the enactment of this provision, and such liability  
30 shall exist in addition to any liability upon any separate bond existent on the effective date of  
31 this provision, or which may be given in the future. All sums recovered on any surety bond for  
32 losses sustained by the Special Employment Security Administration Fund shall be deposited in  
33 said fund. The moneys in the Special Employment Security Administration Fund shall be  
34 continuously available to the ~~Commission-Division~~ for expenditure in accordance with the  
35 provisions of this section.

36 (c1) Repealed by Session Laws 2004-124, s. 13.7B(b), effective July 20, 2004.

37 (d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding,  
38 the ~~Commission-Secretary~~ is authorized to requisition and receive from its account in the  
39 unemployment trust fund in the treasury of the United States of America, in the manner  
40 permitted by federal law, such moneys standing to its credit in such fund, as are permitted by  
41 federal law to be used for expense of administering this Chapter and to expend such moneys for  
42 such purpose, without regard to a determination of necessity by a federal agency. The State  
43 Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such  
44 moneys shall be deposited, administered, and disbursed in the same manner and under the same  
45 conditions and requirements as are provided by law for other special funds in the State treasury.

46 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General  
47 Assembly of North Carolina to the ~~Employment-Security-Commission-Department of~~  
48 Commerce, Division of Employment Security out of funds credited to and held in this State's  
49 account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States  
50 pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~  
51 Division is authorized to utilize such funds for the administration of the Employment Security

1 Law, including personal services, operating and other expenses incurred in the administration  
2 of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or  
3 parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings  
4 or parts of buildings, suitable for use in this State by the ~~Employment Security Commission,~~  
5 Division, and for the payment of expenses incurred for the construction, maintenance,  
6 improvements or repair of, or alterations to, such real or personal property. Provided, that any  
7 such funds appropriated by the General Assembly shall not exceed the amount in the  
8 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and  
9 provided that said funds shall not be obligated for expenditure, as herein provided, after the  
10 close of the two-year period which begins on the effective date of the appropriation.

11 (f) ~~Employment Security Commission~~-Reserve Fund. – There is created in the State  
12 treasury a special trust fund, separate and apart from all other public moneys or funds of this  
13 State, to be known as the ~~Employment Security Commission~~-Reserve Fund, hereinafter  
14 "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j  
15 shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve  
16 Fund may be used by the ~~Commission-Secretary~~ for loans to the Unemployment Insurance  
17 Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay  
18 any interest required on advances under Title XII of the Social Security Act, and shall be  
19 continuously available to the ~~Commission-Division~~ for expenditure in accordance with the  
20 provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian  
21 and shall invest said moneys in accordance with existing law as well as rules and regulations  
22 promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in  
23 accordance with the directions of the ~~Commission-Secretary~~ and in accordance with such  
24 regulations as the ~~Commission-Secretary~~ may prescribe.

25 Administrative costs for the collection of the tax and interest payable to the Reserve Fund  
26 shall be borne by the Special Employment Security Administration Fund.

27 The interest earned from investment of the Reserve Fund moneys shall be deposited in a  
28 fund hereby established in the State Treasurer's Office, to be known as the "Worker Training  
29 Trust Fund". These moneys shall be used to:

- 30 (1) Fund programs, specifically for the benefit of unemployed workers or  
31 workers who have received notice of long-term layoff or permanent  
32 unemployment, which will enhance the employability of workers, including,  
33 but not limited to, adult basic education, adult high school or equivalency  
34 programs, occupational skills training programs, assessment, job counseling  
35 and placement programs;
- 36 (2) Continue operation of local ~~Employment Security Commission-Division~~  
37 offices throughout the State; or
- 38 (3) Provide refunds to employers.

39 The use of funds from the Worker Training Trust Fund, for the purposes set out in the  
40 above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations  
41 Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and  
42 unencumbered at the end of the fiscal year for which they are appropriated shall revert to the  
43 State treasury to the credit of the Worker Training Trust Fund in accordance with  
44 G.S. 143C-1-2.

45 (g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not  
46 more than a total of twenty-five million dollars (\$25,000,000) of funds in the ~~Employment~~  
47 ~~Security Commission~~-Reserve Fund established under subsection (f) of this section in securities  
48 issued by the North Carolina Technological Development Authority, Inc., the proceeds for  
49 which are directed to support investment in venture capital funds. The State Treasurer shall  
50 report to the Joint Legislative Commission on Governmental Operations and the Fiscal

Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."

**SECTION 2.5.** G.S. 96-6 reads as rewritten:

**"§ 96-6. Unemployment Insurance Fund.**

(a) Establishment and Control. – There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the ~~Commission~~Division's Employment Insurance Section exclusively for the purposes of this Chapter. This fund shall consist of:

- (1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the fund;
- (2) Any property or securities acquired through the use of moneys belonging to the fund;
- (3) All earnings of such property or securities;
- (4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
- (5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a));
- (6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;
- (7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit. – The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the ~~Commission~~Secretary and in accordance with such regulations as the ~~Commission~~Division shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account,
- (2) An unemployment trust fund account, and
- (3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the ~~Commission~~Division, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the ~~Commission~~Division. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the ~~Commission~~Secretary, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund shall be deposited in said fund.

(c) Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits (including extended benefits) and in accordance with regulations prescribed by the ~~Commission~~ Secretary. The ~~Commission~~ Division shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in G.S. 143B-426.40G and requisitioned by the ~~Commission~~ Division for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in G.S. 143B-426.40G as requisitioned by the ~~chairman of the Commission~~ Secretary, the Assistant Secretary, or a duly authorized agent of the Commission Division for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the Unemployment Insurance Fund of this State shall be transferred to the treasurer of the Unemployment Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the ~~Commission~~ Secretary of the Department of Commerce, in accordance with the provisions of this Chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the State of North Carolina; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the ~~Commission~~ Secretary of the Department of Commerce.

(e) Benefits shall be deemed to be due and payable under this Chapter only to the extent provided in this Chapter and to the extent that moneys are available therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the ~~Commission~~ Division shall be liable for any amount in excess of such sums.

(f) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts in the Unemployment Insurance Fund."

SECTION 2.6. G.S. 96-7(a) reads as rewritten:

"(a) In any civil action to enforce the provisions of this Chapter, the ~~Commission Secretary, the Department,~~ and the State may be represented by any qualified attorney who is designated by it for this purpose."

SECTION 2.7.(a) G.S. 96-8(2) is repealed.

SECTION 2.7.(b) G.S. 96-8 is amended by adding the following new subdivisions to read:

"§ 96-8. Definitions.

As used in this Chapter, unless the context clearly requires otherwise:

...

(3a) Department. – The North Carolina Department of Commerce.

(3b) Division or DES. – The Department's Division of Employment Security.

(3c) EIS. – The Employment Insurance Section of DES.

(3d) ESS. – The Employment Security Section of DES.

...

(8c) Secretary. – The Secretary of the Department of Commerce or the Assistant Secretary in charge of the Division of Employment Security.

...."

SECTION 2.7.(c) G.S. 96-8(5)a. and b. read as rewritten:

"(5) "Employer" means:

a. Any employing unit which (a) within the current or preceding calendar year, and which for some portion of a day in each of 20 different calendar weeks within such calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week); or (b) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more. Provided further, for the purpose of this paragraph, "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the ~~Commission~~ Division pursuant to subsection (l) of G.S. 96-4, and an agency charged with the administration of any other state or federal employment security law. Provided further, for the purpose of this paragraph, "week" means a period of seven consecutive calendar days, and when a calendar week falls partly within each of two calendar years, the days of that week up to January 1 shall be deemed one calendar week, and the days beginning January 1, another such week.

b. Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this Chapter; provided, such other would have been an employer under paragraph a of this subdivision if such part had constituted its entire organization, trade, or business; provided further, that G.S. 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of G.S. 96-11(a) to the contrary

notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this Chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this Chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and provided the ~~Commission~~ Division finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in G.S. 96-11 of this Chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the ~~Commission~~ Division within 60 days from the date the ~~Commission~~ Division mails him a notification of his liability and the ~~Commission~~ Division finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business."

**SECTION 2.7.(d)** G.S. 96-8(6)d., f.2., and k.3. read as rewritten:

"(6) d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the ~~Commission~~ Division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the ~~Commission~~ Division in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.

...  
f. The term "employment" shall include:

...  
2. Services covered by an election duly approved by the ~~Commission~~ Division in accordance with an arrangement pursuant to G.S. 96-4, subsection (l), of this Chapter during the effective period of such election.

...  
k. The term "employment" does not include:

...



- 1 3. Service with respect to which unemployment insurance is  
2 payable under an employment security system established by  
3 an act of Congress: Provided, that the ~~Commission~~-Division  
4 is hereby authorized and directed to enter into agreements  
5 with the proper agencies under such act of Congress, which  
6 agreements shall become effective 10 days after publication  
7 thereof in the manner provided in G.S. 96-4(b) for general  
8 rules, to provide potential rights to benefits under this  
9 Chapter, acquired rights to unemployment insurance under  
10 act of Congress, or who have, after acquiring potential rights  
11 to unemployment insurance, under such act of Congress,  
12 acquired rights to benefits under this Chapter.

13 ...."

14 **SECTION 2.7.(e)** G.S. 96-8(10) reads as rewritten:

15 **"(10) (Effective until July 1, 2011) Total and partial unemployment.**

- 16 a. For the purpose of establishing a benefit year, an individual shall be  
17 deemed to be unemployed:
- 18 1. If the individual has payroll attachment but, because of lack  
19 of work during the payroll week for which the individual is  
20 requesting the establishment of a benefit year, the individual  
21 worked less than the equivalent of three customary scheduled  
22 full-time days in the establishment, plant, or industry in  
23 which the individual has payroll attachment as a regular  
24 employee. If a benefit year is established, it shall begin on the  
25 Sunday preceding the payroll week ending date.
  - 26 2. If the individual has no payroll attachment on the date the  
27 individual reports to apply for unemployment insurance. If a  
28 benefit year is established, it shall begin on the Sunday of the  
29 calendar week with respect to which the claimant met the  
30 reporting requirements provided by ~~Commission~~  
31 regulation-rules adopted by the Division.
- 32 b. For benefit weeks within an established benefit year, a claimant shall  
33 be deemed to be:
- 34 1. Totally unemployed, irrespective of job attachment, if a  
35 claimant's earnings for such week, including payments  
36 defined in subparagraph c below, would not reduce the  
37 claimant's weekly benefit amount as prescribed by  
38 G.S. 96-12(c).
  - 39 2. Partially unemployed, if the claimant has payroll attachment  
40 but because of lack of work during the payroll week for  
41 which the claimant is requesting benefits the claimant worked  
42 less than three customary scheduled full-time days in the  
43 establishment, plant, or industry in which the claimant is  
44 employed and whose earnings from such employment  
45 (including payments defined in subparagraph c below) would  
46 qualify the claimant for a reduced payment as prescribed by  
47 G.S. 96-12(c).
  - 48 3. Part-totally unemployed, if the claimant had no job  
49 attachment during all or part of such week and whose  
50 earnings for odd jobs or subsidiary work (including payments

- defined in subparagraph c below) would qualify the claimant for a reduced payment as prescribed by G.S. 96-12(c).
- c. (For suspension of enforcement, see note) No individual shall be considered unemployed if, with respect to the entire calendar week, the individual is receiving, has received, or will receive as a result of the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) separation pay, or (v) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.
- d. An individual's week of unemployment shall be deemed to commence only after ~~his~~ the individual's registration at an employment office, except as the ~~Commission may by regulation~~ Division by rule may otherwise prescribe.
- e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
- f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more.
- (10) (Effective July 1, 2011) Total and partial unemployment.
- a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:
1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
  2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by ~~Commission regulation rules adopted by the~~ Division.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
  2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
  3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
- c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or ~~Commission~~Division approved vocational, educational, or training programs as defined in G.S. 96-13.
- d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the ~~Commission~~Division may by ~~regulation~~rule otherwise prescribe.
- e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
- f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more."

1           **SECTION 2.7.(f)** G.S. 96-8(13)a. and d. read as rewritten:

2           "(13) a.       "Wages" shall include commissions, bonuses, any sums paid to an  
3                           employee by an employer pursuant to an order of any court, the  
4                           National Labor Relations Board, or any other lawfully constituted  
5                           adjudicative agency or by private agreement, consent, or arbitration  
6                           for loss of pay by reason of discharge, and the cash value of all  
7                           remuneration in any medium other than cash. The reasonable cash  
8                           value of remuneration in any medium other than cash shall be  
9                           estimated and determined in accordance with rules prescribed by the  
10                          ~~Commission; Division;~~ provided, if the remuneration of an individual  
11                          is not based upon a fixed period or duration of time or if the  
12                          individual's wages are paid at irregular intervals or in such manner as  
13                          not to extend regularly over the period of employment, the wages for  
14                          any week or for any calendar quarter for the purpose of computing an  
15                          individual's right to unemployment benefits only shall be determined  
16                          in such manner as may by authorized regulations be prescribed. The  
17                          regulations shall, so far as possible, secure results reasonably similar  
18                          to those that would prevail if the individual were paid his wages at  
19                          regular intervals. The term "wages" shall not include the amount of  
20                          any payment with respect to services to, or on behalf of, an  
21                          individual in its employ under a plan or system established by an  
22                          employing unit which makes provision for individuals in its employ  
23                          generally or for a class or classes of such individuals (including any  
24                          amount paid by an employing unit for insurance or annuities, or into  
25                          a fund, to provide for any such payment), on account of (i)  
26                          retirement, or (ii) sickness or accident disability, or (iii) medical and  
27                          hospitalization expenses in connection with sickness or accident  
28                          disability or (iv) death. However, in the case of payments made to an  
29                          employee or any of his dependents on account of sickness or accident  
30                          disability, only payments which are received under a worker's  
31                          compensation law shall be excluded from the term "wages".  
32                          Furthermore, the term "wages" shall not include payment by an  
33                          employer without deduction from the remuneration of the employee  
34                          of the tax imposed upon an employee under the Federal Insurance  
35                          Contributions Act.

36           ...

37           d.       Wages shall not include the amount of any payment, including any  
38                          amount paid into a fund to provide for such payment, made to, or on  
39                          behalf of, an employee under a plan or system established by an  
40                          employer or others which makes provision for employees generally,  
41                          or for a class or group of employees, for the purpose of  
42                          supplementing unemployment benefits, provided that the plan has  
43                          been approved by the ~~Commission; Division~~ under such reasonable  
44                          ~~regulations; rules~~ as it shall ~~promulgate; adopt.~~"

45           **SECTION 2.7.(g)** G.S. 96-8(22) and (24) read as rewritten:

46           "(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the  
47                          quotient obtained by dividing the total of the wages, as defined in  
48                          G.S. 96-8(12) and (13), reported by all insured employers by the monthly  
49                          average in insured employment under this Chapter during the immediately  
50                          preceding calendar year and further dividing the quotient obtained by 52 to  
51                          obtain a weekly rate. (For this computation the data as released annually in

the ~~Employment Security Commission's Division's~~ publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year.

...

- (24) Work, for purposes of this Chapter, means any bona fide permanent employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the ~~Commission, Division~~, either on its own motion or upon a clear and convincing showing by an interested party that the application of the presumption would work a substantial injustice in view of the intent of this Chapter; (b) Any decision of the ~~Commission-Division~~ on the question of bona fide employment may be disturbed on judicial review only upon a finding of plain error."

SECTION 2.8. G.S. 96-9 reads as rewritten:

**"§ 96-9. Contributions.**

(a) Payment. –

- (1) Except as provided in subsection (d) hereof, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Chapter, with respect to wages for employment (as defined in G.S. 96-8(6)). Such contributions shall become due and be paid by each employer to the ~~Commission-Division~~ for the fund in accordance with such regulations as the ~~Commission-Division~~ may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the ~~Commission-Division~~ for the fund in accordance with such regulations as the ~~Commission-Division~~ may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the ~~Commission-Division~~ shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this Chapter will be jeopardized by delay, the ~~Commission-Division~~ may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the ~~Commission-Division~~ for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by G.S. 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

...

(3) Benefits paid employees of this State shall be financed and administered in accordance with the provisions and conditions of G.S. 96-9(d) required for nonprofit organizations; except as provided by suitable regulations which may be adopted by the ~~Commission~~-Division. The Department of Administration shall make an election with respect to financing all such benefits.

...  
(6) If the amount of the contributions shown to be due after all credits is less than five dollars (\$5.00), no payment need be made. If an employer has paid contributions, penalties, and/or interest in excess of the amount due, this shall be considered an overpayment and refunded provided no other debts are owed to the ~~Commission~~-Division by the employer. Overpayments of less than five dollars (\$5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i).

(7) Effective with the quarter ending September 30, 1999, every employer with 100 or more employees, and every person or organization that, as agent, reports wages on a total of 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the ~~Commission~~-Division.

For failure of an employer to comply with this subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to comply with this subdivision, the ~~Commission~~-Division may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The ~~Commission~~-Division may reduce or waive a penalty for good cause shown.

(8) An employer of domestic service employees as defined by the Internal Revenue Code may be given permission by the ~~Chair of the Commission~~ Secretary to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the ~~Commission~~-Division for quarterly contributions under subdivision (6) of this subsection.

(9) Employers who are granted permission under subdivision (8) of this subsection to file annual reports may be given permission to file reports by telephone. Employers who report by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the ~~Unemployment Insurance Division~~ Employment Insurance Section in Raleigh and report the required information to that Auditor or to the Division by the date the report is due under subdivision (8) of this subsection.

(10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the ~~Commission~~-Division shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The

~~Commission-Division~~ may waive this penalty for good cause shown. As used in this section, the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

- (11) The ~~Commission-Division~~ may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the ~~Commission-Division~~ of the full amount of taxes, penalties, and interest due. The Commission shall require an employer who pays by credit card to include an amount equal to any fee charged the ~~Commission-Division~~ for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(b) Rate of Contributions. –

...

(2) Experience Rating. –

...

b. Credit Ratio. – The ~~Commission-Division~~ shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

c. Debit Ratio. – The ~~Commission-Division~~ shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

d. Other Provisions. – No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the ~~Commission-Division~~ shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(3)

...

d3.

The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does not apply, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

#### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:



	As But		Rate Schedules (%)								
	Much	Less	A	B	C	D	E	F	G	H	I
	As	Than									
6	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
7	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
8	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
9	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
10	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
11	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
12	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
13	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
14	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
15	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
16	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
17	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
18	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
19	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
20	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
21	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
22	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
23	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
24	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
25	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
26	4.0%										
27	&										
28	OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

...

d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~ Division in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~ Division in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

## EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But  
Much Less  
As Than

## Rate Schedules (%)

			A	B	C	D	E	F	G	H	I
9	0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
10	0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
11	0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
12	0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
13	0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
14	1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
15	1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
16	1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
17	1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
18	1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
19	2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
20	2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
21	2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
22	2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
23	2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
24	3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
25	3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
26	3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
27	3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
28	3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
29	4.0%										
30	&										
31	OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

- g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to its account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as this term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the ~~Commission~~ Division pursuant to G.S. 96-9(c)(3) of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to its account as of the previous July 31. If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The ~~Commission~~ Division in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of the voluntary contribution by the employer.
- h. If, within the calendar month in which the computation date occurs, the ~~Commission~~ Division finds that any employing unit has failed to file any report required in connection therewith or has filed a report

1 which the ~~Commission~~-Division finds incorrect or insufficient, the  
2 Commission shall make an estimate of the information required from  
3 such employing unit on the basis of the best evidence reasonably  
4 available to it at the time and shall notify the employing unit thereof  
5 by registered mail addressed to its last known address. Unless such  
6 employing unit shall file the report or a corrected or sufficient report,  
7 as the case may be, within 15 days after the mailing of such notice,  
8 the ~~Commission~~-Division shall compute such employing unit's rate of  
9 contributions on the basis of such estimates, and the rate as so  
10 determined shall be subject to increases but not to reduction, on the  
11 basis of subsequently ascertained information.

12 i. Repealed by Session Laws 1987, c. 17, s. 5.

13 j. A tax is imposed upon contributions at the rate of twenty percent  
14 (20%) of the amount of contributions due. The tax is due and payable  
15 at the time and in the same manner as the contributions. The tax does  
16 not apply in a calendar year if, as of August 1 of the preceding year,  
17 either of the following conditions was met; (i) the amount in the  
18 Reserve Fund equals or exceeds one hundred sixty-three million  
19 three hundred forty-nine thousand dollars (\$163,349,000), which is  
20 one percent (1%) of taxable wages for calendar year 1984; or (ii) the  
21 balance in the Unemployment Insurance Fund established by  
22 G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The  
23 collection of this tax, the assessment of interest and penalties on  
24 unpaid taxes, the filing of judgment liens, and the enforcement of the  
25 liens for unpaid taxes is governed by the provisions of G.S. 96-10  
26 where applicable. Taxes collected under this subpart shall be credited  
27 to the Employment Security ~~Commission~~-Reserve Fund, and refunds  
28 of the taxes shall be paid from the same Fund. The clear proceeds of  
29 any civil penalties collected under this subpart shall be remitted to  
30 the Civil Penalty and Forfeiture Fund in accordance with  
31 G.S. 115C-457.2. Any interest collected on unpaid taxes shall be  
32 credited to the Special Employment Security Administration Fund,  
33 and any interest refunded on taxes imposed by this subpart shall be  
34 paid from the same Fund.

35 (c) (1) Except as provided in subsection (d) of this section, the ~~Commission~~  
36 Division shall maintain a separate account for each employer and shall credit  
37 his account with all voluntary contributions made by him and all other  
38 contributions which he has paid or is paid on his behalf, provided the  
39 ~~Commission~~-Division shall credit the account of each employer in an  
40 amount equal to eighty percent (80%) of all voluntary contributions paid  
41 with respect to periods prior to January 1, 1984, and of all other  
42 contributions paid with respect to periods between July 1, 1965, and  
43 December 31, 1983. On the computation date, beginning first with August 1,  
44 1948, the ratio of the credit balance in each individual account to the total of  
45 all the credit balances in all employer accounts shall be computed as of such  
46 computation date, and an amount equal to the interest credited to this State's  
47 account in the unemployment trust fund in the treasury of the United States  
48 for the four most recently completed calendar quarters shall be credited prior  
49 to the next computation date on a pro rata basis to all employers' accounts  
50 having a credit balance on the computation date. Such amount shall be  
51 prorated to the individual accounts in the same ratio that the credit balance in

each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. –

...  
b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship shall not be charged to the account of an employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the ~~Commission~~ Division.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with ~~Commission~~ Division regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an ~~Adjudicator, Appeals Referee or the Commission~~ the Division if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid

be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

...  
(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~Division shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the ~~Commission~~Division shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The ~~Commission~~Division may redetermine on its own motion within the same period of time.

(4) Transfer of account. –

a. ...

2. Consent. – When an employer, as defined in G.S. 96-8(5)b., in any manner acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the ~~Commission~~Division in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the ~~Commission~~Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the

~~Commission-Division~~ of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

- ...
- b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the ~~Commission-Division~~ of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

- c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

- ...
- (6) If the ~~Commission-Division~~ finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be

1 deemed to have been chargeable with benefits throughout more than 13  
2 consecutive calendar months ending July 31 immediately preceding the  
3 computation date. This subdivision shall apply only to employers who are  
4 liable for contributions under the experience rating system of financing  
5 unemployment benefits. This subdivision shall not be construed to apply to  
6 employers who are liable for payments in lieu of contributions or to  
7 employers using the reimbursable method of financing benefit payments.

8 (d) Benefits paid to employees of nonprofit organizations shall be financed in  
9 accordance with the provisions of this paragraph. For the purposes of this paragraph, a  
10 nonprofit organization is an organization (or group of organizations) described in section  
11 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of  
12 the Internal Revenue Code.

13 (1) a. Any nonprofit organization which becomes subject to this Chapter on  
14 or after January 1, 1972, shall pay contributions under the provisions  
15 of this Chapter, unless it elects in accordance with this paragraph to  
16 pay the ~~Commission~~ Division for the Unemployment Insurance Fund  
17 an amount equal to the amount of regular benefits and of one half of  
18 the extended benefits paid, that is attributable to service in the  
19 employ of such nonprofit organization, to individuals for weeks of  
20 unemployment which begin within a benefit year established during  
21 the effective period of such election.

22 b. Any nonprofit organization which is or becomes subject to this  
23 Chapter on or after January 1, 1972, may elect to become liable for  
24 payments in lieu of contributions for a period of not less than four  
25 calendar years beginning with the date on which subjectivity begins  
26 by filing a written notice of its election with the ~~Commission~~  
27 Division not later than 30 days immediately following the date of  
28 written notification of the determination of such subjectivity.  
29 Provided if notification is not by registered mail, the election may be  
30 made on or after January 1, 1972, within six months following the  
31 date of the written notification of the determination of such  
32 subjectivity. If such election is not made as set forth herein, no  
33 election can be made until after four calendar years have elapsed  
34 under the contributions method of payment.

35 c. Any nonprofit organization which makes an election in accordance  
36 with subparagraph b of this paragraph will continue after such four  
37 calendar years to be liable for payments in lieu of contributions until  
38 it files with the ~~Commission~~ Division a written notice terminating its  
39 election not later than 30 days prior to the next January 1, effective  
40 on such January 1. Provided, however, no employer granted or in  
41 reimbursement status will be allowed refund of any previous  
42 balances used in a transfer to reimbursement status.

43 d. Any nonprofit organization which has been paying contributions  
44 under this Chapter for a period of at least four consecutive calendar  
45 years subsequent to January 1, 1972, may elect to change to a  
46 reimbursement basis by filing with the ~~Commission~~ Division not  
47 later than 30 days prior to the next January 1 a written notice of  
48 election to become liable for payments in lieu of contributions,  
49 effective on such January 1. Such election shall not be terminable for  
50 a period of four calendar years. In the event of such an election, the  
51 account of such employer shall be closed and shall not be used in any

- 1 future computation of such employer's contribution rate in any  
2 manner whatsoever.
- 3 d1. Any nonprofit organization which makes an election in accordance  
4 with subparagraph b. of this paragraph must secure such election by  
5 making a payment in lieu of contributions as provided in subdivision  
6 (2) of this subsection, posting a surety bond from an insurance  
7 company duly licensed to conduct business in this State, or obtaining  
8 an irrevocable letter of credit with the ~~Commission~~-Division to insure  
9 the payments in lieu of contributions as provided in subdivision (2)  
10 of this subsection. Any surety bond posted under this paragraph shall  
11 be in force for a period of not less than two calendar years and shall  
12 be renewed with the approval of the ~~Commission~~-Division. The  
13 ~~Commission~~-Division may adopt rules to implement the provisions  
14 of this subparagraph.
- 15 e. The ~~Commission~~-Division, in accordance with such regulations as it  
16 may adopt, shall notify each nonprofit organization of any  
17 determination which it may make of its status as an employer and of  
18 the effective date of any election which it makes and of any  
19 termination of such election. Such determinations shall be subject to  
20 reconsideration, appeal and review.
- 21 (2) Payments in lieu of contributions shall be made in accordance with the  
22 provisions of this subparagraph and shall be processed as provided herein.
- 23 a. Quarterly contributions and wage reports and advance payments shall  
24 be submitted to the ~~Commission~~-Division quarterly under the same  
25 conditions and requirements of G.S. 96-9 and 96-10, except that the  
26 amount of advance payments shall be computed as one percent (1%)  
27 of taxable wages and entered on such reports; provided that such  
28 advance payments shall become effective only with respect to the  
29 first four thousand two hundred dollars (\$4,200) in wages paid in a  
30 calendar year until January 1, 1978. On and after that date advance  
31 payments shall be effective with respect to the federally required  
32 wage base provided that after December 31, 1983, the wage base  
33 shall be the same as that provided for in G.S. 96-9(a)(5). Collection  
34 of such advance payments shall be made as provided for the  
35 collection of contributions in G.S. 96-10.
- 36 Beginning January 1, 1978, any employer making quarterly  
37 reports of employment to the ~~Commission~~-Division and if such  
38 employer is a newly electing reimbursement employer he shall pay  
39 contributions of one percent (1%) of taxable wages entered on such  
40 reports.
- 41 Any employer paying by reimbursement having been, prior to  
42 July 1, under the reimbursement method of payment for the  
43 preceding calendar year, shall continue to file quarterly reports but  
44 shall make no payments with those reports.
- 45 b. The ~~Commission~~-Division shall establish a separate account for each  
46 such employer and such account shall be credited, and maintained as  
47 provided in G.S. 96-9(c)(1), except that advance payments shall be  
48 credited in full and voluntary contributions are not applicable.
- 49 ...
- 50 d. As of July 31 of each year, and prior to January 1 of the succeeding  
51 year, the ~~Commission~~-Division shall determine the balance of each



such employer's account and shall furnish him with a statement of all charges and credits thereto.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment mailed to his last known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Beginning January 1, 1978, each employer paying by reimbursement shall have his account computed on computation date (August 1) and if there is a deficit shall be billed for an amount necessary to bring his account to one percent (1%) of his taxable payroll. Any amount of his account in excess of that required to equal one percent (1%) of his payroll shall be refunded. Amounts due from any employer to bring his account to a one percent (1%) balance shall be billed as soon as practical and payment will be due within 25 days from the date of mailing of the statement of amount due. Amounts due from any nonprofit organization to bring its account to a one percent (1%) balance shall be billed as soon as practical, and payment will be due within 60 days from the date of mailing of the statement of the amount due.

- e. The ~~Commission~~-Division may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and with respect to the reimbursement of benefits payments by such group of nonprofit organizations.

...

(e) In order that the ~~Commission~~-Division shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made.

- (f) (1) On and after January 1, 1978, all benefits charged to a State or local governmental employing unit shall be paid to the ~~Commission~~-Division within 25 days from the date a list of benefit charges is mailed to the State or local governmental employing agency and the appropriate account(s) shall be credited with such payment(s).

- (2) In lieu of paying for benefits by reimbursement as provided in subdivision (1) hereof, any State or local governmental employing unit may elect pursuant to rules and regulations established by the ~~Commission~~-Division:

- a. To pay contributions on an experience rating basis as provided in G.S. 96-9(a), (b), and (c); or,

- 1                   b.     To pay to the Commission, within 25 days from the date a list of  
2                   benefit charges is mailed to such employing unit, a sum equal to the  
3                   amount which its account would be charged if it were a tax paying  
4                   employer under G.S. 96-9(c)(2).  
5               (3)     State or local governmental employing units paying for benefits as provided  
6                   in subdivision (1) herein may establish pool accounts; provided, that such  
7                   pool accounts are established and maintained according to ~~the rules and~~  
8                   ~~regulations of the Commission adopted by the Division.~~  
9               (4)     Any governmental entity paying by reimbursement as provided in  
10                   subdivision (1) hereof shall not have any benefits paid against its account  
11                   noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.  
12       (g)     Nothing contained in subsections (d), (f), and (i) of this section prevents the  
13     Commission from providing any reimbursing employer with informational bills or lists of  
14     charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~ Division  
15     considers such action to be in the best interest of the ~~Commission~~ Division and the affected  
16     employer(s).  
17       (h)     (1)     Any nonprofit organization which has been paying contributions on a  
18                   reimbursement basis for at least three consecutive calendar years during  
19                   none of which years the benefit charges exceeded four tenths of one percent  
20                   (.4%) of its taxable payroll may, before November 1 of the fourth or  
21                   subsequent calendar year, elect to pay contributions by special  
22                   reimbursement on the basis provided for in subdivision (2) below but only  
23                   upon the following conditions:  
24                   ...  
25               b.     The election shall apply to no less than the four calendar years  
26                   following the year of election unless terminated by the ~~Commission~~  
27                   Division under subdivision (3) below.  
28                   ...  
29               e.     No later than January 1 of the first year to which its election applies,  
30                   the electing nonprofit organization shall furnish the Commission a  
31                   letter of credit in an amount equal to one hundred fifty percent  
32                   (150%) of the account balance required under subdivision (2) below.  
33               f.     The ~~Commission~~ Division shall by regulation prescribe the form of  
34                   the letter of credit and the criteria for the financial institution issuing  
35                   such letter of credit along with the form of election under this  
36                   section.  
37       (2)     Any qualified nonprofit organization that meets the conditions of  
38                   subdivision (1) above shall, upon the approval of its election by the  
39                   ~~Commission~~ Division, pay contributions by special reimbursement as  
40                   follows:  
41                   ...  
42               b.     On the first day of each quarter of any calendar year, the  
43                   ~~Commission~~ Division shall bill the employer for an amount  
44                   necessary to bring its account to the required minimum balance, and  
45                   the amount so billed is due no later than 25 days after the bill is  
46                   mailed.  
47       (3)     If any electing organization shall fail to make any quarterly payment when  
48                   due:  
49               a.     The ~~Commission~~ Division may draw the full amount of the letter of  
50                   credit for application to the employer's account;  
51                   ...

- 1 c. If, after demand, the organization shall fail to pay any sums required  
2 under paragraph b. above, the Commission may revoke the  
3 organization's election for special reimbursement and any difference  
4 between the employer's account balance and one percent (1%) of its  
5 total taxable payroll shall become immediately due and payable.  
6 d. The ~~Commission~~ Division may, in addition, exercise any of the  
7 powers granted to it in G.S. 96-10 to collect any amount due.  
8 e. Pursuant to ~~such regulations as the Commission may adopt, rules~~  
9 ~~adopted by the Division,~~ the Commission shall afford any  
10 organization affected by this paragraph a hearing to determine if any  
11 increase in the organization's minimum required balance should be  
12 reduced, in whole or in part, or if any revocation of a special  
13 reimbursement election should be rescinded. If the ~~Commission,~~  
14 Division, in its sole discretion, is satisfied that the conditions giving  
15 rise to the increase or revocation have been corrected, it may reduce  
16 such increase or rescind such revocation provided that it may require  
17 as a condition of such reduction or rescission a new letter of credit up  
18 to three times the amount normally required.  
19

20 (i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be  
21 financed in accordance with the provisions of this subsection. For the purposes of this  
22 subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or subsidiary of an  
23 Indian tribe, or a business enterprise wholly owned by an Indian tribe.

24 (1) Election. –

- 25 a. An Indian tribe employing unit shall pay contributions under the  
26 provisions of this Chapter, unless it elects in accordance with this  
27 subsection to pay the ~~Commission~~ Division for the Unemployment  
28 Insurance Fund an amount equal to the amount of benefits paid that  
29 is attributable to service in the employ of the unit, to individuals for  
30 weeks of unemployment that begin within a benefit year established  
31 during the effective period of the election.  
32 b. An Indian tribe employing unit may elect to become liable for  
33 payments in lieu of contributions for a period of not less than three  
34 calendar years by filing a written notice of its election with the  
35 ~~Commission~~ Division at least 30 days before the January 1 effective  
36 date of the election.  
37 c. An Indian tribe employing unit that makes an election in accordance  
38 with this subsection will continue after the end of the three calendar  
39 years to be liable for payments in lieu of contributions until it files  
40 with the ~~Commission~~ Division a written notice terminating its  
41 election at least 30 days before the January 1 effective date of the  
42 termination.  
43 d. The account of an Indian tribe employing unit that has been paying  
44 contributions under this Chapter for a period of at least three  
45 consecutive calendar years and that elects to change to a  
46 reimbursement basis shall be closed and shall not be used in any  
47 future computation of the unit's contribution rate in any manner.  
48 e. The ~~Commission,~~ Division, in accordance with regulations it adopts,  
49 shall notify each Indian tribe employing unit of any determination of  
50 the effective date of any election it makes and of any termination of

- the election. These determinations shall be subject to reconsideration, appeal, and review.
- (2) Procedure. – Indian tribe employing units' payments by reimbursement in lieu of contributions shall be made and processed as provided in this subdivision.
- a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~ Division quarterly under the same conditions and requirements of G.S. 96-9 and G.S. 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on the reports, and except that the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of these advance payments shall be made as provided for the collection of contributions in G.S. 96-10.
- Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.
- b. The ~~Commission~~ Division shall establish a separate account for each Indian tribe employing unit paying by reimbursement. The account shall be credited and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full, and voluntary contributions are not applicable.
- ...
- d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~ Division shall determine the balance of each Indian tribe employing unit's account and shall furnish the unit with a statement of all charges and credits to the account.
- If the balance in the account does not equal one percent (1%) of taxable wages, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount that will bring the balance to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.
- If there is a debit balance in the account, the Indian tribe employing unit must, upon notice and demand for payment mailed to its last known address, pay into the account an amount necessary to bring the account to one percent (1%) of taxable wages. This amount becomes due on or before the 25th day after the notice and demand for payment is mailed. Any amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.
- ...
- (4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the ~~Commission~~ Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if

the ~~Commission~~-Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The ~~Commission~~-Division shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.

...."

SECTION 2.9. G.S. 96-10 reads as rewritten:

**"§ 96-10. Collection of contributions.**

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the ~~Commission~~-Division, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the ~~Commission~~-Division. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this ~~Commission~~-Division, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the ~~Commission~~-Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the ~~Commission~~-Department of Revenue, under the hand of its ~~chairman~~-Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~ Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Commission may not certify the amount to the clerk of court until a field tax auditor or another representative of the ~~Commission~~-Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The ~~Commission~~-Department of Revenue shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Department of Revenue, ~~Commission~~,

and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the ~~Commission-Department of Revenue~~ by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Commission may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the ~~Commission-Department of Revenue~~ for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The ~~Commission-Department of Revenue~~ is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the ~~Commission-Department of Revenue~~, in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the ~~Commission-Department of Revenue~~ such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the ~~Commission-Department of Revenue~~, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the ~~Commission-Department of Revenue~~ shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the ~~Commission-Department of Revenue~~, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the ~~Commission-Department of Revenue~~ for service the said agent of the ~~Commission-Department of Revenue~~ shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the ~~Commission-Department of Revenue~~ to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Commission who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the contributions, penalty, interest, and costs due by the employer.

- (2) Any representative of the ~~Employment Security Commission-Department of Revenue~~ may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the ~~Commission-Department of Revenue~~ shall not be divulged, published, or open to public inspection other than to the ~~Commission's Division's~~ employees in the performance of their public duties. Any employee or member of the ~~Commission of the~~

1 Department of Revenue who violates any provision of this section shall be  
2 fined not less than twenty dollars (\$20.00), nor more than two hundred  
3 dollars (\$200.00), or imprisoned for not longer than 90 days, or both.

- 4 (3) When the ~~Commission~~Department of Revenue furnishes the clerk of  
5 superior court of any county in this State a written statement or certificate to  
6 the effect that any judgment docketed by the ~~Commission~~Department of  
7 Revenue against any firm or individual has been satisfied and paid in full,  
8 and said statement or certificate is signed by the ~~chairman of the~~  
9 ~~Commission~~Secretary and attested by its ~~secretary, the Assistant Secretary,~~  
10 with the seal of the Commission affixed, it shall be the duty of the clerk of  
11 superior court to file said certificate and enter a notation thereof on the  
12 margin of the judgment docket to the effect that said judgment has been paid  
13 and satisfied in full, and is in consequence canceled of record. Such  
14 cancellation shall have the full force and effect of a cancellation entered by  
15 an attorney of record for the ~~Commission~~Department of Revenue. It shall  
16 also be the duty of such clerk, when any such certificate is furnished him by  
17 the ~~Commission~~Division showing that a judgment has been paid in part, to  
18 make a notation on the margin of the judgment docket showing the amount  
19 of such payment so certified and to file said certificate. This paragraph shall  
20 apply to judgments already docketed, as well as to the future judgments  
21 docketed by the ~~Commission~~Department of Revenue. For the filing of said  
22 statement or certificate and making new notations on the record, the clerk of  
23 superior court shall be paid a fee of fifty cents (50¢) by the  
24 ~~Commission~~Department of Revenue.

25 (c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution  
26 of an employer's assets pursuant to an order of any court under the laws of this State, including  
27 any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or  
28 similar proceeding, contributions then or thereafter due shall be paid in full prior to all other  
29 claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars  
30 (\$250.00) to each claimant, earned within six months of the commencement of the proceeding.  
31 In the event of an employer's adjudication in bankruptcy, judicially confirmed extension  
32 proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions  
33 then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act  
34 (U.S.C., Title 11, section 104(a)), as amended.

35 A receiver of any covered employer placed into an operating receivership pursuant to an  
36 order of any court of this State shall pay to the ~~Commission~~Department of Revenue any  
37 contributions, penalties or interest then due out of moneys or assets on hand or coming into his  
38 possession before any such moneys or assets may be used in any manner to continue the  
39 operation of the business of the employer while it is in receivership.

40 (d) Collections of Contributions upon Transfer or Cessation of Business. – The  
41 contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a  
42 lien upon the assets of the business of any employer subject to the provisions hereof who shall  
43 lease, transfer or sell out his business, or shall cease to do business and such employer shall be  
44 required, by the next reporting date as prescribed by the ~~Commission~~Department of Revenue,  
45 to file with the Commission all reports and pay all contributions due with respect to wages  
46 payable for employment up to the date of such lease, transfer, sale or cessation of the business  
47 and such employer's successor in business shall be required to withhold sufficient of the  
48 purchase money to cover the amount of said contributions due and unpaid until such time as the  
49 former owner or employer shall produce a receipt from the ~~Commission~~Department of  
50 Revenue showing that the contributions have been paid, or a certificate that no contributions  
51 are due. If the purchaser of a business or a successor of such employer shall fail to withhold

1 purchase money or any money due to such employer in consideration of a lease or other  
2 transfer and the contributions shall be due and unpaid after the next reporting date, as above set  
3 forth, such successor shall be personally liable to the extent of the assets of the business so  
4 acquired for the payment of the contributions accrued and unpaid on account of the operation  
5 of the business by the former owner or employer.

6 (e) Refunds. – If not later than five years from the last day of the calendar year with  
7 respect to which a payment of any contributions or interest thereon was made, or one year from  
8 the date on which such payment was made, whichever shall be the later, an employer or  
9 employing unit who has paid such contributions or interest thereon shall make application for  
10 an adjustment thereof in connection with subsequent contribution payments, or for a refund,  
11 and the ~~Commission~~Department of Revenue shall determine that such contributions or any  
12 portion thereof was erroneously collected, the ~~Commission~~Department of Revenue shall allow  
13 such employer or employing unit to make an adjustment thereof, without interest, in connection  
14 with subsequent contribution payments by him, or if such an adjustment cannot be made in the  
15 next succeeding calendar quarter after such application for such refund is received, a cash  
16 refund may be made, without interest, from the fund: Provided, that any interest refunded under  
17 this subsection, which has been paid into the Special Employment Security Administration  
18 Fund established pursuant to G.S. 96-5(c), shall be paid out of such fund. For like cause and  
19 within the same period, adjustment or refund may be so made on the ~~Commission's~~Department  
20 of Revenue's own initiative. Provided further, that nothing in this section or in any other section  
21 of this Chapter shall be construed as permitting the refund of moneys due and payable under  
22 the law and regulations in effect at the time such moneys were paid. In any case, where the  
23 ~~Commission~~Department of Revenue finds that any employing unit has erroneously paid to this  
24 State contributions or interest upon wages earned by individuals in employment in another  
25 state, refund or adjustment thereof shall be made, without interest, irrespective of any other  
26 provisions of this subsection, upon satisfactory proof to the ~~Commission~~Department of  
27 Revenue that such other state has determined the employing unit liable under its law for such  
28 contributions or interest.

29 (f) No injunction shall be granted by any court or judge to restrain the collection of any  
30 tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain  
31 the sale of any property under writ of execution, judgment, decree or order of court for the  
32 nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes  
33 or contributions provided for in this Chapter have been assessed, shall claim to have a valid  
34 defense to the enforcement of the tax or contribution so assessed or charged, such employer,  
35 person, firm or corporation shall pay the tax or contribution so assessed to the Commission; but  
36 if at the time of such payment he shall notify the ~~Commission~~Department of Revenue in  
37 writing that the same is paid under protest, such payment shall be without prejudice to any  
38 defenses or rights he may have in the premises, and he may, at any time within 30 days after  
39 such payment, demand the same in writing from the ~~Commission~~Department of Revenue; and  
40 if the same shall not be refunded within 90 days thereafter, he may sue the Commission for the  
41 amount so demanded; such suit against the ~~Employment Security Commission of North~~  
42 Carolina Department of Revenue must be brought in the Superior Court of Wake County, or in  
43 the county in which the taxpayer resides, or in the county where the taxpayer conducts his  
44 principal place of business; and if, upon the trial it shall be determined that such tax or  
45 contribution or any part thereof was for any reason invalid, excessive or contrary to the  
46 provisions of this Chapter, the amount paid shall be refunded by the ~~Commission~~Department  
47 of Revenue accordingly. The remedy provided by this subsection shall be deemed to be  
48 cumulative and in addition to such other remedies as are provided by other subsections of this  
49 Chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes  
50 paid under protest according to the provisions of this subsection shall be maintained unless  
51 such suit, action or proceeding is commenced within one year after the expiration of the 90



1 days mentioned in this subsection, or within one year from the date of the refusal of said  
2 ~~Commission~~ the Department of Revenue to make refund should such refusal be made before  
3 the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not  
4 be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed  
5 as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

6 (g) Upon the motion of the ~~Commission~~ Department of Revenue, any employer  
7 refusing to submit any report required under this Chapter, after 10 days' written notice sent by  
8 the ~~Commission~~ Department of Revenue by registered or certified mail to the employer's last  
9 known address, may be enjoined by any court of competent jurisdiction from hiring and  
10 continuing in employment any employees until such report is properly submitted. When an  
11 execution has been returned to the ~~Commission~~ Department of Revenue unsatisfied, and the  
12 employer, after 10 days' written notice sent by the ~~Commission~~ Department of Revenue by  
13 registered mail to the employer's last known address, refuses to pay the contributions covered  
14 by the execution, such employer shall upon the motion of the ~~Commission~~ Department of  
15 Revenue be enjoined by any court of competent jurisdiction from hiring and continuing in  
16 employment any employees until such contributions have been paid.

17 An employer who fails to file a report within the required time shall be assessed a late filing  
18 penalty of five percent (5%) of the amount of contributions due with the report for each month  
19 or fraction of a month the failure continues. The penalty may not exceed twenty-five percent  
20 (25%) of the amount of contributions due. An employer who fails to file a report within the  
21 required time but owes no contributions shall not be assessed a penalty unless the employer's  
22 failure to file continues for more than 30 days.

23 (h) When any uncertified check is tendered in payment of any contributions to the  
24 ~~Commission~~ Department of Revenue and such check shall have been returned unpaid on  
25 account of insufficient funds of the drawer of said check in the bank upon which same is  
26 drawn, a penalty shall be payable to the ~~Commission~~ Department of Revenue, equal to ten  
27 percent (10%) of the amount of said check, and in no case shall such penalty be less than one  
28 dollar (\$1.00) nor more than two hundred dollars (\$200.00).

29 (i) Except as otherwise provided in this subsection, no suit or proceedings for the  
30 collection of unpaid contributions may be begun under this Chapter after five years from the  
31 date on which the contributions become due, and no suit or proceeding for the purpose of  
32 establishing liability and/or status may be begun with respect to any period occurring more than  
33 five years prior to the first day of January of the year within which the suit or proceeding is  
34 instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat  
35 or evade the payment of any contributions becoming due under this Chapter. A proceeding  
36 shall be deemed to have been instituted or begun upon the date of issuance of an order by the  
37 chairman of the ~~Commission~~ Department of Revenue directing a hearing to be held to  
38 determine liability or nonliability, and/or status under this Chapter of an employing unit, or  
39 upon the date notice and demand for payment is mailed by certified mail to the last known  
40 address of the employing unit. The order shall be deemed to have been issued on the date the  
41 order is mailed by certified mail to the last known address of the employing unit. The running  
42 of the period of limitations provided in this subsection for the making of assessments or  
43 collection shall, in a case under Title II of the United States Code, be suspended for the period  
44 during which the Commission is prohibited by reason of the case from making the assessment  
45 or collection and for a period of one year after the prohibition is removed.

46 (j) Waiver of Interest and Penalties. – The ~~Commission~~ Department of Revenue may,  
47 for good cause shown, reduce or waive any interest assessed on unpaid contributions under this  
48 section. The Commission may reduce or waive any penalty provided in G.S. 96-10(a) or  
49 G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed  
50 report bears a postmark that discloses that it was mailed by midnight of the due date but was  
51 addressed or delivered to the wrong State or federal agency. The late payment penalty and the

late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the ~~Commission~~ Department of Revenue to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the ~~Commission~~ Department of Revenue upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the ~~Chairman, the Assistant Administrator, Department of Revenue~~ or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the ~~Chairman, the Assistant Administrator, Department of Revenue~~ or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the ~~Commission~~ Department of Revenue. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

**SECTION 2.10.** G.S. 96-11 reads as rewritten:

**"§ 96-11. Period, election, and termination of employer's coverage.**

...

(b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January of any calendar year, if it files with the Commission prior to the first day of March of such calendar year a written application for termination of coverage and the ~~Commission~~ Department of Revenue finds that there were no 20 different weeks in the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that on and after January 1, 1972, except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~ Department of Revenue prior to the first day of March of such year a written application for termination of coverage and the ~~Commission~~ Department of Revenue finds that there were no 20 different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed one or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individual

1 was employed in each such week), and the ~~Commission-Department of Revenue~~ finds that  
2 there was no calendar quarter within the preceding calendar year in which the total wages of its  
3 employees were one thousand five hundred dollars (\$1,500) or more. Any employing unit, as  
4 defined in G.S. 96-8(5)n, shall cease to be an employer only if it files with the ~~Commission~~  
5 Division by the first day of March of any calendar year an application for termination of  
6 coverage, and the ~~Commission-Department of Revenue~~ finds that there were no 20 different  
7 weeks within the preceding calendar year in which such employing unit had at least 10  
8 individuals in employment, and that there was no calendar quarter within the preceding  
9 calendar year in which such employing unit paid twenty thousand dollars (\$20,000) or more in  
10 wages for services in employment. Any employing unit, as defined in G.S. 96-8(5)o, shall  
11 cease to be an employer if it files with the ~~Commission-Division~~ by the first day of March of  
12 any calendar year an application for termination of coverage and the Commission finds that  
13 there was no calendar quarter within the preceding calendar year in which such employing unit  
14 paid one thousand dollars (\$1,000) or more in wages for services in employment. Provided  
15 further, except as otherwise provided in subsections (a), (c), and (d) of this section on and after  
16 January 1, 1974, an "employer" as the term is used in G.S. 96-8(5)k shall cease to be an  
17 employer subject to this Chapter only as of the first day of January in any calendar year, if it  
18 files with the ~~Commission-Division~~ prior to the first day of March of such year a written  
19 application for termination of coverage and the ~~Commission-Division~~ finds that there were no  
20 20 different weeks within the preceding calendar year (whether or not such weeks are or were  
21 consecutive) within which said employing unit employed four or more individuals in  
22 employment (not necessarily simultaneously and irrespective of whether the same individuals  
23 were employed in each such week). For the purpose of this subsection, the two or more  
24 employing units mentioned in paragraphs b or c of G.S. 96-8, subdivision (5) shall be treated as  
25 a single employing unit: Provided, however, that any employer, as the term is used in  
26 G.S. 96-8(5)k, whose liability covers a period of more than two years when first discovered by  
27 the ~~Commission-Division~~, upon filing a written application for termination within 90 days after  
28 notification of his liability by the ~~Commission-Division~~, may be terminated as an employer  
29 effective January 1; and for any subsequent year if the ~~Commission-Division~~ finds there were  
30 no 20 different weeks within the preceding calendar year (whether or not such weeks are or  
31 were consecutive) within which said employing unit employed four or more individuals in  
32 employment (not necessarily simultaneously and irrespective of whether the same individuals  
33 were employed in each such week). Provided further, any other employer whose liability  
34 covers a period of more than two years when first discovered by the ~~Commission-Division~~,  
35 upon filing a written application for termination within 90 days after notification of his liability  
36 by the ~~Commission-Division~~, may be terminated as an employer effective January 1, and for  
37 any subsequent years if the ~~Commission-Division~~ finds that prior to January 1, 1972, there were  
38 no 20 different weeks within the preceding calendar year (whether or not such weeks are or  
39 were consecutive) within which said employing unit employed four or more individuals in  
40 employment (not necessarily simultaneously and irrespective of whether the same individuals  
41 were employed in each such week); and with respect to 1972 and subsequent years, if the  
42 ~~Commission-Division~~ finds that there were no 20 different weeks within the preceding calendar  
43 year (whether or not such weeks are or were consecutive) within which said employing unit  
44 employed one or more individuals in employment (not necessarily simultaneously and  
45 irrespective of whether the same individual was employed in each such week), and the  
46 ~~Commission-Division~~ finds that there was no calendar quarter within the preceding calendar  
47 year in which the total wages of its employees were one thousand five hundred dollars (\$1,500)  
48 or more. In such cases, a protest of liability shall be considered as an application for  
49 termination within the meaning of this provision where the decision with respect to such protest  
50 has not become final; provided further, this provision shall not apply in any case of willful

attempt in any manner to defeat or evade the payment of contributions becoming due under this Chapter.

(c) (1) An employing unit, not otherwise subject to this Chapter, which files with the ~~Commission~~ Division its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the ~~Commission~~ Division, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, it has filed with the ~~Commission~~ Division a written notice to that effect, provided such employing unit may be terminated by the ~~Commission~~ Division as provided under the provisions of subdivision (3)(4) of this subsection.

(2) Any employing unit for which services that do not constitute employment as defined in this Chapter are performed may file with the ~~Commission~~ Division a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this Chapter for not less than two calendar years. Upon the written approval of such election by the ~~Commission~~ Division such services shall be deemed to constitute employment subject to this Chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the ~~Commission~~ Division a written notice to that effect, provided such employing unit may be terminated by the ~~Commission~~ Division as provided under the provisions of subdivision (3)(4) of this subsection.

(3) ...

d. An election under this section may be terminated as of January 1 of any calendar year subsequent to such two calendar years only if 30 days prior to such January 1, such employer has filed with the ~~Commission~~ Division a written notice to that effect.

(4) On and after July 1, 1965, the ~~Commission~~ Division on its own motion and in its discretion, upon 30 days' written notice mailed to the last known address of such employer, may terminate coverage of any employer which has become subject to this Chapter solely by electing coverage under the provisions of this subsection.

(d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered wages for a period of two consecutive calendar years shall cease to be an employer subject to this Chapter. An employer who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~ Division finds there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed one or more individuals in employment (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week, and the Commission finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars (\$1,500) or more, except as otherwise

provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of its account. Such termination shall be effective January 1 of any calendar year only if the ~~Commission~~-Division finds that there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment, not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final."

SECTION 2.11. G.S. 96-12 reads as rewritten:

"§ 96-12. Benefits.

(a) Payment of Benefits. – Twenty-four months after the date when contributions first accrue under this Chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with ~~such regulations as the Commission may prescribe~~rules adopted by the Division.

(b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

b. An individual who is totally unemployed shall be paid the individual's weekly benefit amount. The weekly benefit amount for an individual is the amount of the high-quarter wages paid to the individual in the individual's base period, divided by 26 and, if the quotient is not a whole dollar, rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits.

c. Repealed by Session Laws 1981, c. 160, s. 17.

(2) Each August 1, the ~~Commission~~-Division shall calculate the maximum weekly benefit amount available to an individual. The maximum weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the average weekly insured wage rounded, if the amount is not a whole dollar, to the next lower whole dollar. The maximum weekly benefit amount set on August 1 of a year applies to an individual whose benefit year begins on or after that date and before August 1 of the following year.

...

(d) Duration of Benefits. – The total benefits paid to an individual shall not be less than the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the individual's total benefit amount. The total benefit amount for an individual is determined by dividing the individual's base-period wages by the individual's high-quarter wages, multiplying that quotient by eight and two thirds, rounding the result to the nearest whole number, and then multiplying the resulting amount by the individual's weekly benefit amount. The minimum total benefit for an individual is 13 times the individual's weekly benefit amount. The maximum total benefit for an individual is 26 times the individual's weekly benefit amount, unless the benefits are extended further in accordance with G.S. 96-12.01. The ~~Commission~~-Division shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits.

...

(g) Income Tax Withholding. – When an individual files a new claim for unemployment compensation, the individual shall be advised in writing at the time of filing that:

(1) Unemployment compensation is subject to federal and State individual income tax.

- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.
- (4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.
- (5) The individual may change a previously elected withholding status.

The ~~Commission~~-Division shall follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions will be deducted and withheld in accordance with priorities established by the ~~Commission~~-Division."

**SECTION 2.12.** G.S. 96-12.01 reads as rewritten:

**"§ 96-12.01. Extended benefits.**

...

(a1) Definitions. – As used in this section, unless the context clearly requires otherwise .

–

...

- (4) There is an "on indicator" for this State for a week if the ~~Commission~~ Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

...

- (5) There is an "off indicator" for this State for a week if the ~~Commission~~ Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

- a. Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and was less than six percent (6%), or
- b. Was less than five percent (5%).

- (6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and (5) of this subsection, means the percentage derived by dividing

- a. The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the ~~Commission~~-Division, on the basis of its reports to the United States Secretary of Labor, by
- b. The average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

...

(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. – Except when the result would be inconsistent with the other

1 provisions of this section and in matters of eligibility determination, as provided ~~in the~~  
2 ~~regulations of by rules adopted by the Commission, Division~~ the provisions of this Chapter  
3 which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the  
4 payment of, extended benefits.

5 (c) Eligibility Requirements for Extended Benefits. – An individual shall be eligible to  
6 receive extended benefits with respect to any week of unemployment in his eligibility period  
7 only if the Commission finds that with respect to such week:

8 (1) ~~He~~ The individual is an "exhaustee" as defined in subsection (a)(10).

9 (2) ~~He~~ The individual has satisfied the requirements of this Chapter for the  
10 receipt of regular benefits that are applicable to individuals claiming  
11 extended benefits, including not being subject to a disqualification for the  
12 receipt of benefits. Provided, however, that for purposes of disqualification  
13 for extended benefits for weeks of unemployment beginning after March 31,  
14 1981, the term "suitable work" means any work which is within the  
15 individual's capabilities to perform if: (i) The gross average weekly  
16 remuneration payable for the work exceeds the sum of the individual's  
17 weekly extended benefit amount plus the amount, if any, of supplemental  
18 unemployment benefits (as defined in section 501(C)(17)(D) of the Internal  
19 Revenue Code of 1954) payable to such individual for such week; and (ii)  
20 the gross wages payable for the work equal the higher of the minimum  
21 wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938  
22 as amended (without regard to any exemption), or the State minimum wage;  
23 and (iii) the work is offered to the individual in writing and is listed with the  
24 State employment service; and (iv) the considerations contained in  
25 G.S. 96-14(3) for determining whether or not work is suitable are applied to  
26 the extent that they are not inconsistent with the specific requirements of this  
27 subdivision; and (v) the individual cannot furnish evidence satisfactory to  
28 the ~~Commission~~ Division that his prospects for obtaining work in his  
29 customary occupation within a reasonably short period of time are good, but  
30 if the individual submits evidence which the ~~Commission~~ Division deems  
31 satisfactory for this purpose, the determination of whether or not work is  
32 suitable with respect to such individual shall be made in accordance with  
33 G.S. 96-14(3) without regard to the definition contained in this subdivision.  
34 Provided, further, that no work shall be deemed to be suitable work for an  
35 individual which does not accord with the labor standard provisions set forth  
36 in this subdivision, but the employment service shall refer any individual  
37 claiming extended benefits to any work which is deemed suitable hereunder.  
38 Provided, further, that any individual who has been disqualified for  
39 voluntarily leaving employment, being discharged for misconduct or  
40 substantial fault, or refusing suitable work under G.S. 96-14 and who has  
41 had the disqualification terminated, shall have such disqualification  
42 reinstated when claiming extended benefits unless the termination of the  
43 disqualification was based upon employment subsequent to the date of the  
44 disqualification.

45 (3) After March 31, 1981, he has not failed either to apply for or to accept an  
46 offer of suitable work, as defined in G.S. 96-12.01(c)(2), to which he was  
47 referred by an employment office of the Commission, and he has furnished  
48 the Commission with tangible evidence that he has actively engaged in a  
49 systematic and sustained effort to find work. If an individual is found to be  
50 ineligible hereunder, he shall be ineligible beginning with the week in which  
51 he either failed to apply for or to accept the offer of suitable work or failed to

furnish the ~~Commission-Division~~ with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount.

...

(f) Beginning and Termination of Extended Benefit Period. –

- (1) Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the ~~Commission-Division~~ shall make an appropriate public announcement; and
- (2) Computations required by the provisions of subsection (a)(6) shall be made by the ~~Commission-Division~~, in accordance with regulations prescribed by the United States Secretary of Labor.

...."

**SECTION 2.13.** G.S. 96-12.1 reads as rewritten:

**"§ 96-12.1. Extended base period for certain job related injuries.**

If an individual lacks sufficient base period wages because of a job related injury for which he received workers' compensation, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. "Extended base period" means the four quarters prior to the claimant's base period. These four quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the ~~Employment Security Commission of North Carolina-Division of Employment Security~~ out of compliance with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged."

**SECTION 2.14.** G.S. 96-13 reads as rewritten:

**"§ 96-13. Benefit eligibility conditions.**

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission-Division~~ finds that -

- (1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the ~~Commission in accordance with such regulations as the Commission may prescribe~~; Division pursuant to rules adopted by the Division.

...

- (3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by ~~Commission regulations, Division rules~~, no individual shall be deemed available for work unless he establishes to the satisfaction of the ~~Commission-Division~~ that ~~he-the individual~~ is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the ~~Commission-Division~~ that ~~such-the individual~~ is actively seeking employment which ~~such-the individual is qualified-able to perform by past experience or training during such nonseasonal period~~: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the ~~Commission-Division~~ finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to



a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with ~~regulations adopted by the Commission,~~ rules adopted by the Division, each claimant that tests positive for a controlled substance under this subdivision. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school. For the purposes of this subdivision:

- a. No individual shall be deemed to be available for work during any week that the person is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution.
- b. An individual is exempted for any week that the individual participates in the Trade Jobs For Success initiative under G.S. 143B-438.16.

...  
(c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~Commission-Division~~ finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting period for a benefit year shall not be required of any claimant if all of the following conditions are met:

- ...  
(4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The ~~Employment Security Commission,~~ Division for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the ~~Employment Security Commission-Division~~ may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The ~~Employment Security Commission-Division~~ shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(c1) As to claims filed on or after January 29, 2003, the waiting period for a benefit year shall not be required of a claimant if all of the following conditions are met:

- ...
- (3) The Governor has issued an Executive Order directing and authorizing the ~~Employment Security Commission Division~~ to waive the waiting week for employees of the manufacturer.
- (4) The ~~Employment Security Commission Division~~ shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(d) Benefit entitlement based on services for governmental entities that become subject to ~~the Employment Security Commission law~~ Law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter.

- ...
- (g) (1) Except as herein provided, no individual shall be eligible for benefits for any week during any part of which the ~~Commission Division~~ finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

...."

**SECTION 2.15.** G.S. 96-14 reads as rewritten:

**"§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission Division~~ that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the ~~Commission Division~~ that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the

beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

...

(1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the Commission Division that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evidencing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evidencing carelessness or negligence of such degree as to manifest equal disregard. conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; employer; being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, illegal drugs, or other activities which could negatively affect the employer's reputation in the community or business dealings; any physical violence whatsoever related to an employee's work for an employer including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general

public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; refusing to perform reasonably assigned work tasks; and the failure to adequately perform any other employment duties as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination. This phrase does not include discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service.

(2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the ~~Commission~~ Division shall not be disturbed by a reviewing court except upon a finding of plain error.

(2b) For the duration of the individual's unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision.

(2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the

~~Commission Division~~ determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time.

- (3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the ~~Commission Division~~ that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the ~~Commission; Division;~~ or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the ~~Commission. Division.~~ Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the ~~Commission Division~~ for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the ~~Commission Division~~ shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).

- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission Division~~ that:

- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the ~~Commission; Division;~~
- b. Such individual has discontinued his training course without good cause; or
- c. If the individual is separated from his training course or vocational school due to misconduct.

- (5) For any week with respect to which the ~~Commission Division~~ finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at

which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(6) If the ~~Commission-Division~~ finds he is customarily self-employed and can reasonably return to self-employment.

(6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission-Division~~ that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:

- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
- b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
- c. The employing entity was a proprietorship, and the individual was a proprietor.

...

(8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the ~~Commission-Division~~ may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the ~~Commission-Division~~ by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the ~~Commission-Division~~ and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the ~~Commission-Division~~

or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

...  
(10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:

- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
- b. Subsequently becomes unemployed through no fault of his own; and
- c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the ~~Commission~~ Division in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

...  
(12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

**SECTION 2.16.** G.S. 96-15 reads as rewritten:

**"§ 96-15. Claims for benefits.**

(a) Filing. – Claims for benefits shall be made in accordance with such regulations as the ~~Commission~~ Division may prescribe. Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Commission may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the ~~Commission~~ Division may direct. Such printed statements and other materials shall be supplied by the Commission to each employing unit without cost to the employing unit.

(b) (1) Initial Determination. – A representative designated by the ~~Commission~~ Division shall promptly examine the claim and shall determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim shall be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination shall be issued showing the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant

shall be furnished a copy of such monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claim is not valid due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the earlier of mailing or delivery of his monetary determination to him within which to protest his monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy Commissioner~~ Assistant Secretary or his designee for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year.

At any time within one year from the date of the making of an initial determination, the ~~Commission~~ Division on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

- (2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the ~~Commission~~ Division unless within ~~15~~ 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to ~~such regulations as the Commission may adopt.~~ The Commission rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~10~~ 30 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the ~~Commission~~ Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.



1 An employer shall receive written notice of the employer's appeal rights  
2 and any forms that are required to allow the employer to protest the claim.  
3 The forms shall include a section referencing the appropriate rules pertaining  
4 to appeals and the instructions on how to appeal.

5 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee  
6 or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be  
7 heard. The conduct of hearings shall be governed by suitable ~~regulations established rules~~  
8 ~~adopted by the Commission-Division~~. The regulations need not conform to common law or  
9 statutory rules of evidence or technical or formal rules of procedure but shall provide for the  
10 conduct of hearings in such manner as to ascertain the substantial rights of the parties. The  
11 hearings may be conducted by conference telephone call or other similar means provided that if  
12 any party files with the ~~Commission-Division~~ prior written objection to the telephone  
13 procedure, that party will be afforded an opportunity for an in-person hearing at such place in  
14 the State as the ~~Commission-Division~~ by regulation shall provide. The hearing shall be  
15 scheduled for a time that, as much as practicable, least intrudes on and reasonably  
16 accommodates the ordinary business activities of an employer and the return to employment of  
17 a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the  
18 adjudicator or issue a new decision in which findings of fact and conclusions of law will be set  
19 out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute  
20 the appeal after having been duly notified of the appeals hearing. The evidence taken at the  
21 hearings before the appeals referee shall be recorded and the decision of the appeals referee  
22 shall be deemed to be the final decision of the ~~Commission-Division~~ unless within 10 days after  
23 the date of notification or mailing of the decision, whichever is earlier a written appeal is filed  
24 pursuant to such ~~regulations rules~~ as the ~~Commission-Board of Review and the Division~~ may  
25 adopt. No person may be appointed as an appeals referee or hearing officer unless he or she  
26 possesses the minimum qualifications necessary to be a staff attorney eligible for designation  
27 by the ~~Commission-Division~~ as a hearing officer under G.S. 96-4(m). G.S. 96-4(q). No appeals  
28 referee or hearing officer in full-time permanent status may engage in the private practice of  
29 law as defined in G.S. 84-2.1 while serving in office as appeals referee; ~~referee or hearing~~  
30 ~~officer~~; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken  
31 from a decision of the appeals referee; ~~referee or hearings officer~~; the appealing party shall  
32 submit a clear written statement containing the grounds for the appeal within the time allowed  
33 by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~  
34 ~~Board of Review~~ may dismiss the appeal.

35 (c1) Unless required for disposition of an ex parte matter authorized by law, a  
36 ~~Commissioner, Division~~ appeals referee, or employee assigned to make a decision or to make  
37 findings of facts and conclusions of law in a case shall not communicate, directly or indirectly,  
38 in connection with any issue of fact, or question of law, with any person or party or his  
39 representative, except on notice and opportunity for parties to participate.

40 (c2) Whenever a party is notified of an ~~Adjudicator's, Appeals Referee's, or Deputy~~  
41 ~~Commissioner's the Board of Review's or a hearing officer's~~ decision by mail, G.S. 1A-1, Rule  
42 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

43 (d) Repealed by Session Laws 1977, c. 727, s. 54.

44 (d1) No continuance shall be granted except upon application to the ~~Commissioner,~~  
45 ~~Division~~, the appeals referee, or other authority assigned to make the decision in the matter to  
46 be continued. A continuance may be granted only for good cause shown and upon such terms  
47 and conditions as justice may require. Good cause for granting a continuance shall include, but  
48 not be limited to, those instances when a party to the proceeding, a witness, or counsel of  
49 record has an obligation of service to the State, such as service as a member of the North  
50 Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater  
51 jurisdiction.

(e) ~~Review by the Commission.~~ Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or other employee assigned to make a decision on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Board of Review finds appropriate. The Board of Review may remove itself or transfer to an appeals referee, hearing officer, or other employee assigned to make a decision the proceedings on any claim pending before an appeals referee, hearing officer, or other employee assigned to make a decision. Interested parties shall be promptly notified of the findings and decision of the Board of Review. ~~Commission or Deputy Commissioner may on its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission or Deputy Commissioner may deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. The Commission shall promptly notify the interested parties of its findings and the decision. In all Commission matters heard by a Deputy Commissioner, the decision of the Deputy Commissioner shall constitute the decision of the Commission; except, the Commission may remove unto itself, upon its own motion, any claim pending for rehearing and redetermination, provided such removal is done prior to the expiration of appeal period applicable to the decision of the Deputy Commissioner.~~

(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with ~~regulations prescribed by the Commission~~ rules adopted by the Division for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless ~~the recording is waived by all interested parties, the parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the decision,~~ but need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such ~~regulations as the Commission may prescribe, rules as the Division may adopt,~~ to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the ~~Commission~~ Division such reasonable fee for the transcript as the ~~Commission~~ Division may by regulation provide. The fee so prescribed by the ~~Commission~~ Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The ~~Commission~~ Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the ~~Commission~~ Division shall waive the fee.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the ~~Commission~~ Division. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Commission~~ Division, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, shall become final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review shall be permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Commission~~ Division as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly

1 state what exceptions are taken to the decision or procedure of the ~~Commission-Division~~ and  
2 what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the  
3 petitioner shall serve copies of the petition by personal service or by certified mail, return  
4 receipt requested, upon the ~~Commission-Division~~ and upon all parties of record to the  
5 ~~Commission-Division~~ proceedings. Names and addresses of the parties shall be furnished to the  
6 petitioner by the Commission upon request. The ~~Commission-Division~~ shall be deemed to be a  
7 party to any judicial action involving any of its decisions and may be represented in the judicial  
8 action by any qualified attorney who has been designated by it for that purpose. ~~Upon motion~~  
9 ~~of the Commission, the court shall dismiss any review for which the petition is untimely filed,~~  
10 ~~untimely or improperly served, or for which it otherwise fails to comply with the requirements~~  
11 ~~of this subsection. Any questions regarding the requirements of this subsection concerning the~~  
12 ~~service or filing of a petition shall be determined by the superior court.~~ Any party to the  
13 ~~Commission-Division~~ proceeding may become a party to the review proceeding by notifying  
14 the court within 10 days after receipt of the copy of the petition. Any person aggrieved may  
15 petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

16 Within 45 days after receipt of the copy of the petition for review or within such additional  
17 time as the court may allow, the ~~Commission-Division~~ shall transmit to the reviewing court the  
18 original or a certified copy of the entire record of the proceedings under review. With the  
19 permission of the court the record may be shortened by stipulation of all parties to the review  
20 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by  
21 the court for such additional cost as is occasioned by the refusal. The court may require or  
22 permit subsequent corrections or additions to the record when deemed desirable.

23 (i) Review Proceedings. – If a timely petition for review has been filed and served as  
24 provided in G.S. 96-15(h), the court may make party defendant any other party it deems  
25 necessary or proper to a just and fair determination of the case. The ~~Commission-Division~~ may,  
26 in its discretion, certify to the reviewing court questions of law involved in any decision by it.  
27 In any judicial proceeding under this section, the findings of fact by the ~~Commission-Division~~,  
28 if there is any competent evidence to support them and in the absence of fraud, shall be  
29 conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions  
30 and the questions so certified shall be heard in a summary manner and shall be given  
31 precedence over all civil cases. An appeal may be taken from the judgment of the superior  
32 court, as provided in civil cases. The ~~Commission-Division~~ shall have the right to appeal to the  
33 appellate division from a decision or judgment of the superior court and for such purpose shall  
34 be deemed to be an aggrieved party. No bond shall be required of the ~~Commission-Division~~  
35 upon appeal. Upon the final determination of the case or proceeding, the ~~Commission-Division~~  
36 shall enter an order in accordance with the determination. When an appeal has been entered to  
37 any judgment, order, or decision of the court below, no benefits shall be paid pending a final  
38 determination of the cause, except in those cases in which the final decision of the ~~Commission~~  
39 ~~Division~~ allowed benefits.

40 (j) Repealed by Session Laws 1985, c. 197, s. 9.

41 (k) Irrespective of any other provision of this Chapter, the ~~Commission-Division~~ may  
42 adopt minimum regulations necessary to provide for the payment of benefits to individuals  
43 promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42  
44 U.S.C.A., section 503(a)(1))."

45 **SECTION 2.17.** G.S. 96-16 reads as rewritten:

46 "**§ 96-16. Seasonal pursuits.**

47 (a) A seasonal pursuit is one which, because of seasonal conditions making it  
48 impracticable or impossible to do otherwise, customarily carries on production operations only  
49 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a  
50 calendar year. No pursuit shall be deemed seasonal unless and until so found by the  
51 ~~Commission. Provided, however, Division; except that from March 27, 1953, any successor~~

under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.

(b) Upon application therefor by a pursuit, the ~~Commission-Division~~ shall determine or redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods thereof. The ~~Commission-Division~~ may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the ~~Commission-Division~~ and must be made at least 20 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Whenever the ~~Commission-Division~~ has determined or redetermined a pursuit to be seasonal, such pursuit shall be notified immediately, and such notice shall contain the beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. Such notices shall be furnished by the ~~Commission-Division~~.

...

(j) As used in this section:

...

(5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The ~~Commission-Division~~ may prescribe by regulation the manner in which seasonal wages shall be reported.

...."

SECTION 2.18. G.S. 96-17 reads as rewritten:

"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.

...

(b) Representation. – Any claimant or employer who is a party to any proceeding before the ~~Commission-Division~~ may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the ~~Commission-Division~~.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of any kind by the ~~Commission-Division~~ or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

...

(d) (1) Definitions. – For the purpose of this subsection and when used herein:

a. "Unemployment compensation" means any compensation found by the ~~Commission-Division~~ to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the ~~Commission-Division~~ pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the ~~Commission's Division's~~ ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.

- (2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the ~~Commission~~ Division to be eligible for payment of unemployment compensation, the ~~Commission~~ Division shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.
- b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the ~~Commission~~ Division, the ~~Commission~~ Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations:
1. The amount specified by the individual to the Commission to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or
  2. The amount, if any, determined pursuant to an agreement submitted to the ~~Commission~~ Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or
  3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.
- c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the ~~Employment Security Commission~~ Division to the appropriate State or local child support enforcement agency.
- d. The Department of Health and Human Services and the ~~Commission~~ Division are hereby authorized to enter into one or more agreements which may provide for the payment to the ~~Commission~~ Division of the processing fees referred to in subparagraph b. and the payment to the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the ~~Commission~~ Division will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the ~~Commission~~ Division. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit

year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the ~~Commission~~ Division of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

- ...
- (4) a. On or before April 1 of 1983 and each calendar year thereafter, the ~~Commission~~ Division shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the ~~Commission~~ Division generated thereby.
- b. At least 20 days prior to September 25, 1982, the ~~Commission~~ Division shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.
- c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the ~~Commission~~ Division under this subsection attributable to child support obligations enforced by the agency."

**SECTION 2.19.** G.S. 96-18 reads as rewritten:

**"§ 96-18. Penalties.**

...

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The ~~Commission~~ Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

- (1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars (\$2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars (\$5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the ~~Commission~~-Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

...

(g) (1) Any person who, under subsection (e) above, has been held ineligible for benefits and who, because of those same acts or omissions has received any sum as benefits under this Chapter to which ~~he~~ the person was not entitled, shall be liable to repay any such sum to the ~~Commission~~-Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after 10 years from the last day of the year in which the overpayment occurred.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the ~~Commission~~-Division) other than subparagraph (1) above shall be liable to repay such sum to the ~~Commission~~-Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after three years from the last day of the year in which the overpayment occurred.

(3) The ~~Commission~~-Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the ~~Commission~~ Division may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the ~~Commission~~, Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the ~~Commission~~, Division, under the hand of its ~~Chairman~~, the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~-Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded

1 to the clerk of the superior court shall immediately be docketed and  
2 indexed on the cross index of judgments, and from the date of such  
3 docketing shall constitute a preferred lien upon any property which  
4 said claimant may own in said county, with the same force and effect  
5 as a judgment rendered by the superior court. The ~~Commission~~  
6 Division shall forward a copy of said certificate to the sheriff or  
7 sheriffs of such county or counties, or to a duly authorized agent of  
8 the ~~Commission, Division~~, and when so forwarded and in the hands  
9 of such sheriff or agent of the ~~Commission, Division~~, shall have all  
10 the force and effect of an execution issued to such sheriff or agent of  
11 the ~~Commission-Division~~ by the clerk of the superior court upon a  
12 judgment of the superior court duly docketed in said county. The  
13 ~~Commission-Division~~ is further authorized and empowered to issue  
14 alias copies of said certificate or execution to the sheriff or sheriffs of  
15 such county or counties, or a duly authorized agent of the  
16 ~~Commission-Division~~ in all cases in which the sheriff or duly  
17 authorized agent has returned an execution or certificate unsatisfied;  
18 when so issued and in the hands of the sheriff or duly authorized  
19 agent of the ~~Commission, Division~~, such alias shall have all the force  
20 and effect of an alias execution issued to such sheriff or duly  
21 authorized agent of the ~~Commission-Division~~ by the clerk of the  
22 superior court upon a judgment of the superior court duly docketed in  
23 said county. Provided, however, that notwithstanding any provision  
24 of this subsection, upon filing one written notice with the  
25 ~~Commission, Division~~, the sheriff of any county shall have the sole  
26 and exclusive right to serve all executions and make all collections  
27 mentioned in this subsection and in such case, no agent of the  
28 ~~Commission-Division~~ shall have the authority to serve any  
29 executions or make any collections therein in such county. A return  
30 of such execution or alias execution, shall be made to the  
31 ~~Commission, Division~~, together with all moneys collected  
32 thereunder, and when such order, execution or alias is referred to the  
33 agent of the ~~Commission-Division~~ for service, the said agent of the  
34 ~~Commission-Division~~ shall be vested with all the powers of the  
35 sheriff to the extent of serving such order, execution or alias and  
36 levying or collecting thereunder. The agent of the ~~Commission~~  
37 Division to whom such order or execution is referred shall give a  
38 bond not to exceed three thousand dollars (\$3,000) approved by the  
39 ~~Commission-Division~~ for the faithful performance of such duties.  
40 The liability of said agent shall be in the same manner and to the  
41 same extent as is now imposed on sheriffs in the service of  
42 execution. If any sheriff of this State or any agent of the ~~Commission~~  
43 Division who is charged with the duty of serving executions shall  
44 willfully fail, refuse or neglect to execute any order directed to him  
45 by the said ~~Commission-Division~~ and within the time provided by  
46 law, the official bond of such sheriff or of such agent of the  
47 ~~Commission-Division~~ shall be liable for the overpayments and costs  
48 due by the claimant. Additionally, the ~~Commission-Division~~ or its  
49 designated representatives in the collection of overpayments shall  
50 have the powers enumerated in G.S. 96-10(b)(2) and (3).



- 1 c. Any person who has been found by the ~~Commission~~-Division to have  
2 been overpaid under subparagraph (1) above shall be liable to have  
3 such sums deducted from future benefits payable to him under this  
4 Chapter.
- 5 d. Any person who has been found by the ~~Commission~~-Division to have  
6 been overpaid under subparagraph (2) above shall be liable to have  
7 such sums deducted from future benefits payable to him under this  
8 Chapter in such amounts as the ~~Commission~~-Division may by  
9 regulation prescribe but no such benefit payable for any week shall  
10 be reduced by more than fifty percent (50%) of that person's weekly  
11 benefit amount.
- 12 e. To the extent permissible under the laws and Constitution of the  
13 United States, the ~~Commission~~-Division is authorized to enter into or  
14 cooperate in arrangements or reciprocal agreements with appropriate  
15 and duly authorized agencies of other states or the United States  
16 Secretary of Labor, or both, whereby: (1) Overpayments of  
17 unemployment benefits as determined under subparagraphs (1) and  
18 (2) above shall be recovered by offset from unemployment benefits  
19 otherwise payable under the unemployment compensation law of  
20 another state, and overpayments of unemployment benefits as  
21 determined under the unemployment compensation law of such other  
22 state shall be recovered by offset from unemployment benefits  
23 otherwise payable under this Chapter; and, (2) Overpayments of  
24 unemployment benefits as determined under applicable federal law,  
25 with respect to benefits or allowances for unemployment provided  
26 under a federal program administered by this State under an  
27 agreement with the United States Secretary of Labor, shall be  
28 recovered by offset from unemployment benefits otherwise payable  
29 under this Chapter or any such federal program, or under the  
30 unemployment compensation law of another state or any such federal  
31 unemployment benefit or allowance program administered by such  
32 other state under an agreement with the United States Secretary of  
33 Labor if such other state has in effect a reciprocal agreement with the  
34 United States Secretary of Labor as authorized by Section 303(g)(2)  
35 of the federal Social Security Act, if the United States agrees, as  
36 provided in the reciprocal agreement with this State entered into  
37 under such Section 303(g)(2) of the Social Security Act, that  
38 overpayments of unemployment benefits as determined under  
39 subparagraphs (1) and (2) above, and overpayment as determined  
40 under the unemployment compensation law of another state which  
41 has in effect a reciprocal agreement with the United States Secretary  
42 of Labor as authorized by Section 303(g)(2) of the Social Security  
43 Act, shall be recovered by offset from benefits or allowances for  
44 unemployment otherwise payable under a federal program  
45 administered by this State or such other state under an agreement  
46 with the United States Secretary of Labor.
- 47 f. The ~~Commission~~-Division may in its discretion decline to collect  
48 overpayments to claimants if the claimant has deceased after the  
49 payment was made. In such a case the ~~Commission~~-Division may  
50 remove the debt of the deceased claimant from its records."  
51

SECTION 2.20. G.S. 96-19 reads as rewritten:

1 **"§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or**  
2 **invalidation of federal acts; suspension of enforcement provisions contested.**

3 (a) It is the purpose of this Chapter to secure for employers and employees the benefits  
4 of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to  
5 credit on payment of federal taxes, of State contributions, the receipt of federal grants for  
6 administrative purposes, and all other provisions of the said Federal Social Security Act; and it  
7 is intended as a policy of the State that this Chapter and its requirements for contributions by  
8 employers shall continue in force only so long as such employers are required to pay the federal  
9 taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title  
10 III and Title IX of the said Federal Social Security Act shall be declared invalid by the United  
11 States Supreme Court, or if such law be repealed by congressional action so that the federal tax  
12 cannot be further levied, from and after the declaration of such invalidity by the United States  
13 Supreme Court, or the repeal of said law by congressional action, as the case may be, no further  
14 levy or collection of contributions shall be made hereunder. The enactment by the Congress of  
15 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance  
16 Act shall in no way affect the administration of this law except as herein expressly provided.

17 All federal grants and all contributions theretofore collected, and all funds in the treasury by  
18 virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible,  
19 under the terms of this Chapter: Provided, however, that contributions already due from any  
20 employer shall be collected and paid into the said fund, subject to such distribution; and  
21 provided further, that the personnel of the ~~State Employment Security Commission~~ Division of  
22 Employment Security shall be reduced as rapidly as possible.

23 The funds remaining available for use by the ~~North Carolina Employment Security~~  
24 ~~Commission~~ Division of Employment Security shall be expended, as necessary, in making  
25 payment of all such awards as have been made and are fully approved at the date aforesaid, and  
26 the payment of the necessary costs for the further administration of this Chapter, and the final  
27 settlement of all affairs connected with same. After complete payment of all administrative  
28 costs and full payment of all awards made as aforesaid, any and all moneys remaining to the  
29 credit of any employer shall be refunded to such employer, or his duly authorized assignee:  
30 Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and  
31 transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former  
32 Employment Security Commission of North Carolina, and that is now part of the Division of  
33 Employment Security of the North Carolina Department of Commerce, shall in such event  
34 return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of  
35 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on  
36 the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment~~  
37 ~~Security Commission of North Carolina~~ Division, the said State employment service shall  
38 render such service in connection therewith as shall be demanded or required under the  
39 provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

40 (b) The ~~Employment Security Commission~~ Division of Employment Security may,  
41 upon receiving notification from the U.S. Department of Labor that any provision of this  
42 Chapter is out of conformity with the requirements of the federal law or of the U.S. Department  
43 of Labor, suspend the enforcement of the contested section or provision until the North  
44 Carolina Legislature next has an opportunity to make changes in the North Carolina law. The  
45 ~~Employment Security Commission shall, Division~~, in order to implement the above suspension:

- 46 (1) Notify the Governor's office and provide that office with a copy of the  
47 determination or notification of the U.S. Department of Labor;  
48 (2) Advise the Governor's office as to whether the contested portion or provision  
49 of the law would, if not enforced, so seriously hamper the operations of the  
50 agency as to make it advisable that a special session of the legislature be  
51 called;

- 1 (3) Take all reasonable steps available to obtain a reprieve from the  
2 implementation of any federal conformity failure sanctions until the State  
3 legislature has been afforded an opportunity to consider the existing  
4 conflict."

5 **SECTION 2.21.** G.S. 96-20 reads as rewritten:

6 **"§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;  
7 employees.**

8 The ~~Employment Service Division of the Employment Security Commission~~ Employment  
9 Security Section of the Division of Employment Security, Department of Commerce, shall  
10 establish and maintain free public employment offices in such number and in such places as  
11 may be necessary for the proper administration of this Chapter, and for the purpose of  
12 performing such duties as are within the purview of the act of Congress entitled "An act to  
13 provide for the establishment of a national employment system and for cooperation with the  
14 states in the promotion of such system and for other purposes," approved June 6, 1933, (48  
15 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered  
16 by a full-time salaried director. The ~~Employment Security Commission Division~~ shall be  
17 charged with the duty to cooperate with any official or agency of the United States having  
18 powers or duties under the provisions of the said act of Congress, as amended, and to do and  
19 perform all things necessary to secure to this State the benefits of the said act of Congress, as  
20 amended, in the promotion and maintenance of a system of public employment offices. The  
21 provisions of the said act of Congress, as amended, are hereby accepted by this State, in  
22 conformity with section 4 of said act, and this State will observe and comply with the  
23 requirements thereof. The ~~Employment Security Commission Division~~ is hereby designated  
24 and constituted the agency of this State for the purpose of said act. The ~~Commission Secretary~~  
25 is directed to appoint the ~~director, head,~~ other officers, and employees of the Employment  
26 Service Division Security Section."

27 **SECTION 2.22.** G.S. 96-21 reads as rewritten:

28 **"§ 96-21. Duties concerning veterans and worker profiling.**

29 The duties of the ~~Employment Service Division~~ Employment Security Section include the  
30 following:

- 31 ...  
32 (2) To establish and use a worker profiling system that complies with 42 U.S.C.  
33 § 503(a)(10) to identify claimants for benefits whom the ~~Division Section~~  
34 must refer to reemployment services in accordance with that law."

35 **SECTION 2.23.** G.S. 96-22 reads as rewritten:

36 **"§ 96-22. Employment of and assistance to minors.**

37 The ~~Employment Service Division Security Section~~ shall have jurisdiction over all matters  
38 contemplated in this Article pertaining to securing employment for all minors who avail  
39 themselves of the free employment service. The ~~Employment Service Division Security~~  
40 Section shall have power to so conduct its affairs that at all times it shall be in harmony with  
41 laws relating to child labor and compulsory education; to aid in inducing minors over 16, who  
42 cannot or do not for various reasons attend day school, to undertake promising skilled  
43 employment; to aid in influencing minors who do not come within the purview of compulsory  
44 education laws, and who do not attend day school, to avail themselves of continuation or  
45 special courses in existing night schools, vocational schools, part-time schools, trade schools,  
46 business schools, library schools, university extension courses, etc., so as to become more  
47 skilled in such occupation or vocation to which they are respectively inclined or particularly  
48 adapted, including assisting those minors who are interested in securing vocational employment  
49 in agriculture and to aid in the development of good citizenship and in the study and  
50 development of vocational rehabilitation capabilities for handicapped minors."

51 **SECTION 2.24.** G.S. 96-24 reads as rewritten:

**"§ 96-24. Local offices; cooperation with United States service; financial aid from United States.**

The ~~Employment Service Division~~ Security Section is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses."

**SECTION 2.25.** G.S. 96-25 reads as rewritten:

**"§ 96-25. Acceptance and use of donations.**

It shall be lawful for the ~~Employment Service Division~~ Security Section to receive, accept, and use, in the name of the people of the State, or any community or municipal corporation, as the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose of extending the benefits of this Article and for the purpose of giving assistance to handicapped citizens through vocational rehabilitation."

**SECTION 2.26.** G.S. 96-26 reads as rewritten:

**"§ 96-26. Cooperation of towns, townships, and counties with Division.**

It shall be lawful for the governing authorities of any municipality, county, township, or school corporation in the State to enter into cooperative agreement with the ~~Employment Service Division~~ Security Section and to appropriate and expend the necessary money upon such conditions as may be approved by the ~~Employment Service Division~~ Security Section and to permit the use of public property for the joint establishment and maintenance of such offices as may be mutually agreed upon, and which will further the purpose of this Article."

**SECTION 2.27.** G.S. 96-27 reads as rewritten:

**"§ 96-27. Method of handling employment service funds.**

All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the ~~Employment Service Division~~ Security Section shall be paid into the Employment Security Administration Fund, and said moneys are hereby made available to the State employment service to be expended as provided in this Article and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, ~~said Division~~ the Section is authorized to enter into agreements with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the Commission may accept moneys, services, or quarters as a contribution to the Employment Security Administration Fund."

**SECTION 2.28.** G.S. 96-29 reads as rewritten:

**"§ 96-29. Openings listed by State agencies.**

Every State agency shall list with the ~~Employment Security Commission of North Carolina~~ Division of Employment Security every job opening occurring within the agency which opening the agency wishes filled and which will not be filled solely by promotion or transfer from within the existing State government work force. The listing shall include a brief description of the duties and salary range and shall be filed with the ~~Commission~~ Division within 30 days after the occurrence of the opening. The State agency may not fill the job opening for at least 21 days after the listing has been filed with the ~~Commission~~ Division. The listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within 15 days after the opening has been filled.

The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period for job openings in job classifications declared to be in short supply by the State Personnel

Commission, upon the request of a State agency, if the 21-day listing requirement for these classifications hinders the agency in providing essential services."

**SECTION 2.29.** G.S. 96-31 reads as rewritten:

**"§ 96-31. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) "CFS" means the common follow-up information management system developed by DES ~~the Employment Security Commission of North Carolina~~ as authorized under this Article.
- (2) ~~"ESC" means the Employment Security Commission of North Carolina.~~  
"DES" means the Division of Employment Security.
- (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- (4) "State job training, education, and placement program" or "State-funded program" means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development."

**SECTION 2.30.** G.S. 96-32 reads as rewritten:

**"§ 96-32. Common follow-up information management system created.**

(a) ~~The Employment Security Commission of North Carolina~~ DES shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ~~ESC~~ DES shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) ~~The ESC~~ DES shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the ~~ESC~~ DES shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated."

**SECTION 2.31.** G.S. 96-33 reads as rewritten:

**"§ 96-33. State agencies required to provide information and data.**

(a) Every State agency and local government agency or entity that receives State or federal funds for the direct or indirect support of State job training, education, and placement programs shall provide to the ~~Employment Security Commission of North Carolina~~ DES all data and information available to or within the agency or entity's possession requested by the ~~ESC~~ DES for input into the common follow-up information management system authorized under this Article.

(b) Each agency or entity required to report information and data to the ~~ESC~~ DES under this Article shall maintain true and accurate records of the information and data requested by the ~~ESC~~ DES. The records shall be open to ~~ESC~~ DES inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by ~~ESC~~ DES, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the ~~ESC~~ DES to carry out the purposes of this Article. Information obtained by the ~~ESC~~ DES from the agency or entity shall be held by ~~ESC~~ DES as

confidential and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers."

**SECTION 2.32.** G.S. 96-35 reads as rewritten:

**"§ 96-35. Reports on common follow-up system activities.**

(a) ~~The Employment Security Commission of North Carolina~~ DES shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) ~~The ESC~~ DES shall report to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS."

### **PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

**SECTION 3.1.** G.S. 7A-343.1 reads as rewritten:

**"§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
<del>Employment Security Commission</del>	<del>1</del>
<u>Department of Commerce</u>	<u>1</u>
Commission of Correction	1
Parole Commission	1

1	Archives and History, Division of	1
2	Crime Control and Public Safety, Department of	2
3	Cultural Resources, Department of	3
4	Legislative Building Library	2
5	Justices of the Supreme Court	1 ea.
6	Judges of the Court of Appeals	1 ea.
7	Judges of the Superior Court	1 ea.
8	Clerks of the Superior Court	1 ea.
9	District Attorneys	1 ea.
10	Emergency and Special Judges of the Superior Court	1 ea.
11	Supreme Court Library	AS MANY AS
12		REQUESTED
13	Appellate Division Reporter	1
14	University of North Carolina, Chapel Hill	71
15	University of North Carolina, Charlotte	1
16	University of North Carolina, Greensboro	1
17	University of North Carolina, Asheville	1
18	North Carolina State University, Raleigh	1
19	Appalachian State University	1
20	East Carolina University	1
21	Fayetteville State University	1
22	North Carolina Central University	17
23	Western Carolina University	1
24	Duke University	17
25	Davidson College	2
26	Wake Forest University	25
27	Lenoir Rhyne College	1
28	Elon College	1
29	Campbell University	25
30	Federal, Out-of-State and Foreign Secretary of State	1
31	Secretary of Defense	1
32	Secretary of Health, Education and Welfare	1
33	Secretary of Housing and Urban Development	1
34	Secretary of Transportation	1
35	Attorney General	1
36	Department of Justice	1
37	Internal Revenue Service	1
38	Veterans' Administration	1
39	Library of Congress	5
40	Federal Judges resident in North Carolina	1 ea.
41	Marshal of the United States Supreme Court	1
42	Federal District Attorneys resident in North Carolina	1 ea.
43	Federal Clerks of Court resident in North Carolina	1 ea.
44	Supreme Court Library exchange list	1
45	Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

**SECTION 3.2.** G.S. 8-45.3(a1) reads as rewritten:

"(a) The ~~Employment Security Commission~~ Division of Employment Security is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the ~~Commission, Division~~, including filings required by law to be made to the ~~Commission, Division~~, and said photographs, photocopies, or microphotocopies, when certified by the ~~Commission-Division~~ as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings, and matters as the originals thereof would have been."

**SECTION 3.3.** G.S. 52C-5-501(a) reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from ~~the North Carolina Employment Security Commission, the Division of Employment Security (DES)~~ in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the ~~Employment Security Commission-DES~~ without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the ~~Employment Security Commission-DES~~ shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order. The ~~Employment Security Commission-DES~~ shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

**SECTION 3.4.** G.S. 58-89A-120 reads as rewritten:

**"§ 58-89A-120. Unemployment taxes; payroll.**

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and 96-8(6). The ~~Employment Security Commission-Department of Commerce, Division of Employment Security (DES)~~, shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the ~~Employment Security Commission-DES~~."

**SECTION 3.5.** G.S. 84-5(a) reads as rewritten:

"(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the ~~Employment Security Commission, Division of Employment Security, Department of Commerce~~, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.



To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
  - b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
  - c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.
- (2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:
  - a. Offering wills for probate.
  - b. Preparing and publishing notice of administration to creditors.
  - c. Handling formal court proceedings.
  - d. Drafting legal papers or giving legal advice to spouses concerning rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
  - e. Resolving questions of domicile and residence of a decedent.
  - f. Handling proceedings involving year's allowances of widows and children.
  - g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
  - h. Drafting instruments releasing deeds of trust.
  - i. Drafting assignments of rent.
  - j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
  - k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
    1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    3. Handling petitions to the tax court.
  - l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
  - m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters of administration.
  2. Abstracting or passing upon title to property.
  3. Handling litigation relating to claims by or against the estate or trust.
  4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.
- (3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:
- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
  - b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
  - c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.
  - d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing."

**SECTION 3.6.** G.S. 95-25.3(d) reads as rewritten:

"(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the ~~Employment Security Commission~~Division of Employment Security.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks."

**SECTION 3.7.** G.S. 94-144(b) reads as rewritten:

"(b) A listing of employment by area and industry of employers who have an assigned account number by the ~~Employment Security Commission~~Department of Commerce, Division

1 of Employment Security (DES), shall be supplied annually to the Commissioner by the  
2 ~~Employment Security Commission of this State.~~ DES. The listing of employment by area and  
3 industry shall contain at least the following: employer name; ~~Employment Security~~  
4 ~~Commission~~ DES account number; indication of whether multiple or a single report unit;  
5 number of reporting units; average employment; establishment size code; geographical area;  
6 any four-digit code; and any other information deemed necessary by the ~~Commissioner~~  
7 Division to meet federal reporting requirements."

8 "**§ 105-129. Extension of time for filing returns.**

9 A return required by this Article is due on or before the date set in this Article. A taxpayer  
10 may ask the Secretary for an extension of time to file a return under G.S. 105-263. (1939, c.  
11 158, s. 216; 1955, c. 1350, s. 17; 1959, c. 1259, s. 9; 1973, c. 476, s. 193; 1977, c. 1114, s. 6;  
12 1989 (Reg. Sess., 1990), c. 984, s. 7; 1997-300, s. 2.)"

13 **SECTION 3.8.** G.S. 105-129.4(b) reads as rewritten:

14 "(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an  
15 enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average  
16 wage of the jobs for which the credit is claimed meets the wage standard and the average wage  
17 of all jobs at the location with respect to which the credit is claimed meets the wage standard.  
18 No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the  
19 credit for investing in machinery and equipment, the credit for research and development, or  
20 the credit for investing in real property for a central office or aircraft facility in a tier three,  
21 four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for  
22 the credit, the average wage of all jobs at the location with respect to which the credit is  
23 claimed meets the wage standard. In making the wage calculation, the taxpayer must include  
24 any positions that were filled for at least 1,600 hours during the calendar year the taxpayer  
25 engages in the activity that qualifies for the credit even if those positions are not filled at the  
26 time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar  
27 year, the taxpayer must use the wage standard for the calendar year in which the taxable year  
28 begins. No wage standard applies to credits for activities in an enterprise tier one or two area.  
29 For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential  
30 manufacturing process in which separate parts of the sequential manufacturing process are  
31 performed in different facilities within the same county, the term "location" may mean either  
32 the specific establishment or all facilities in the county in which parts of the process are  
33 performed.

34 Part-time jobs for which the taxpayer provides health insurance as provided in subsection  
35 (b2) of this section are considered to have an average weekly wage at least equal to the  
36 applicable percentage times the applicable average weekly wage for the county in which the  
37 jobs will be located. There may be a period of up to 100 days between the time at which an  
38 employee begins a part-time job and the time at which the taxpayer begins to provide health  
39 insurance for that employee.

40 Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one  
41 hundred ten percent (110%) of the applicable average weekly wage for the county in which the  
42 jobs will be located, as computed by the Secretary of Commerce from data compiled by the  
43 ~~Employment Security Commission~~ Division of Employment Security for the most recent  
44 period for which data are available. The applicable average weekly wage is the lowest of the  
45 following: (i) the average wage for all insured private employers in the county, (ii) the average  
46 wage for all insured private employers in the State, and (iii) the average wage for all insured  
47 private employers in the county multiplied by the county income/wage adjustment factor. The  
48 county income/wage adjustment factor is the county income/wage ratio divided by the State  
49 income/wage ratio. The county income/wage ratio is average per capita income in the county  
50 divided by the annualized average wage for all insured private employers in the county. The  
51 State income/wage ratio is the average per capita income in the State divided by the annualized

average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

**SECTION 3.9.** G.S. 105-259(b)(9) and (9a) read as rewritten:

"(9) To furnish to the ~~Employment Security Commission~~ Division of Employment Security the name, address, and account and identification numbers of a taxpayer when the information is requested by the ~~Commission~~ Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(9a) To furnish information to the ~~Employment Security Commission~~ Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The ~~Employment Security Commission~~ Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

- a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
- b. Filing status and federal personal exemptions.
- c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
- d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
- e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
- f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

**SECTION 3.10.** G.S. 105A-8(b) reads as rewritten:

"(b) Hearing. — A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with rules adopted by that ~~Commission~~ Division. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the

debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 3.11. G.S. 105A-9 reads as rewritten:

**"§ 105A-9. Appeals from hearings.**

Appeals from hearings allowed under this Chapter, other than those conducted by the ~~Employment Security Commission, Division of Employment Security~~, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the ~~Employment Security Commission of North Carolina Division of Employment Security~~ shall be in accordance with the provisions of Chapter 96 of the General Statutes."

SECTION 3.12. G.S. 108A-29 reads as rewritten:

**"§ 108A-29. Priority for employment services.**

(a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register with the ~~Employment Security Commission-Division of Employment Security~~ for employment services. The point of registration shall be at an office of the ~~Employment Security Commission-Division~~ in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the ~~Employment Security Commission-Division~~ and the local department of social services.

...

(f) Each county department of social services shall enter into a cooperative agreement with the local ~~Employment Security Commission-Division~~ to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the Employment Security Commission by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission, Division~~, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the ~~Employment Security Commission, Division~~, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

(g) The ~~Employment Security Commission-Division~~ shall further assist registrants through job search, job placement, or referral to community service, if contracted to do so.

(h) An individual placed in the Job Search component of the ~~Employment Security Commission-Division~~ or other agency providing Job Search services shall look for work and shall accept any suitable employment. If contracted, the ~~Employment Security Commission Division~~ shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the ~~Commission, Division~~, and the ~~Employment Security Commission-Division~~ will monitor these activities. A "job search record" means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly

1 contact with the ~~Employment Security Commission Division~~. The ~~Employment Security~~  
2 ~~Commission Division~~ shall adopt rules to accomplish this subsection.

3 (i) The Employment Security Commission shall notify all employers in the State of the  
4 "Exclusive No-Fault" Referral Service available through the ~~Employment Security Commission~~  
5 ~~Division of Employment Security~~ to employers who hire personnel through Job Service  
6 referrals.

7 (j) All individuals referred to jobs through the ~~Employment Security Commission~~  
8 ~~Division of Employment Security~~ shall be instructed in the procedures for applying for the  
9 Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment~~  
10 ~~Security Commission Division~~ who qualify for the FEIC shall apply for the FEIC by filing a  
11 W-5 form with their employers.

12 ...

13 (l) The ~~Employment Security Commission Division of Employment Security~~ shall  
14 work with the Department of Labor to develop a relationship with these private employment  
15 agencies to utilize their services and make referrals of individuals registered with the  
16 Employment Security Commission.

17 ...

18 (n) If after evaluation of an individual the ~~Employment Security Commission Division~~  
19 ~~of Employment Security~~ believes it necessary, the ~~Employment Security Commission Division~~  
20 or the county department of social services also may refer an individual to a Job Preparedness  
21 provider. The local community college should include General Education Development, Adult  
22 Basic Education, or Human Resources Development programs that are already in existence as a  
23 part of the Job Preparedness component. Additionally, the Commission or the county  
24 department of social services may refer an individual to a literacy council. Through a  
25 Memorandum of Understanding between the Employment Security Commission, the local  
26 department of social services, and other contracted entities, a system shall be established to  
27 monitor an individual's progress through close communications with the agencies assisting the  
28 individual. The ~~Employment Security Commission Division of Employment Security~~ or Job  
29 Preparedness provider shall adopt rules to accomplish this subsection.

30 ...

31 (p) The ~~Employment Security Commission Division~~ shall expand its Labor Market  
32 Information System. The expansion shall at least include: statistical information on  
33 unemployment rates and other labor trends by county; and publications dealing with licensing  
34 requirements, economic development, and career projections, and information technology  
35 systems which can be used to track participants through the employment and training process.

36 ...."

37 **SECTION 3.13.** G.S. 110-129.2(g)(1) reads as rewritten:

38 "(g) Other Uses of Directory Information. – The following agencies may access  
39 information entered into the Directory from employer reports for the purposes stated:

40 (1) The ~~Employment Security Commission Division of Employment Security~~  
41 for the purpose of administering employment security programs."

42 **SECTION 3.14.** G.S. 110-136.2 reads as rewritten:

43 "**§ 110-136.2. Use of unemployment compensation benefits for child support.**

44 ...

45 (b) Upon notification of a voluntary assignment by the Department of Health and  
46 Human Services, the ~~Employment Security Commission Division of Employment Security~~  
47 shall deduct and withhold the amount assigned by the responsible parent as provided in  
48 G.S. 96-17.

49 (c) Any amount deducted and withheld shall be paid by the ~~Employment Security~~  
50 ~~Commission Division of Employment Security~~ to the Department of Health and Human  
51 Services for distribution as required by federal law.

1 (d) Voluntary assignment of unemployment compensation benefits shall remain  
2 effective until the ~~Employment Security Commission~~ Division of Employment Security  
3 receives notification from the Department of Health and Human Services of an express written  
4 revocation by the responsible parent.

5 ...

6 (f) In the absence of a voluntary assignment of unemployment compensation benefits,  
7 the Department of Health and Human Services shall implement income withholding as  
8 provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five  
9 percent (25%) of the unemployment compensation benefits. Notice of the requirement to  
10 withhold shall be served upon the ~~Employment Security Commission~~ Division and payment  
11 shall be made by the ~~Employment Security Commission~~ Division directly to the Department of  
12 Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501.  
13 Except for the requirement to withhold from unemployment compensation benefits and the  
14 forwarding of withheld funds to the Department of Health and Human Services or to another  
15 state under G.S. 52C-5-501, the ~~Employment Security Commission~~ Division is exempt from  
16 the provisions of G.S. 110-136.8."

17 **SECTION 3.15.** G.S. 113-276(j) reads as rewritten:

18 "(j) A migrant farm worker who has in his possession a temporary certification of his  
19 status as such by the Rural Employment Service of the ~~North Carolina Employment Security~~  
20 ~~Commission~~ Division of Employment Security on a form provided by the Wildlife Resources  
21 Commission is entitled to the privileges of a resident of the State and of the county indicated on  
22 such certification during the term thereof for the purposes of purchasing and using the resident  
23 fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

24 **SECTION 3.16.** G.S. 132-3(c) reads as rewritten:

25 "(c) Employment Security ~~Commission~~ Records. – Notwithstanding subsection (a) of  
26 this section and G.S. 121-5, when a record of the ~~Employment Security Commission~~ Division  
27 of Employment Security has been copied in any manner, the original record may be destroyed  
28 upon the order of the ~~Chairman of the Employment Security Commission~~ Division. If a record  
29 of ~~the Commission~~ that Division has not been copied, the original record shall be preserved for  
30 at least three years. After three years the original record may be destroyed upon the order of the  
31 ~~Chairman of the Employment Security Commission~~ Assistant Secretary of Commerce."

32 **SECTION 3.17.** G.S. 135-16 reads as rewritten:

33 "**§ 135-16. Employees transferred to North Carolina State Employment Service by act of**  
34 **Congress.**

35 Notwithstanding any provision contained in this Chapter, any employee of the United  
36 States Employment Service who was transferred to and became employed by the State of North  
37 Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th  
38 Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower  
39 Commission or the United States Employment Service between January 1, 1942, and  
40 November 15, 1946, shall be deemed to have been engaged in membership service as defined  
41 by this Chapter for any payroll period or periods between such dates: Provided, that any such  
42 employee or member on or before January 1, 1948, pays to the Board of Trustees for the  
43 benefit of the proper fund or account an amount equal to the accumulated contributions, with  
44 interest thereon, that such employee or member would have made during such period if he had  
45 been a member of the Retirement System with earnable compensation based on the salary  
46 received for such period and as limited by this Chapter: Provided, further that funds are made  
47 available by the United States Employment Service, or other federal agency, to the  
48 ~~Employment Security Commission~~ Division of Employment Security for the payment of and  
49 the ~~Employment Security Commission~~ Division of Employment Security pays to the Board of  
50 Trustees for the benefit of the proper fund a sum equal to the employer's contributions that

1 would have been paid for such period for members or employees who pay the accumulated  
2 contributions provided in this section.

3 The Board of Trustees is authorized to adopt and issue all necessary rules and regulations  
4 for the purpose of administering and enforcing the provisions of this section."

5 **SECTION 3.18.** G.S. 138A-24(14)c. reads as rewritten:

6 "c. A covered person serving on, or a prospective appointee to, one of  
7 the following panels or boards:

- 8 1. Alcoholic Beverage Control Commission.
- 9 2. Coastal Resources Commission.
- 10 3. State Board of Education.
- 11 4. State Board of Elections.
- 12 5. ~~Employment Security Commission~~ Division of Employment  
13 Security.
- 14 6. Environmental Management Commission.
- 15 7. Industrial Commission.
- 16 8. State Personnel Commission.
- 17 9. Rules Review Commission.
- 18 10. Board of Transportation.
- 19 11. Board of Governors of the University of North Carolina.
- 20 12. Utilities Commission.
- 21 13. Wildlife Resources Commission."

22 **SECTION 3.19.** G.S. 143B-181 reads as rewritten:

23 **"§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum;**  
24 **compensation.**

25 The Governor's Advisory Council on Aging of the Department of Health and Human  
26 Services shall consist of 33 members, 29 members to be appointed by the Governor, two  
27 members to be appointed by the President Pro Tempore of the Senate, and two members to be  
28 appointed by the Speaker of the House of Representatives. The composition of the Council  
29 shall be as follows: one representative of the Department of Administration; one representative  
30 of the Department of Cultural Resources; one representative of the ~~Employment Security~~  
31 ~~Commission~~ Division of Employment Security; one representative of the Teachers' and State  
32 Employees' Retirement System; one representative of the Commissioner of Labor; one  
33 representative of the Department of Public Instruction; one representative of the Department of  
34 Environment and Natural Resources; one representative of the Department of Insurance; one  
35 representative of the Department of Crime Control and Public Safety; one representative of the  
36 Department of Community Colleges; one representative of the School of Public Health of The  
37 University of North Carolina; one representative of the School of Social Work of The  
38 University of North Carolina; one representative of the Agricultural Extension Service of North  
39 Carolina State University; one representative of the collective body of the Medical Society of  
40 North Carolina; and 19 members at large. The at large members shall be citizens who are  
41 knowledgeable about services supported through the Older Americans Act of 1965, as  
42 amended, and shall include persons with greatest economic or social need, minority older  
43 persons, and participants in programs under the Older Americans Act of 1965, as amended. The  
44 Governor shall appoint 15 members at large who meet these qualifications and are 60 years of  
45 age or older. The four remaining members at large, two of whom shall be appointed by the  
46 President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the  
47 House of Representatives, shall be broadly representative of the major private agencies and  
48 organizations in the State who are experienced in or have demonstrated particular interest in the  
49 special concerns of older persons. At least one of each of the at-large appointments of the  
50 President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be  
51 persons 60 years of age or older. The Council shall meet at least quarterly.



Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chair to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Health and Human Services."

**SECTION 3.20.** G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Health and Human Services, the ~~Director of the Employment Security Commission~~, Assistant Secretary of Commerce in charge of the Division of Employment Security; the Secretary of Administration, the Secretary of Environment and Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties; and the Native Americans located in Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native American Society, one. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

**SECTION 3.21.** G.S. 143B-417(1)bb. reads as rewritten:"

"(1) To determine the number of student interns to be allocated to each of the following offices or departments:

...

bb. ~~Employment Security Commission~~Division of Employment Security  
...."

**SECTION 3.22.** G.S. 143B-426.25(b)(7) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

...

(7) The ~~Chairman of the Employment Security Commission~~ Assistant Secretary of Commerce in charge of the Division of Employment Security or ~~his~~ that officer's designee shall serve ex officio.

...."

**SECTION 3.23.** G.S. 147-86.1 reads as rewritten:

**"§ 147-86.1. Pool account for local government unemployment compensation.**

(a) The State Treasurer is authorized to establish a pool account, in accordance with rules and regulations of the ~~Employment Security Commission~~, Division of Employment

1 Security (DES), in cooperation with any one or more units of local government, for the purpose  
2 of reimbursing the ~~Employment Security Commission-DES~~ for unemployment benefits paid by  
3 the ~~Commission-DES~~ and chargeable to each local unit of government participating in the pool  
4 account. In the pool account established pursuant to this section, the funds contributed by a unit  
5 of local government shall remain the funds of the particular unit, and interest or other  
6 investment income earned by the pool account shall be prorated and credited to the various  
7 contributing local units on the basis of the amounts thereof contributed, figured according to an  
8 average periodic balance or some other sound accounting principle.

9 (b) The State Treasurer shall pay to the ~~Employment Security Commission~~, Division of  
10 Employment Security, within 25 days from receipt of a list thereof, all unemployment benefits  
11 charged by the ~~Commission-DES~~ to each unit of local government participating in the pool  
12 account from the funds in the pool account belonging to each such unit, to the extent that said  
13 funds are sufficient to do so.

14 (c) Notwithstanding the participation by a unit of local government in the pool account  
15 authorized by this section, such unit shall remain liable to the ~~Employment Security~~  
16 ~~Commission~~-Division of Employment Security for any benefits duly charged by the  
17 Commission to the unit which are not paid by the State Treasurer from funds in the pool  
18 account belonging to the unit. Notwithstanding its participation in the pool account, each unit  
19 of local government shall continue to maintain an individual account with the ~~Employment~~  
20 ~~Security Commission-DES~~.

21 (d) The Director of the Budget shall be authorized to transfer from the interest earned  
22 on the pool account, to the State Treasurer's departmental budget, such funds as may be  
23 necessary to defray the Treasurer's cost of administering the pool account."

24 **SECTION 3.24.** G.S. 158-7.1(d2)(1) reads as rewritten:

25 "(d2) In arriving at the amount of consideration that it receives, the Board may take into  
26 account prospective tax revenues from improvements to be constructed on the property,  
27 prospective sales tax revenues to be generated in the area, as well as any other prospective tax  
28 revenues or income coming to the county or city over the next 10 years as a result of the  
29 conveyance or lease provided the following conditions are met:

- 30 (1) The governing board of the county or city shall determine that the  
31 conveyance of the property will stimulate the local economy, promote  
32 business, and result in the creation of a substantial number of jobs in the  
33 county or city that pay at or above the median average wage in the county or,  
34 for a city, in the county where the city is located. A city that spans more than  
35 one county is considered to be located in the county where the greatest  
36 population of the city resides. For the purpose of this subdivision, the  
37 median average wage in a county is the median average wage for all insured  
38 industries in the county as computed by the ~~Employment Security~~  
39 ~~Commission~~-Department of Commerce, Division of Employment Security,  
40 for the most recent period for which data is available."

41 **SECTION 3.25.** G.S. 165-10 reads as rewritten:

42 **"§ 165-10. Transfer of veterans' activities.**

43 The Governor may transfer to the Department such funds, facilities, properties and  
44 activities now being held or administered by the State for the benefit of veterans, their families  
45 and dependents, as he may deem proper; provided, that the provisions of this section shall not  
46 apply to the activities of the ~~North Carolina Employment Security Commission~~-Department of  
47 Commerce, Division of Employment Security, in respect to veterans."

48  
49 **PART IV. REPORTING; OTHER MATTERS**

50 **SECTION 4.1.** By October 1, 2011, the Board of Review established by this act  
51 shall be appointed and the Department of Commerce shall assign staff to the Board.

1           **SECTION 4.2.** By June 30, 2012, the Secretary of the Department of Commerce  
2 shall make a detailed written report to the Joint Legislative Program Evaluation Oversight  
3 Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal  
4 Research Division on the consolidation of the Employment Security Commission into the  
5 Department of Commerce and on any changes the Secretary recommends to maintain the  
6 solvency of the Employment Security Fund.  
7

8           **PART V.       AUTHORITY OF THE REVISOR**

9           **SECTION 5.1.** Deletion of References. — The Revisor of Statutes may delete any  
10 reference in the General Statutes to the Employment Security Commission, or any derivative  
11 thereof, and substitute references to the Division of Employment Security (DES) of the  
12 Department of Commerce created by this act wherever conforming changes are necessary. The  
13 Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the  
14 Employment Security Commission, or any derivative thereof, and substitute references to the  
15 Secretary of Commerce, as appropriate.  
16

17           **PART VI.     EFFECTIVE DATE**

18           **SECTION 6.1.** Except as otherwise provided, this act is effective when it becomes  
19 law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 813\*  
PROPOSED COMMITTEE SUBSTITUTE H813-CSLR-15 [v.2]**

5/31/2011 6:31:53 PM

Short Title: ESC/Jobs Reform.

(Public)

Sponsors:

Referred to:

April 7, 2011

**A BILL TO BE ENTITLED**

**AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA  
BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE  
DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE  
EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE  
DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2A OF CHAPTER 150B  
OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND  
CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY  
FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF  
THE SECRETARY OF COMMERCE.**

The General Assembly of North Carolina enacts:

**PART I. TRANSFER; GENERAL PROVISIONS; RULE MAKING**

**SECTION 1.1.** Transfers of Agency, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Employment Security Commission are transferred to the Department of Commerce with all of the elements of a Type I transfer as defined by G.S. 143A-6.

**SECTION 1.2.** Continuation of Duties. – Any previous assignment of duties of a quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, office, bureau, or other subunit of State government transferred to the Secretary of Commerce and the Department of Commerce, Division of Employment Security, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Secretary of Commerce and the Department of Commerce, Division of Employment Security, are charged with exercising the functions of the former named entity.

**SECTION 1.3.** No action or proceeding pending on November 1, 2011, brought by or against the Employment Security Commission shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Department of Commerce, Division of Employment Security. In these actions and proceedings, the Secretary of Commerce or the Department of Commerce shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.



\* H 8 1 3 - C S L R - 1 5 - V - 2 \*

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Employment Safety and Security Commission, or by the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on the date this act becomes effective, may be conducted and completed by the Employment Safety and Security Commission in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners, or directors thereof.

SECTION 1.4. G.S. 143B-431(a)(1) and (a)(2) read as rewritten:

**"§ 143B-431. Department of Commerce – functions.**

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development and employment security, including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the administration of unemployment insurance, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

- a. The State Board of Alcoholic Control,
  - b. The North Carolina Utilities Commission,
  - c. ~~The Employment Security Commission,~~
  - d. The North Carolina Industrial Commission,
  - e. State Banking Commission and the Commissioner of Banks,
  - f. Savings Institutions Division,
  - g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
  - h. Credit Union Commission,
  - i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
  - j. The North Carolina Mutual Burial Association Commission,
  - k. The North Carolina Rural Electrification Authority,
  - l. The North Carolina State Ports Authority,
- all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

...."

SECTION 1.5. G.S. 143B-433(1) reads as rewritten:

**"§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

(1) The following agencies:

- a. The North Carolina Alcoholic Beverage Control Commission.
- b. The North Carolina Utilities Commission.
- c. ~~The Employment Security Commission.~~
- d. The North Carolina Industrial Commission.
- e. State Banking Commission.
- f. Savings Institutions Division.
- g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.

- 1 h. Credit Union Commission.
- 2 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,
- 3 2004.
- 4 j. The North Carolina Mutual Burial Association Commission.
- 5 k. North Carolina Cemetery Commission.
- 6 l. The North Carolina Rural Electrification Authority.
- 7 m. Repealed by Session Laws 1985, c. 757, s. 179(d).
- 8 n. North Carolina Science and Technology Research Center.
- 9 o. The North Carolina State Ports Authority.
- 10 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,
- 11 2010.
- 12 q. Economic Development Board.
- 13 r. Labor Force Development Council.
- 14 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective
- 15 September 30, 2000.
- 16 u. Navigation and Pilotage Commissions established by Chapter 76 of
- 17 the General Statutes.
- 18 v. Repealed by Session Laws 1993, c. 321, s. 313b.
- 19 (2) Those agencies which are transferred to the Department of Commerce
- 20 including the:
- 21 a. Community Assistance Division.
- 22 b. Community Development Council.
- 23 c. Employment and Training Division.
- 24 d. Job Training Coordinating Council.
- 25 (3) The Division of Employment Security.
- 26 (3)(4) Such divisions as may be established pursuant to Article 1 of this Chapter."
- 27 **SECTION 1.6.** G.S. 143B-343(c) reads as rewritten:
- 28 (c) Advice and Staff. – The Secretaries of Administration, State, and Transportation,
- 29 the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall
- 30 advise the Board on economic development activities within the responsibility of their
- 31 respective departments. Clerical and professional staff support to the Economic Development
- 32 Board shall be provided by an Interagency Economic Development Group composed of
- 33 representatives of the following State agencies:
- 34 (1) The Department of Administration.
- 35 (2) The Department of Agriculture and Consumer Services.
- 36 (3) The Division of Employment Security Commission.~~Security.~~
- 37 (4) The Department of Labor.
- 38 (5) The Department of Transportation.
- 39 The Department of Commerce shall have the responsibility for coordinating the activities and
- 40 efforts of the Interagency Economic Development Group."
- 41 **SECTION 1.7.** G.S. 143B-438.10(b)(1) reads as rewritten:
- 42 "(b) Membership; Terms. – The Commission on Workforce Development shall consist
- 43 of 38 members appointed as follows:
- 44 (1) By virtue of their offices, the following department and agency heads or
- 45 their respective designees shall serve on the Commission: the Secretary of
- 46 the Department of Health and Human Services, the ~~Chair Assistant Secretary~~
- 47 of Commerce in charge of the Division of Employment Security
- 48 Commission, Security, the Superintendent of Public Instruction, the
- 49 President of the Community Colleges System Office, the Commissioner of

the Department of Labor, and the Secretary of the Department of Commerce."

SECTION 1.8. G.S. 143B-438.16 reads as rewritten:

"§ 143B-438.16. Trade Jobs for Success initiative established; funds; program components and guidelines.

(a) There is established within the Department of Commerce the Trade Jobs for Success (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with the ~~Employment Security Commission and the~~ Community Colleges System Office.

(b) There is created in the Department of Commerce a special, nonreverting fund called the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS initiative. The Department of Commerce shall develop guidelines for administration of the TJS initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the administration of the Fund. The members of the advisory council shall include:

(1) ~~The Chairman~~ Assistant Secretary of Commerce in charge of the Division of Employment Security Commission Security or that officer's designee.

(2) The President of the Community Colleges System or that officer's designee.

(3) The State Auditor or that officer's designee.

(4) A representative of a statewide association to further the interests of business and industry in North Carolina designated by the Secretary of Commerce.

(c) At a minimum, the Trade Jobs for Success initiative shall include the following programmatic components:

(1) Displaced workers participating in the TJS initiative shall receive (i) on-the-job training to learn new job skills and (ii) educational assistance or remedial education specifically designed to help displaced workers qualify for new jobs.

(2) Displaced workers participating in the TJS initiative shall not lose their eligibility for unemployment insurance benefits while they are in the program and may receive wage supplements, as appropriate.

(3) In-State relocation assistance, in appropriate instances, where participating individuals must relocate to work for participating employers.

(4) Mentoring, both on and off the job, shall be provided to participants in a dignified manner through telephone assistance and other appropriate means.

(5) Financial assistance and other incentives may be provided to participating employers who provide jobs to participating displaced workers to help defray the costs of providing the on-the-job training opportunities.

(6) Work provided by participating employers as part of the TJS initiative must be full-time employment. Wages paid shall not be less than the hourly entry-level wage normally paid by the employer.

(7) Staff of the ~~Division of the Employment Security Commission, Security~~, in conjunction with other appropriate staff of the Department of Commerce, shall match participating displaced workers to the most suitable employer.

(8) ~~Local Employment Security Commission offices operated by the Division of Employment Security~~ and community colleges shall enter into partnership agreements with local chambers of commerce, and other appropriate organizations, that would encourage employer participation in the TJS initiative.

(9) Tracking of participating individuals and businesses by the Department of Commerce ~~and the Employment Security Commission~~ to assure program integrity and effectiveness and the compilation of data to generate the reports necessary to evaluate the success of the TJS initiative.

- (10) Coordination and integration of existing programs in the Department of Commerce, the ~~Employment Security Commission, Division of Employment Security~~, and the North Carolina Community College System in a manner that maximizes the flexibility of these agencies to effectively assist participating individuals and businesses."

**SECTION 1.9.** G.S. 143B-438.17(c) reads as rewritten:

"(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the ~~Employment Security Commission Division of Employment Security~~ and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative and legislative proposals and recommendations regarding statutory c

hanges needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

**SECTION 1.10.(a)** G.S. 150B-1(c) reads as rewritten:

**"§ 150B-1. Policy and scope.**

(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) The Industrial Commission.
- (5) ~~The Employment Security Commission.~~
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery.
- (8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

**SECTION 1.10.(b)** G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- ...
- (18) The Department of Commerce for hearings and appeals authorized under Chapter 96 of the General Statutes."

**SECTION 1.10.(c)** The Department of Commerce, Division of Employment Security shall adopt all existing rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire.

## **PART II. SUBSTANTIVE AMENDMENTS AND CONFORMING CHANGES TO THE EMPLOYMENT SECURITY LAWS**

**SECTION 2.1.** G.S. 96-1 reads as rewritten:



## " Article 1.

~~Employment Security Commission. Division of Employment Security.~~~~§ 96-1. Title.~~

~~This Chapter shall be known and may be cited as the "Employment Security Law." Any reference to the Unemployment Compensation Commission shall be deemed a reference to the Employment Security Commission. Department of Commerce, Division of Employment Security (DES), and all powers, duties, funds, records, etc., of the Unemployment Compensation Commission are transferred to the Employment Security Commission. Commission, and the Employment Security Commission, are transferred to the DES."~~

SECTION 2.2. G.S. 96-3 reads as rewritten:

~~"§ 96-3. Employment Security Commission. Division of Employment Security.~~

~~The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of Commerce through two coordinate sections: the Employment Security Section and the Employment Insurance Section. The Employment Security Section shall administer the employment services functions of the Division. The Employment Insurance Section shall administer the unemployment taxation and assessment functions of the Division.~~

~~(a) Organization.— There is hereby created a commission to be known as the Employment Security Commission of North Carolina. The Commission shall consist of seven members to be appointed by the Governor on or before July 1, 1941. The Governor shall have the power to designate the member of said Commission who shall act as the chairman thereof. The chairman of the Commission shall not engage in any other business, vocation or employment. Three members of the Commission shall be appointed by the Governor to serve for a term of two years. Three members shall be appointed to serve for a term of four years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four years each, thereafter, and the member of said Commission designated by the Governor as chairman shall serve at the pleasure of the Governor. Any member appointed to fill a vacancy occurring in any of the appointments made by the Governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Governor may at any time after notice and hearing, remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.~~

~~(b) Divisions.— The Commission shall establish two coordinate divisions: the North Carolina State Employment Service Division, created pursuant to G.S. 96-20, and the Unemployment Insurance Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except insofar as the Commission may find that such separation is impracticable. Notwithstanding any other provision of this Chapter, administrative organization of the agency shall be in accordance with that which the Commission finds most desirable in order to perform the duties and functions of the agency.~~

~~(c) Salaries.— The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations Act for the Secretary of Commerce, and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.~~

1       (d) ~~Quorum. — The chairman or his designee and three members of the Commission~~  
2 ~~shall constitute a quorum."~~

3       SECTION 2.3. G.S. 96-4 reads as rewritten:

4       "**§ 96-4. Administration. Administration; powers and duties of the Assistant Secretary;**  
5 **Board of Review.**

6       (a) ~~Duties and Powers of Commission.~~ Duties and Powers of the Secretary and Assistant Secretary. – It shall  
7 be the duty of the ~~Commission~~ Secretary of the Department of Commerce to administer this  
8 ~~Chapter.~~ Chapter. The Secretary shall appoint an Assistant Secretary to assist in the  
9 implementation of the Employment Security Laws and the oversight of the Division of  
10 Employment Security.

11       (b) Board of Review. – The Governor shall appoint a three-person Board of Review to  
12 determine appeals policies and procedures and to hear appeals arising from the decisions and  
13 determinations of the Employment Security Section and the Employment Insurance Section.  
14 The Board of Review shall be comprised of one member representing employers, one member  
15 representing employees, and one member representing the general public. Members of the  
16 Board of Review are subject to confirmation by the General Assembly and shall serve four-year  
17 terms. The member appointed to represent the general public shall serve as chair of the Board  
18 of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be  
19 set by the General Assembly in the current Operations Appropriations Act. ~~The Commission~~  
20 ~~shall meet at least once in each 60 days and may hold special meetings at any time at the call of~~  
21 ~~the chairman or any three members of the Commission, and the Commission shall have power~~  
22 ~~and authority to adopt, amend, or rescind such rules and regulations, to employ such persons,~~  
23 ~~make such expenditures, require such reports, make such investigations, and take such other~~  
24 ~~action as it deems necessary or suitable in the administration of this Chapter. Such rules and~~  
25 ~~regulations shall be effective upon publication in the manner, not inconsistent with the~~  
26 ~~provisions of this Chapter, which the Commission shall prescribe. The Commission~~

27       (c) Procedures. – The Secretary of the Department of Commerce shall determine its  
28 ~~own~~ the organization and methods of procedure of the Division in accordance with the  
29 provisions of this Chapter, and shall have an official seal which shall be judicially noticed. The  
30 ~~chairman of said Commission shall,~~ Assistant Secretary shall, except as otherwise provided by  
31 ~~the Commission,~~ Secretary, be vested with all authority of the ~~Commission,~~ Secretary under  
32 this Chapter, including the authority to conduct hearings and make decisions and  
33 determinations, when the Commission is not in session and shall execute all orders, rules and  
34 regulations established by said Commission. ~~the Secretary.~~ Not later than November 20  
35 preceding the meeting of the General Assembly, the ~~Commission~~ Secretary shall submit to the  
36 Governor a report covering the administration and operation of this Chapter during the  
37 preceding biennium, and shall make such recommendation for amendments to this Chapter as  
38 the ~~Commission~~ Secretary deems proper. ~~Such~~ The report shall include a balance sheet of the  
39 moneys in the fund in which there shall be provided, if possible, a reserve against the liability  
40 in future years to pay benefits in excess of the then current contributions, which reserve shall be  
41 set up by the ~~Commission~~ Secretary in accordance with accepted actuarial principles on the  
42 basis of statistics of employment, business activity, and other relevant factors for the longest  
43 possible period. Whenever the ~~Commission~~ Secretary believes that a change in contribution or  
44 benefit rates will become necessary to protect the solvency of the fund, ~~it~~ the Secretary shall  
45 promptly so inform the Governor and the legislature, and make recommendations with respect  
46 thereto.

47       ~~(b)(d) Regulations and General and Special Rules.~~ Rule Making. – Rules adopted to  
48 implement the Employment Security Laws in accordance with this Chapter shall be made  
49 pursuant to Article 2A of Chapter 150B of the General Statutes, the Administrative Procedures  
50 Act. General and special rules may be adopted, amended, or rescinded by the Commission only

1 after public hearing or opportunity to be heard thereon, of which proper notice has been given  
2 by mail to the last known address in cases of special rules, or by publication as herein provided,  
3 and by one publication as herein provided as to general rules. The Commission shall not take  
4 final action on a general or special rule that has a substantial economic impact, as defined in  
5 G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has  
6 prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with  
7 the Secretary of State and publication in one or more newspapers of general circulation in this  
8 State. Special rules shall become effective 10 days after notification to or mailing to the last  
9 known address of the individuals or concerns affected thereby. Before the adoption,  
10 amendment, or repeal of any permanent regulation, the Commission shall publish notice of the  
11 public hearing and offer any person an opportunity to present data, opinions, and arguments.  
12 The notice shall be published in one or more newspapers of general circulation in this State at  
13 least 10 days before the public hearing and at least 20 days prior to the proposed effective date  
14 of the proposed permanent regulation. The published notice of public hearing shall include the  
15 time and place of the public hearing; a statement of the manner in which data, opinions, and  
16 arguments may be submitted to or before the Commission; a statement of the terms or  
17 substance of the proposed regulation; a statement of whether a fiscal note has been or will be  
18 prepared for the proposed regulation; and the proposed effective date of the regulation. Any  
19 permanent regulation adopted after following the above procedure shall become effective on its  
20 effective date and after it is published in the manner provided for in subsection (e) as well as  
21 such additional publication as the Commission deems appropriate. Additionally, the  
22 Commission shall provide notice of adoption by mail to the last known addresses of all persons  
23 who submitted data, opinions, or arguments to the Commission with respect to the regulation.  
24 Temporary regulations may be adopted, amended, or rescinded by the Commission and shall  
25 become effective in the manner and at the time prescribed by the Commission but shall remain  
26 in force for no longer than 120 days.

27 (e)(e) Publication. – The ~~Commission~~ Division shall cause to be printed for distribution to  
28 the public the text of this Chapter, the ~~Commission's~~ regulations and general ~~Division's~~ rules,  
29 and any other material the ~~Commission~~ Division deems relevant and suitable, and shall furnish  
30 the same to any person upon application therefor. All publications printed shall comply with  
31 the requirements of G.S. 143-170.1.

32 (d)(f) Personnel. – Subject to other provisions of this Chapter, the ~~Commission~~ Assistant  
33 Secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of  
34 such officers, accountants, attorneys, experts, and other persons as may be necessary in the  
35 performance of its duties. It the Division's duties under this Chapter. The Assistant Secretary  
36 shall provide for the holding of examinations to determine the qualifications of applicants for  
37 the positions so classified, and except for temporary appointments not to exceed six months in  
38 duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such  
39 examinations. All positions shall be filled by persons selected and appointed on a nonpartisan  
40 merit basis. The Commission Secretary of Commerce may delegate to any such person so  
41 appointed such power and authority as it the Secretary deems reasonable and proper for the  
42 effective administration of this Chapter, and may, in its his or her discretion, bond any person  
43 handling moneys or signing checks hereunder.

44 (e)(g) Advisory Councils. – ~~The Governor shall appoint a State Advisory Council~~  
45 ~~composed of men and women representing employers, employees, and the general public, in~~  
46 ~~equal numbers. The Chairman of the Commission shall be a member of the State Advisory~~  
47 ~~Council and shall serve as its chairman. There shall be 15 members of the Council (other than~~  
48 ~~its chairman) who shall each be appointed for a term of four years. The State Advisory Council~~  
49 ~~shall be composed of the Assistant Secretary and 15 persons representing employers,~~  
50 ~~employees, and the general public, to be appointed as follows:~~

- (1) Five members appointed by the Governor.
- (2) Five members appointed by the President Pro Tempore of the Senate.
- (3) Five members appointed by the Speaker of the House of Representatives.

Each member shall be appointed for a term of four years. Vacancies on the State Advisory Council shall be filled by the appointing authority. The Assistant Secretary shall serve as chair.

A quorum of the State Advisory Council shall consist of the chairman, or such appointed member as he may designate, plus one half of the total appointed members. The function of the Council shall be to aid the ~~Commission-Division~~ in formulating policies and discussing problems related to the administration of this Chapter. Each member of the State Advisory Council attending meetings of the Council shall be paid the same amount per diem for his or her services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office, and his actual mileage and subsistence at the same rate allowed to State officials.

~~(f)(h)~~ Employment Stabilization. – The ~~Commission~~, Secretary of Commerce, in consultation with the Assistant Secretary and with the advice and aid of ~~its~~ the advisory councils, ~~and through its appropriate divisions,~~ shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

~~(g)~~(i) Records and Reports. –

- (1) Each employing unit shall keep true and accurate employment records, containing such information as the ~~Commission-Division~~ may prescribe. ~~Such~~ The records shall be open to inspection and be subject to being copied by the ~~Commission-Division~~ or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing business in North Carolina shall make available in this State to the ~~Commission, Division~~ such information with respect to persons, firms, or other employing units performing services for it which the ~~Commission Secretary~~ deems necessary in connection with the administration of this Chapter. The ~~Commission-Division~~ may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the ~~Commission~~ Secretary deems necessary for the effective administration of this Chapter.
- (2) If the ~~Commission-Division~~ finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the ~~Commission-Division~~ finds incorrect or insufficient, the ~~Commission-Division~~ may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the ~~Commission-Division~~ may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or

return shall be made until the employer has first been given at least 10 days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this Chapter.

(j) Hearings. – The Assistant Secretary shall appoint hearing officers or appeals referees to hear contested matters arising from the Employment Security Section and the Employment Insurance Section. Appeals from the decisions of the hearing officers or appeals referees shall be heard by the Board of Review.

~~(h)(k)~~ Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the ~~chairman~~ Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative ~~or member of the Commission of the Division~~ shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter. Upon a motion, the ~~chairman~~ Assistant Secretary, the Chair of the Board of Review, and any duly authorized representative ~~or member of the Commission of the Division~~ may quash a subpoena if, after a hearing, ~~the Commission finds any of the following:~~ any of the following findings are made:

- (1) The subpoena requires the production of evidence that does not relate to a matter in issue.
- (2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.
- (3) The subpoena is subject to being quashed for any other reason sufficient in law.

~~(h)(l)~~ (i) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection ~~(h)(k)~~ of this section shall be heard at least ~~10~~20 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides.

~~(i)(m)~~ Subpoenas. – In case of contumacy by, or refusal to obey a subpoena issued to any person by the ~~Commission or its Secretary~~, the Assistant Secretary, the Board of Review, or the Division's authorized representative, any clerk of a superior court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the ~~Commission, Division,~~ or its duly authorized representatives, shall have jurisdiction to issue to such person an order requiring such person to appear before the ~~Commission, Division,~~ or its duly authorized representatives, there to produce evidence if so ordered, or there to give testimony touching upon the matter under investigation or in question; and any failure to obey such order of the said clerk of superior court may be punished by ~~the said clerk of superior court~~ any Superior Court judge as a contempt of said court. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the ~~Commission, Division,~~ shall be punished by a fine of not more than fifty dollars ~~(\$50.00) or by imprisonment for not longer than 30 days. (\$50.00).~~

~~(j)(n)~~ (j) Protection against Self-Incrimination. – No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the ~~Commission~~ Division, Board of Review, or in obedience to the subpoena of the ~~Commission~~ Division, Board of Review, or any member thereof, or any duly authorized representative of the ~~Commission, Division, or Board of Review~~ in any cause or proceeding

1 before the ~~Commission~~, Division, on the ground that the testimony or evidence, documentary  
2 or otherwise, required of him may tend to incriminate him or subject him to a penalty or  
3 forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or  
4 on account of any transaction, matter, or thing concerning which he is compelled, after having  
5 claimed his privilege against self-incrimination, to testify or produce evidence, documentary or  
6 otherwise, except that such individual so testifying shall not be exempt from prosecution and  
7 punishment for perjury committed in so testifying.

8 ~~(k)(o)~~ State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~  
9 Division or Board of Review shall cooperate, to the fullest extent consistent with the provisions  
10 of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to  
11 administer the provisions of the Social Security Act approved August 14, 1935, as amended,  
12 shall make such reports, in such form and containing such information as such federal agency,  
13 official, or bureau may from time to time require, and shall comply with such provisions as  
14 such federal agency, official, or bureau may from time to time find necessary to assure the  
15 correctness and verification of such reports; and shall comply with the regulations prescribed  
16 by such agency, official, or bureau governing the expenditures of such sums as may be allotted  
17 and paid to this State under Title III of the Social Security Act for the purpose of assisting in  
18 the administration of this Chapter. The ~~Commission~~ Division or Board of Review shall further  
19 make its records available to the Railroad Retirement Board, created by the Railroad  
20 Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the  
21 Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies  
22 thereof as the Board shall deem necessary for its purposes in accordance with the provisions of  
23 section 303 (c) of the Social Security Act as amended.

24 Upon request therefor, the ~~Commission~~ Division shall furnish to any agency of the United  
25 States charged with the administration of public works or assistance through public  
26 employment, the name, address, ordinary occupation, and employment status of each recipient  
27 of benefits, and such recipient's rights to further benefits under this Chapter.

28 The ~~Commission~~ Division is authorized to make such investigations, secure and transmit  
29 such information, make available such services and facilities and exercise such of the other  
30 powers provided herein with respect to the administration of this Chapter as it deems necessary  
31 or appropriate to facilitate the administration of any employment security or public  
32 employment service law, and in like manner, to accept and utilize information, services and  
33 facilities made available to this State by the agency charged with the administration of such  
34 other employment security or public employment service law.

35 The ~~Commission~~ Division shall fully cooperate with the agencies of other states and shall  
36 make every proper effort within its means to oppose and prevent any further action which  
37 would, in its judgment, tend to effect complete or substantial federalization of State  
38 unemployment insurance funds or State employment security programs.

39 ~~(l)(p)~~ Reciprocal Arrangements. –

40 (1) The ~~Commission~~ Secretary is hereby authorized to enter into reciprocal  
41 arrangements with appropriate and duly authorized agencies of other states  
42 or of the federal government, or both, whereby:

43 a. Services performed by an individual for a single employing unit for  
44 which services are customarily performed in more than one state  
45 shall be deemed to be services performed entirely within any one of  
46 the states

- 47 1. In which any part of such individual's service is performed or
- 48 2. In which such individual has his residence or
- 49 3. In which the employing unit maintains a place of business,  
50 provided there is in effect, as to such services, an election by

- the employing unit, approved by the agency charged with the administration of such state's employment security law, pursuant to which the services performed by such individual for such employing unit are deemed to be performed entirely within such state.
- b. Combining wage credits. – The ~~Commission~~Division shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Chapter with his wages and employment covered under one or more laws of the federal government and the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for (1) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining.
- c. The services of the ~~Commission~~Division as agent may be made available to other states in taking interstate claims for such states.
- d. Contributions due under this Chapter with respect to wages for insured work shall for the purposes of G.S. 96-10 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the ~~Commission~~Division finds will be fair and reasonable as to all affected interests.
- e. The services of the ~~Commission~~Division may be made available to such other agencies to assist in the enforcement and collection of judgments of such other agencies.
- f. The services on vessels engaged in interstate or foreign commerce for a single employer, wherever performed, shall be deemed performed within this State or within such other state.
- g. Benefits paid by agencies of other states may be reimbursed to such agencies in cases where services of the claimant were "employment" under this Chapter and contributions have been paid by the employer to this agency on remuneration paid for such services; provided the amount of such reimbursement shall not exceed the amount of benefits such claimant would have been entitled to receive under the provisions of this Chapter.
- (2) Reimbursements paid from the fund pursuant to subparagraphs b and c of subdivision (1) of this subsection shall be deemed to be benefits for the purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission~~Division is authorized to make to other states or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision (1) of this subsection.

(3) To the extent permissible under the laws and Constitution of the United States, the ~~Commission~~ Division is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Chapter and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this State or under a similar law of such government.

~~(m)(q)~~ The ~~Commission~~ Division after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder. The ~~Commission~~ Division shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the ~~Commission~~ Division by any employer. Hearings may be before the ~~Commission or a Deputy Commissioner~~ Board of Review or the Division and shall be held in the central office of the ~~Commission~~ Division or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the ~~Commission~~ Board of Review and a determination of the law applicable to that evidence. The ~~Commission~~ Division shall provide for the taking of evidence by a hearing officer ~~who shall be a member of the legal staff of the Commission officer.~~ Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Commission~~ Division and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the ~~Commission~~ Division or Board of Review for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the ~~Commission~~ Division or Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the ~~Commission or a Deputy Commissioner~~ Assistant Secretary or the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before ~~such a~~ party shall be allowed to appeal, ~~he the~~ party shall within 10 days after notice of such decision or determination, file with the ~~Commission~~ Board of Review exceptions to the decision or the ~~determination of the Commission~~ determination, which exceptions will state the grounds of objection to ~~such the~~ decision or determination. If any one of ~~such the~~ exceptions shall be overruled then ~~such the~~ party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the ~~Commission~~ Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the ~~Commission~~ Division upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the ~~Commission~~ Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the ~~Commission~~ Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the ~~Commission~~ Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or,



1 unless the appellant objects after being given reasonable opportunity to object, to a judge of the  
2 Superior Court of Wake County: Provided, however, the 30-day period specified herein may be  
3 extended by agreement of parties. ~~If there be no exceptions to any facts as found by the~~  
4 ~~Commission the facts so found shall be binding upon the court and it shall be heard by the~~  
5 ~~judge at chambers at some place in the district, above mentioned, of which all parties shall have~~  
6 ~~10 days' notice.~~

7 (n)(r) The cause shall be entitled "State of North Carolina on Relationship of the  
8 ~~Employment Security Commission~~ Division of Employment Security, Department of  
9 Commerce, of North Carolina against (here insert name of appellant)," and if there are  
10 exceptions to any facts found by the ~~Commission~~ Board of Review, it shall be placed on the  
11 civil issue docket of such court and shall have precedence over other civil actions except those  
12 described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are  
13 prescribed for the trial of other civil causes. By consent of all parties the appeal may be held  
14 and determined at chambers before any judge of a district in which the appellant either resides,  
15 maintains a place of business or conducts business, or said appeal may be heard before any  
16 judge holding court therein, or in any district in which the appellant either resides, maintains a  
17 place of business or conducts business. Either party may appeal to the appellate division from  
18 the judgment of the superior court under the same rules and regulations as are prescribed by  
19 law for appeals, except that if an appeal shall be taken on behalf of the ~~Employment Security~~  
20 ~~Commission of North Carolina Department of Commerce~~, it shall not be required to give any  
21 undertaking or make any deposit to secure the cost of such appeal and such court may advance  
22 the cause on its docket so as to give the same a speedy hearing.

23 (o)(s) The decision or determination of the ~~Commission~~ Division when docketed in the  
24 office of the clerk of the superior court of any county and when properly indexed and  
25 cross-indexed shall have the same force and effect as a judgment rendered by the superior  
26 court, and if it shall be adjudged in the decision or determination of the ~~Commission~~ Division  
27 that any employer is indebted to the ~~Commission~~ Division for contributions, penalties and  
28 interest or either of the same, then said judgment shall constitute a lien upon any realty owned  
29 by said employer in the county only from the date of docketing of such decision or  
30 determination in the office of the clerk of the superior court and upon personalty owned by said  
31 employer in said county only from the date of levy on such personalty, and upon the execution  
32 thereon no homestead or personal property exemptions shall be allowed; provided, that nothing  
33 herein shall affect any rights accruing to the ~~Commission~~ Division under G.S. 96-10. The  
34 provisions of this section, however, shall not have the effect of releasing any liens for  
35 contributions, penalties or interest, or either of the same, imposed by other law, nor shall they  
36 have the effect of postponing the payment of said contributions, penalties or interest, or  
37 depriving the ~~said Employment Security Commission of North Carolina~~ Division of  
38 Employment Security of any priority in order of payment provided in any other statute under  
39 which payment of the said contributions, penalties and interest or either of the same may be  
40 required. The superior court or any appellate court shall have full power and authority to issue  
41 any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of  
42 said decision or determination of the ~~Commission~~ Division or to collect any amount of  
43 contribution, penalty or interest adjudged to be due the ~~Commission~~ Division by said decision  
44 or determination. In case of an appeal from any decision or determination of the ~~Commission~~  
45 Division to the superior court or from any judgment of the superior court to the appellate  
46 division all proceedings to enforce said judgment, decision, or determination shall be stayed  
47 until final determination of such appeal but no proceedings for the collection of any amount of  
48 contribution, penalty or interest due on same shall be suspended or stayed unless the employer  
49 or party adjudged to pay the same shall file with the clerk of the superior court a bond in such  
50 amount not exceeding double the amount of contribution, penalty, interest or amount due and

1 with such sureties as the clerk of the superior court deems necessary conditioned upon the  
2 payment of the contribution, penalty, interest or amount due when the appeal shall be finally  
3 decided or terminated.

4 ~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations  
5 established by the ~~Commission~~Secretary of Commerce. The manner in which appeals and  
6 hearings shall be presented and conducted before the ~~Commission~~Division shall be governed  
7 by suitable rules and regulations established by it ~~the Secretary~~. The ~~Commission~~Division  
8 shall not be bound by common-law or statutory rules of evidence or by technical or formal  
9 rules of procedure but shall conduct hearings in such manner as to ascertain the substantial  
10 rights of the parties.

11 ~~(q)~~(u) Notices of hearing shall be issued by the ~~Commission~~Division or its authorized  
12 representative and sent by registered mail, return receipt requested, to the last known address of  
13 any employing unit, employers, persons, or firms involved. The notice shall be sent at least  
14 ~~10~~15 days prior to the hearing date and shall contain notification of the place, date, hour, and  
15 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the  
16 ~~Commission~~Division or its authorized representative and shall order ~~him~~the witness to appear  
17 at the time, date and place shown thereon. Any bond or other undertaking required to be given  
18 in order to suspend or stay any execution shall be given payable to the ~~Employment Security~~  
19 ~~Commission of North Carolina~~Department of Commerce. Any such bond or other undertaking  
20 may be forfeited or sued upon as are any other undertakings payable to the State.

21 ~~(r)~~(v) None of the provisions or sections herein set forth in subsections ~~(m)~~~~(q)~~ ~~(q)~~~~(u)~~  
22 shall have the force and effect nor shall the same be construed or interpreted as repealing any of  
23 the provisions of G.S. 96-15 which provide for the procedure and determination of all claims  
24 for benefits and such claims for benefits shall be prosecuted and determined as provided by  
25 said G.S. 96-15.

26 ~~(s)~~(w) Upon a finding of good cause, the ~~Commission~~Division shall have the power in its  
27 sole discretion to forgive, in whole or in part, any overpayment arising under G.S. 96-18(g)(2).

28 ~~(t)~~(x) Confidentiality of Records, Reports, and Information Obtained from Claimants,  
29 Employers, and Units of Government.

- 30 (1) Confidentiality of Information Contained in Records and Reports. – (i)  
31 Except as hereinafter otherwise provided, it shall be unlawful for any person  
32 to obtain, disclose, or use, or to authorize or permit the use of any  
33 information which is obtained from any employing unit, individual, or unit  
34 of government pursuant to the administration of this Chapter or  
35 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives  
36 shall be supplied with information from the records of the ~~Employment~~  
37 ~~Security Commission~~Division to the extent necessary for the proper  
38 presentation of claims or defenses in any proceeding under this Chapter.  
39 Notwithstanding any other provision of law, any claimant may be supplied,  
40 subject to restrictions as the ~~Commission~~Division may by regulation  
41 prescribe, with any information contained in his payment record or on his  
42 most recent monetary determination, and any individual, as well as any  
43 interested employer, may be supplied with information as to the individual's  
44 potential benefit rights from claim records. (iii) Subject to restrictions as the  
45 ~~Commission~~Secretary may by regulation provide, information from the  
46 records of the ~~Employment Security Commission~~Division may be made  
47 available to any agency or public official for any purpose for which  
48 disclosure is required by statute or regulation. (iv) The ~~Commission~~Division  
49 may, in its sole discretion, permit the use of information in its possession by  
50 public officials in the performance of their public duties. (v) The

~~Commission—Division~~ shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The ~~Commission—Division~~ shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State or to track debtors of the State.

- (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the ~~North Carolina State Employment Service—Division~~ from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the ~~Commission—Division~~ have agreed upon in writing. (ii) The ~~Employment Service—Division~~ shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information ~~Division—Unit~~ shall collect, collate, and publish statistical and other information relating to the work under the ~~Commission's Division's~~ jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the ~~Commission's Division's~~ opinion may make further legislation desirable. (iv) Except as provided by ~~Commission—regulation, rules adopted by the Division,~~ any information published pursuant to this subdivision shall not be published in any manner revealing the identity of the applicant or the employing unit.
- (3) Penalties for Disclosure or Improper Use. – Any person violating any provision of this section may be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200.00), ~~or imprisoned for not longer than 90 days, or both, (\$200.00).~~
- (4) Regulations. – The ~~Commission—Division~~ may provide by ~~regulation—rule~~ for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The ~~Commission Division~~ is authorized to provide by regulation for the assessment of fees for securing and copying information released under this section.
- (5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. – All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the ~~Commission—Division~~ or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the ~~Commission, —Division,~~ upon written request and on a

reimbursable basis only, from disclosing information from the records of a proceeding before an appeals referee, deputy commissioner, or other hearing officer by whatever name called, compiled for the purpose of resolving issues raised pursuant to the Employment Security Law.

(6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.

(7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~ Division from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the ~~Commission, Division~~, its agents, or its employees.

(7a) Nothing in this subsection (~~t~~) shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the ~~Employment Security Commission-Division~~ with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the ~~Employment Security Commission's~~ compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

(7b) Nothing in this subsection (~~t~~) shall be construed to prevent the ~~Commission~~ Division from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the ~~Employment Security Commission-Division~~ as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.

(8) Any finding of fact or law, judgment, determination, conclusion or final order made by an adjudicator, appeals referee, commissioner, the ~~Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under authority of the ~~Commission-Division~~ pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Provided, however, any finding of fact or law, judgment, determination, conclusion, or final order made by an adjudicator, appeals referee, commissioner, the ~~Commission~~ the Assistant Secretary, the Board of Review, a hearing officer, appeals referee, or any other person acting under the authority of the ~~Commission-Division~~ pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission.

(~~u~~)(y) Service of process upon the ~~Commission-Division~~ in any proceeding instituted before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits

1 pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment~~  
2 ~~Security Commission Division~~ by regular or courier mail.

3 (v)(z) Advisory rulings may be made by the ~~Commission Division~~ with respect to the  
4 applicability of any statute or rule administered by the ~~Commission Division~~, as follows:

- 5 (1) All requests for advisory rulings shall be made in writing and submitted to  
6 the ~~Chief Counsel Division~~. Such requests shall state the facts and statutes or  
7 rules on which the ruling is requested.
- 8 (2) The ~~Chief Counsel Division~~ may request from any person securing an  
9 advisory ruling any additional information that is necessary. Failure to  
10 supply such additional information shall be cause for the ~~Commission~~  
11 ~~Division~~ to decline to issue an advisory ruling.
- 12 (3) The ~~Commission Division~~ may decline to issue an advisory ruling if any  
13 administrative or judicial proceeding is pending with the person requesting  
14 the ruling on the same factual grounds. The ~~Commission Division~~ may  
15 decline to issue an advisory ruling if such a ruling may harm the  
16 ~~Commission's Division's~~ interest in any litigation in which it is or may be a  
17 party.
- 18 (4) All advisory rulings shall be issued no later than 30 days from the date all  
19 information necessary to make a ruling has been received by the ~~Chief~~  
20 ~~Counsel Division~~.
- 21 (5) No advisory ruling shall be binding upon the ~~Commission Division~~ provided  
22 that in any subsequent enforcement action initiated by the ~~Commission,~~  
23 ~~Division~~, any person's reliance on such ruling shall be considered in  
24 mitigation of any penalty sought to be assessed."

25 SECTION 2.4. G.S. 96-5 reads as rewritten:

26 "§ 96-5. Employment Security Administration Fund.

27 (a) Special Fund. – There is hereby created in the State treasury a special fund to be  
28 known as the Employment Security Administration Fund. All moneys which are deposited or  
29 paid into this fund shall be continuously available to the ~~Commission Secretary~~ for expenditure  
30 in accordance with the provisions of this Chapter, and shall not lapse at any time or be  
31 transferred to any other fund. The Employment Security Administration Fund, except as  
32 otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act  
33 (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys  
34 in this fund which are received from the federal government or any agency thereof or which are  
35 appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for  
36 the purposes and in the amounts found necessary by the Secretary of Labor for the proper and  
37 efficient administration of this Chapter. The fund shall consist of all moneys appropriated by  
38 this State, all moneys received from the United States of America, or any agency thereof,  
39 including the Secretary of Labor, and all moneys received from any other source for such  
40 purpose, and shall also include any moneys received from any agency of the United States or  
41 any other state as compensation for services or facilities supplied to such agency, any amounts  
42 received pursuant to any surety bond or insurance policy or from other sources for losses  
43 sustained by the Employment Security Administration Fund or by reason of damage to  
44 equipment or supplies purchased from moneys in such fund, and any proceeds realized from  
45 the sale or disposition of any such equipment or supplies which may no longer be necessary for  
46 the proper administration of this Chapter: Provided, any interest collected on contributions  
47 and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment  
48 Security Administration Fund created by subsection (c) of this section. All moneys in this fund  
49 shall be deposited, administered, and disbursed in the same manner and under the same  
50 conditions and requirements as is provided by law for other special funds in the State treasury,

1 and shall be maintained in a separate account on the books of the State treasury. The State  
2 Treasurer shall be liable on his official bond for the faithful performance of his duties in  
3 connection with the Employment Security Administration Fund provided for under this  
4 Chapter. Such liability on the official bond shall be effective immediately upon the enactment  
5 of this provision, and such liability shall exist in addition to any liability upon any separate  
6 bond existent on the effective date of this provision, or which may be given in the future. All  
7 sums recovered on any surety bond for losses sustained by the Employment Security  
8 Administration Fund shall be deposited in said fund.

9 (b) Replacement of Funds Lost or Improperly Expended. – If any moneys received  
10 from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered  
11 balances in the Employment Security Administration Fund or any moneys granted to this State  
12 pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this  
13 State or its political subdivisions and matched by such moneys granted to this State pursuant to  
14 the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any  
15 action or contingency, to have been lost or expended for purposes other than, or in amounts in  
16 excess of those found necessary by the Secretary of Labor for the proper administration of this  
17 Chapter, it is the policy of this State that such moneys, not available from the Special  
18 Employment Security Administration Fund established by subsection (c) of this section, shall  
19 be replaced by moneys appropriated for such purpose from the general funds of this State to the  
20 Employment Security Administration Fund for expenditure as provided in subsection (a) of this  
21 section. Upon receipt of notice of such a finding by the Secretary of Labor, the ~~Commission~~  
22 Division shall promptly pay from the Special Employment Security Administration Fund such  
23 sum if available in such fund; if not available, it shall promptly report the amount required for  
24 such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to  
25 the legislature a request for the appropriation of such amount.

26 (c) There is hereby created in the State treasury a special fund to be known as the  
27 Special Employment Security Administration Fund. All interest and penalties, regardless of  
28 when the same became payable, collected from employers under the provisions of this Chapter  
29 subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly,  
30 shall be paid into this fund. No part of said fund shall be expended or available for expenditure  
31 in lieu of federal funds made available to the ~~Commission-Secretary~~ for the administration of  
32 this Chapter. Said fund shall be used by the ~~Commission-Division~~ for the payment of costs and  
33 charges of administration which are found by the Secretary of Labor not to be proper and valid  
34 charges payable out of any funds in the Employment Security Administration Fund received  
35 from any source and shall also be used by the ~~Commission-Secretary~~ for: (i) extensions, repairs,  
36 enlargements and improvements to buildings, and the enhancement of the work environment in  
37 buildings used for ~~Commission-Division~~ business; (ii) the acquisition of real estate, buildings  
38 and equipment required for the expeditious handling of ~~Commission-Division~~ business; and  
39 (iii) the temporary stabilization of federal funds cash flow. The ~~Employment Security~~  
40 ~~Commission-Division~~ may use funds either from the Special Employment Security  
41 ~~Commission-Administration~~ Fund created by this subsection or from federal funds, or from a  
42 combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the  
43 General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest  
44 allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such  
45 interest was deposited in said fund: Provided further, that in those cases where an employer  
46 takes credit for a previous overpayment of interest on contributions due by such employer  
47 pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such  
48 overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the  
49 Special Employment Security Administration Fund. The Special Employment Security  
50 Administration Fund, except as otherwise provided in this Chapter, shall be subject to the

1 provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel  
2 Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and  
3 disbursed in the same manner and under the same conditions and requirements as is provided  
4 by law for other special funds in the State treasury, and shall be maintained in a separate  
5 account on the books of the State treasury. The State Treasurer shall be liable on his official  
6 bond for the faithful performance of his duties in connection with the Special Employment  
7 Security Administration Fund provided for under this Chapter. Such liability on the official  
8 bond shall be effective immediately upon the enactment of this provision, and such liability  
9 shall exist in addition to any liability upon any separate bond existent on the effective date of  
10 this provision, or which may be given in the future. All sums recovered on any surety bond for  
11 losses sustained by the Special Employment Security Administration Fund shall be deposited in  
12 said fund. The moneys in the Special Employment Security Administration Fund shall be  
13 continuously available to the ~~Commission~~ Division for expenditure in accordance with the  
14 provisions of this section.

15 (c1) Repealed by Session Laws 2004-124, s. 13.7B(b), effective July 20, 2004.

16 (d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding,  
17 the ~~Commission~~ Secretary is authorized to requisition and receive from its account in the  
18 unemployment trust fund in the treasury of the United States of America, in the manner  
19 permitted by federal law, such moneys standing to its credit in such fund, as are permitted by  
20 federal law to be used for expense of administering this Chapter and to expend such moneys for  
21 such purpose, without regard to a determination of necessity by a federal agency. The State  
22 Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such  
23 moneys shall be deposited, administered, and disbursed in the same manner and under the same  
24 conditions and requirements as are provided by law for other special funds in the State treasury.

25 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General  
26 Assembly of North Carolina to the ~~Employment Security Commission~~ Department of  
27 Commerce, Division of Employment Security out of funds credited to and held in this State's  
28 account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States  
29 pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~  
30 Division is authorized to utilize such funds for the administration of the Employment Security  
31 Law, including personal services, operating and other expenses incurred in the administration  
32 of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or  
33 parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings  
34 or parts of buildings, suitable for use in this State by the ~~Employment Security Commission~~,  
35 Division, and for the payment of expenses incurred for the construction, maintenance,  
36 improvements or repair of, or alterations to, such real or personal property. Provided, that any  
37 such funds appropriated by the General Assembly shall not exceed the amount in the  
38 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and  
39 provided that said funds shall not be obligated for expenditure, as herein provided, after the  
40 close of the two-year period which begins on the effective date of the appropriation.

41 (f) Employment Security ~~Commission~~ Reserve Fund. – There is created in the State  
42 treasury a special trust fund, separate and apart from all other public moneys or funds of this  
43 State, to be known as the Employment Security ~~Commission~~ Reserve Fund, hereinafter  
44 "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j  
45 shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve  
46 Fund may be used by the ~~Commission~~ Secretary for loans to the Unemployment Insurance  
47 Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay  
48 any interest required on advances under Title XII of the Social Security Act, and shall be  
49 continuously available to the ~~Commission~~ Division for expenditure in accordance with the  
50 provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian

1 and shall invest said moneys in accordance with existing law as well as rules and regulations  
2 promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in  
3 accordance with the directions of the ~~Commission-Secretary~~ and in accordance with such  
4 regulations as the ~~Commission-Secretary~~ may prescribe.

5 Administrative costs for the collection of the tax and interest payable to the Reserve Fund  
6 shall be borne by the Special Employment Security Administration Fund.

7 The interest earned from investment of the Reserve Fund moneys shall be deposited in a  
8 fund hereby established in the State Treasurer's Office, to be known as the "Worker Training  
9 Trust Fund". These moneys shall be used to:

- 10 (1) Fund programs, specifically for the benefit of unemployed workers or  
11 workers who have received notice of long-term layoff or permanent  
12 unemployment, which will enhance the employability of workers, including,  
13 but not limited to, adult basic education, adult high school or equivalency  
14 programs, occupational skills training programs, assessment, job counseling  
15 and placement programs;
- 16 (2) Continue operation of local ~~Employment Security Commission-Division~~  
17 offices throughout the State; or
- 18 (3) Provide refunds to employers.

19 The use of funds from the Worker Training Trust Fund, for the purposes set out in the  
20 above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations  
21 Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and  
22 unencumbered at the end of the fiscal year for which they are appropriated shall revert to the  
23 State treasury to the credit of the Worker Training Trust Fund in accordance with  
24 G.S. 143C-1-2.

25 (g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not  
26 more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment  
27 Security ~~Commission-Reserve Fund~~ established under subsection (f) of this section in securities  
28 issued by the North Carolina Technological Development Authority, Inc., the proceeds for  
29 which are directed to support investment in venture capital funds. The State Treasurer shall  
30 report to the Joint Legislative Commission on Governmental Operations and the Fiscal  
31 Research Division on October 1 and March 1 of each fiscal year on investments made pursuant  
32 to this subsection."

33 **SECTION 2.5.** G.S. 96-6 reads as rewritten:

34 **"§ 96-6. Unemployment Insurance Fund.**

35 (a) Establishment and Control. – There is hereby established as a special fund, separate  
36 and apart from all public moneys or funds of this State, an Unemployment Insurance Fund,  
37 which shall be administered by the ~~Commission-Division's~~ Employment Insurance Section  
38 exclusively for the purposes of this Chapter. This fund shall consist of:

- 39 (1) All contributions collected under this Chapter, together with any interest  
40 earned upon any moneys in the fund;
- 41 (2) Any property or securities acquired through the use of moneys belonging to  
42 the fund;
- 43 (3) All earnings of such property or securities;
- 44 (4) Any moneys received from the federal unemployment account in the  
45 unemployment trust fund in accordance with Title XII of the Social Security  
46 Act as amended;
- 47 (5) All moneys credited to this State's account in the Unemployment Trust Fund  
48 pursuant to section 903 of Title IX of the Social Security Act, as amended,  
49 (U.S.C.A. Title 42, sec. 1103 (a));



(6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;

(7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit. – The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the ~~Commission-Secretary~~ and in accordance with such regulations as the ~~Commission-Division~~ shall prescribe. ~~He~~ The Treasurer shall maintain within the fund three separate accounts:

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the ~~Commission-Division~~, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the ~~Commission-Division~~. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the ~~Commission-Secretary~~, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund shall be deposited in said fund.

(c) Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits (including extended benefits) and in accordance with regulations prescribed by the ~~Commission-Secretary~~. The ~~Commission-Division~~ shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in G.S. 143B-426.40G and requisitioned by the ~~Commission-Division~~ for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in G.S. 143B-426.40G as requisitioned by the ~~chairman of the Commission-Secretary, the Assistant Secretary, or a duly authorized agent of the Commission-Division~~ for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the ~~Commission~~,

1 Division shall be redeposited with the Secretary of the Treasury of the United States of  
2 America, to the credit of this State's account in the unemployment trust fund, as provided in  
3 subsection (b) of this section.

4 (d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The  
5 provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment  
6 trust fund, shall be operative only so long as such unemployment trust fund continues to exist,  
7 and so long as the Secretary of the Treasury of the United States of America continues to  
8 maintain for this State a separate book account of all funds deposited therein by this State for  
9 benefit purposes; together with this State's proportionate share of the earnings of such  
10 unemployment trust fund, from which no other state is permitted to make withdrawals. If and  
11 when such unemployment trust fund ceases to exist, or such separate book account is no longer  
12 maintained, all moneys, properties, or securities therein belonging to the Unemployment  
13 Insurance Fund of this State shall be transferred to the treasurer of the Unemployment  
14 Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys,  
15 properties, or securities in a manner approved by the ~~Commission~~, Secretary of the Department  
16 of Commerce, in accordance with the provisions of this Chapter: Provided, that such moneys  
17 shall be invested in the following readily marketable classes of securities: Bonds or other  
18 interest-bearing obligations of the United States of America or such investments as are now  
19 permitted by law for sinking funds of the State of North Carolina; and provided further, that  
20 such investment shall at all times be so made that all the assets of the fund shall always be  
21 readily convertible into cash when needed for the payment of benefits. The treasurer shall  
22 dispose of securities or other properties belonging to the Unemployment Insurance Fund only  
23 under the direction of the ~~Commission~~, Secretary of the Department of Commerce.

24 (e) Benefits shall be deemed to be due and payable under this Chapter only to the extent  
25 provided in this Chapter and to the extent that moneys are available therefor to the credit of the  
26 Unemployment Insurance Fund, and neither the State nor the ~~Commission~~ Division shall be  
27 liable for any amount in excess of such sums.

28 (f) Any interest required to be paid on advances under Title XII of the Social Security  
29 Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts  
30 in the Unemployment Insurance Fund."

31 **SECTION 2.6.** G.S. 96-7(a) reads as rewritten:

32 "(a) In any civil action to enforce the provisions of this Chapter, the ~~Commission~~  
33 Secretary, the Department, and the State may be represented by any qualified attorney who is  
34 designated by it for this purpose."

35 **SECTION 2.7.(a)** G.S. 96-8(2) is repealed.

36 **SECTION 2.7.(b)** G.S. 96-8 is amended by adding the following new subdivisions  
37 to read:

38 "**§ 96-8. Definitions.**

39 As used in this Chapter, unless the context clearly requires otherwise:

40 ...

41 (3a) Department. – The North Carolina Department of Commerce.

42 (3b) Division or DES. – The Department's Division of Employment Security.

43 (3c) EIS. – The Employment Insurance Section of DES.

44 (3d) ESS. – The Employment Security Section of DES.

45 ...

46 (8c) Secretary. – The Secretary of the Department of Commerce or the Assistant  
47 Secretary in charge of the Division of Employment Security.

48 ...."

49 **SECTION 2.7.(c)** G.S. 96-8(5)a. and b. read as rewritten:

50 "(5) "Employer" means:

- 1                   a.     Any employing unit which (a) within the current or preceding  
2                   calendar year, and which for some portion of a day in each of 20  
3                   different calendar weeks within such calendar year (whether or not  
4                   such weeks are or were consecutive), has or had in employment one  
5                   or more individuals (not necessarily simultaneously and irrespective  
6                   of whether the same individuals are or were employed in each such  
7                   week); or (b) in any calendar quarter in either the current or  
8                   preceding calendar year paid for service in employment wages of one  
9                   thousand five hundred dollars (\$1,500) or more. Provided further, for  
10                  the purpose of this paragraph, "employment" shall include services  
11                  which would constitute "employment" but for the fact that such  
12                  services are deemed to be performed entirely within another state  
13                  pursuant to an election under an arrangement entered into by the  
14                  ~~Commission-Division~~ pursuant to subsection (l) of G.S. 96-4, and an  
15                  agency charged with the administration of any other state or federal  
16                  employment security law. Provided further, for the purpose of this  
17                  paragraph, "week" means a period of seven consecutive calendar  
18                  days, and when a calendar week falls partly within each of two  
19                  calendar years, the days of that week up to January 1 shall be deemed  
20                  one calendar week, and the days beginning January 1, another such  
21                  week.
- 22                  b.     Any employing unit which acquired the organization, trade or  
23                  business, or substantially all the assets thereof, of another which at  
24                  the time of such acquisition was an employer subject to this Chapter,  
25                  or which acquired a part of the organization, trade, or business of  
26                  another, which at the time of such acquisition was an employer  
27                  subject to this Chapter; provided, such other would have been an  
28                  employer under paragraph a of this subdivision if such part had  
29                  constituted its entire organization, trade, or business; provided  
30                  further, that G.S. 96-10, subsection (d), shall not be applicable to an  
31                  individual or employing unit acquiring such part of the organization,  
32                  trade or business. The provisions of G.S. 96-11(a) to the contrary  
33                  notwithstanding, any employing unit which becomes an employer  
34                  solely by virtue of the provisions of this paragraph shall not be liable  
35                  for contributions based on wages paid or payable to individuals with  
36                  respect to employment performed by such individuals for such  
37                  employing unit prior to the date of acquisition of the organization,  
38                  trade, business, or a part thereof as specified herein, or substantially  
39                  all the assets of another, which at the time of such acquisition was an  
40                  employer subject to this Chapter. This provision shall not be  
41                  applicable with respect to any employing unit which is an employer  
42                  by reason of any other provision of this Chapter. A successor by total  
43                  acquisition under the provisions of this paragraph may be relieved  
44                  from coverage hereunder by making written application with the  
45                  ~~Commission-Division~~ within 60 days from the date the ~~Commission~~  
46                  ~~Division~~ mails him a notification of his liability and provided the  
47                  ~~Commission-Division~~ finds the predecessor was an employer at the  
48                  time of such acquisition only because such predecessor had failed to  
49                  make application for termination of coverage as provided in  
50                  G.S. 96-11 of this Chapter. A successor under the provisions of this

paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the ~~Commission-Division~~ within 60 days from the date the ~~Commission-Division~~ mails him a notification of his liability and the ~~Commission-Division~~ finds that the predecessor could have terminated by making the application under G.S. 96-11 if the part acquired had constituted all of the predecessor's business."

**SECTION 2.7.(d)** G.S. 96-8(6)d., f.2., and k.3. read as rewritten:

"(6) d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this Chapter if the individual performing such service is a resident of this State and the ~~Commission-Division~~ approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Chapter, and services covered by an election duly approved by the ~~Commission-Division~~ in accordance with an arrangement pursuant to subsection (l) of G.S. 96-4 shall be deemed to be employment during the effective period of such election.

...  
f. The term "employment" shall include:

...  
2. Services covered by an election duly approved by the ~~Commission-Division~~ in accordance with an arrangement pursuant to G.S. 96-4, subsection (l), of this Chapter during the effective period of such election.

...  
k. The term "employment" does not include:

...  
3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the ~~Commission-Division~~ is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.

...."  
**SECTION 2.7.(e)** G.S. 96-8(10) reads as rewritten:

"(10) (Effective until July 1, 2011) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If the individual has payroll attachment but, because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
  2. If the individual has no payroll attachment on the date the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by ~~Commission~~ regulation-rules adopted by the Division.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
1. Totally unemployed, irrespective of job attachment, if a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).
  2. Partially unemployed, if the claimant has payroll attachment but because of lack of work during the payroll week for which the claimant is requesting benefits the claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify the claimant for a reduced payment as prescribed by G.S. 96-12(c).
  3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify the claimant for a reduced payment as prescribed by G.S. 96-12(c).
- c. (For suspension of enforcement, see note) No individual shall be considered unemployed if, with respect to the entire calendar week, the individual is receiving, has received, or will receive as a result of the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) separation pay, or (v) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this

- subsection. Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.
- d. An individual's week of unemployment shall be deemed to commence only after ~~his—the individual's~~ registration at an employment office, except as the ~~Commission may by regulation~~ Division by rule may otherwise prescribe.
- e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
- f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more.
- (10) (Effective July 1, 2011) Total and partial unemployment.
- a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:
1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
  2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by ~~Commission regulation rules adopted by the~~ Division.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
  2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
  3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments

- defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
- c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or ~~Commission~~ Division approved vocational, educational, or training programs as defined in G.S. 96-13.
- d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the ~~Commission~~ Division may by ~~regulation~~ rule otherwise prescribe.
- e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009, and applicable to claims filed on or after that date.
- f. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was employed as a full-time substitute during the period of time for which the individual is requesting benefits. For the purposes of this subsection, full-time substitute is defined as a substitute employee who works more than 30 hours a week on a continual basis for a period of six months or more."

**SECTION 2.7.(f) G.S. 96-8(13)a. and d. read as rewritten:**

- "(13) a. "Wages" shall include commissions, bonuses, any sums paid to an employee by an employer pursuant to an order of any court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge, and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the ~~Commission~~ Division; provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an

individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed. The regulations shall, so far as possible, secure results reasonably similar to those that would prevail if the individual were paid his wages at regular intervals. The term "wages" shall not include the amount of any payment with respect to services to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability or (iv) death. However, in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, only payments which are received under a worker's compensation law shall be excluded from the term "wages". Furthermore, the term "wages" shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

- ...
- d. Wages shall not include the amount of any payment, including any amount paid into a fund to provide for such payment, made to, or on behalf of, an employee under a plan or system established by an employer or others which makes provision for employees generally, or for a class or group of employees, for the purpose of supplementing unemployment benefits, provided that the plan has been approved by the ~~Commission~~ Division under such reasonable ~~regulations~~ rules as it shall ~~promulgate~~ adopt."

**SECTION 2.7.(g)** G.S.96-8(22) and (24) read as rewritten:

"(22) Average Weekly Insured Wage. - "Average weekly insured wage" is the quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13), reported by all insured employers by the monthly average in insured employment under this Chapter during the immediately preceding calendar year and further dividing the quotient obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in the ~~Employment Security Commission's~~ Division's publication "North Carolina Insured Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to be the average weekly wage for such year.

- ...
- (24) Work, for purposes of this Chapter, means any bona fide permanent employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the ~~Commission~~,



1            Division, either on its own motion or upon a clear and convincing showing  
2            by an interested party that the application of the presumption would work a  
3            substantial injustice in view of the intent of this Chapter; (b) Any decision of  
4            the ~~Commission-Division~~ on the question of bona fide employment may be  
5            disturbed on judicial review only upon a finding of plain error."

6            **SECTION 2.8. G.S. 96-9 reads as rewritten:**

7            **"§ 96-9. Contributions.**

8            (a)    **Payment. –**

9            (1)    Except as provided in subsection (d) hereof, contributions shall accrue and  
10           become payable by each employer for each calendar year in which he is  
11           subject to this Chapter, with respect to wages for employment (as defined in  
12           G.S. 96-8(6)). Such contributions shall become due and be paid by each  
13           employer to the ~~Commission-Division~~ for the fund in accordance with such  
14           regulations as the ~~Commission-Division~~ may prescribe, and shall not be  
15           deducted in whole or in part from the remuneration of individuals in his  
16           employ. Contributions shall become due on and shall be paid on or before  
17           the last day of the month following the close of the calendar quarter in which  
18           such wages are paid and such contributions shall be paid by each employer  
19           to the ~~Commission-Division~~ for the fund in accordance with such regulations  
20           as the ~~Commission-Division~~ may prescribe, and shall not be deducted in  
21           whole or in part from the remuneration of individuals in his employ,  
22           provided, further, that if the ~~Commission-Division~~ shall be advised by its  
23           duly authorized officers or agents that the collection of any contribution  
24           under any provision of this Chapter will be jeopardized by delay, the  
25           ~~Commission-Division~~ may, whether or not the time otherwise prescribed by  
26           law for making returns and paying such tax has expired, immediately assess  
27           such contributions (together with all interest and penalties, the assessment of  
28           which is provided for by law). Such contributions, penalties and interest  
29           shall thereupon become immediately due and payable, and immediate notice  
30           and demand shall be made by the ~~Commission-Division~~ for the payment  
31           thereof. Upon failure or refusal to pay such contributions, penalties, and  
32           interest, it shall be lawful to make collection thereof as provided by  
33           G.S. 96-10 and subsections thereunder and such collection shall be lawful  
34           without regard to the due date of contributions herein prescribed, provided,  
35           further, that nothing in this paragraph shall be construed as permitting any  
36           refund of contributions heretofore paid under the law and regulations in  
37           effect at the time such contributions were paid.

38           ...  
39           (3)    Benefits paid employees of this State shall be financed and administered in  
40           accordance with the provisions and conditions of G.S. 96-9(d) required for  
41           nonprofit organizations; except as provided by suitable regulations which  
42           may be adopted by the ~~Commission-Division~~. The Department of  
43           Administration shall make an election with respect to financing all such  
44           benefits.

45           ...  
46           (6)    If the amount of the contributions shown to be due after all credits is less  
47           than five dollars (\$5.00), no payment need be made. If an employer has paid  
48           contributions, penalties, and/or interest in excess of the amount due, this  
49           shall be considered an overpayment and refunded provided no other debts  
50           are owed to the ~~Commission-Division~~ by the employer. Overpayments of

less than five dollars (\$5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i).

- (7) Effective with the quarter ending September 30, 1999, every employer with 100 or more employees, and every person or organization that, as agent, reports wages on a total of 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the ~~Commission~~ Division.

For failure of an employer to comply with this subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to comply with this subdivision, the ~~Commission~~ Division may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The ~~Commission~~ Division may reduce or waive a penalty for good cause shown.

- (8) An employer of domestic service employees as defined by the Internal Revenue Code may be given permission by the ~~Chair of the Commission~~ Secretary to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the ~~Commission~~ Division for quarterly contributions under subdivision (6) of this subsection.

- (9) Employers who are granted permission under subdivision (8) of this subsection to file annual reports may be given permission to file reports by telephone. Employers who report by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the ~~Unemployment Insurance Division~~ Employment Insurance Section in Raleigh and report the required information to that Auditor or to the Division by the date the report is due under subdivision (8) of this subsection.

- (10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the ~~Commission~~ Division shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The ~~Commission~~ Division may waive this penalty for good cause shown. As used in this section, the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

- (11) The ~~Commission~~ Division may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the ~~Commission~~ Division of the full amount of taxes, penalties, and interest due. The ~~Commission~~ Division shall require an employer who pays by credit card to include an amount equal to any fee charged the ~~Commission~~ Division for the use of the card. A payment of

taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(b) Rate of Contributions. –

(2) Experience Rating. –

- b. Credit Ratio. – The ~~Commission~~ Division shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.
- c. Debit Ratio. – The ~~Commission~~ Division shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.
- d. Other Provisions. – No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the

account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the ~~Commission-Division~~ shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(3) ...

d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does not apply, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the ~~Commission-Division~~ in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

#### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But  
Much Less  
As Than

#### Rate Schedules (%)

			A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%

1	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
2	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
3	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
4	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
5	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
6	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
7	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
8	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
9	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
10	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
11	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
12	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
13	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
14	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
15	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
16	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
17	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
18	4.0%										
19	&										
20	OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~-Division in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the ~~Commission~~-Division in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

#### EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As	But
Much	Less
As	Than

Rate Schedules (%)

			A	B	C	D	E	F	G	H	I
1											
2	0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
3	0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
4	0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
5	0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
6	0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
7	1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
8	1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
9	1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
10	1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
11	1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
12	2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
13	2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
14	2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
15	2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
16	2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
17	3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
18	3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
19	3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
20	3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
21	3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
22	4.0%										
23	&										
24	OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
25											

g.

Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to its account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as this term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the ~~Commission~~ Division pursuant to G.S. 96-9(c)(3) of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to its account as of the previous July 31. If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The ~~Commission~~ Division in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

h.

If, within the calendar month in which the computation date occurs, the ~~Commission~~ Division finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the ~~Commission~~ Division finds incorrect or insufficient, the ~~Commission~~ Division shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address.

1 Unless such employing unit shall file the report or a corrected or  
2 sufficient report, as the case may be, within 15 days after the mailing  
3 of such notice, the ~~Commission~~Division shall compute such  
4 employing unit's rate of contributions on the basis of such estimates,  
5 and the rate as so determined shall be subject to increases but not to  
6 reduction, on the basis of subsequently ascertained information.

7 i. Repealed by Session Laws 1987, c. 17, s. 5.

8 j. A tax is imposed upon contributions at the rate of twenty percent  
9 (20%) of the amount of contributions due. The tax is due and payable  
10 at the time and in the same manner as the contributions. The tax does  
11 not apply in a calendar year if, as of August 1 of the preceding year,  
12 either of the following conditions was met; (i) the amount in the  
13 Reserve Fund equals or exceeds one hundred sixty-three million  
14 three hundred forty-nine thousand dollars (\$163,349,000), which is  
15 one percent (1%) of taxable wages for calendar year 1984; or (ii) the  
16 balance in the Unemployment Insurance Fund established by  
17 G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The  
18 collection of this tax, the assessment of interest and penalties on  
19 unpaid taxes, the filing of judgment liens, and the enforcement of the  
20 liens for unpaid taxes is governed by the provisions of G.S. 96-10  
21 where applicable. Taxes collected under this subpart shall be credited  
22 to the Employment Security ~~Commission~~-Reserve Fund, and refunds  
23 of the taxes shall be paid from the same Fund. The clear proceeds of  
24 any civil penalties collected under this subpart shall be remitted to  
25 the Civil Penalty and Forfeiture Fund in accordance with  
26 G.S. 115C-457.2. Any interest collected on unpaid taxes shall be  
27 credited to the Special Employment Security Administration Fund,  
28 and any interest refunded on taxes imposed by this subpart shall be  
29 paid from the same Fund.

30 (c) (1) Except as provided in subsection (d) of this section, the ~~Commission~~  
31 Division shall maintain a separate account for each employer and shall credit  
32 his account with all voluntary contributions made by him and all other  
33 contributions which he has paid or is paid on his behalf, provided the  
34 ~~Commission~~Division shall credit the account of each employer in an  
35 amount equal to eighty percent (80%) of all voluntary contributions paid  
36 with respect to periods prior to January 1, 1984, and of all other  
37 contributions paid with respect to periods between July 1, 1965, and  
38 December 31, 1983. On the computation date, beginning first with August 1,  
39 1948, the ratio of the credit balance in each individual account to the total of  
40 all the credit balances in all employer accounts shall be computed as of such  
41 computation date, and an amount equal to the interest credited to this State's  
42 account in the unemployment trust fund in the treasury of the United States  
43 for the four most recently completed calendar quarters shall be credited prior  
44 to the next computation date on a pro rata basis to all employers' accounts  
45 having a credit balance on the computation date. Such amount shall be  
46 prorated to the individual accounts in the same ratio that the credit balance in  
47 each individual account bears to the total of the credit balances in all such  
48 accounts. In computing the amount to be credited to the account of an  
49 employer as a result of interest earned by funds on deposit in the  
50 unemployment trust fund in the treasury of the United States to the account

of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments. –

...  
b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship shall not be charged to the account of an employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the ~~Commission~~ Division with such notices regarding any separation of the individual from work as are or may be required by the regulations of the ~~Commission~~ Division.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with ~~Commission~~ Division regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by ~~an Adjudicator, Appeals Referee or the Commission~~ the Division if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of



benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

...  
(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~Division shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the ~~Commission~~Division shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The ~~Commission~~Division may redetermine on its own motion within the same period of time.

(4) Transfer of account. –

a. ...

2. Consent. – When an employer, as defined in G.S. 96-8(5)b., in any manner acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the ~~Commission~~Division in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the ~~Commission~~Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the ~~Commission~~Division of the right to request such transfer,

1                                   whichever occurs later. However, in no event will a request  
2                                   for a transfer be allowed if an account has been terminated  
3                                   because an employer ceases to be an employer pursuant to  
4                                   G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of  
5                                   notification.  
6

- 7                   ...  
8                   b.   Notwithstanding any other provisions of this section, if the successor  
9                   employer was an employer subject to this Chapter prior to the date of  
10                   acquisition of the business, the successor's rate of contribution for the  
11                   period from that date to the end of the then current contribution year  
12                   shall be the same as the successor's rate in effect on the date of the  
13                   acquisition. If the successor was not an employer prior to the date of  
14                   the acquisition of the business, the successor shall be assigned a  
15                   standard beginning rate of contribution set forth in G.S. 96-9(b)(1)  
16                   for the remainder of the year in which the successor acquired the  
17                   business of the predecessor; however, if the successor makes  
18                   application for the transfer of the account within 60 days after  
19                   notification by the ~~Commission~~-Division of the right to do so and the  
20                   account is transferred, or meets the requirements for mandatory  
21                   transfer, the successor shall be assigned for the remainder of the year  
22                   the rate applicable to the predecessor employer or employers on the  
23                   date of acquisition of the business, as long as there was only one  
24                   predecessor or, if more than one, the predecessors had identical rates.  
25                   In the event the rates of the predecessor were not identical, the rate of  
26                   the successor shall be the highest rate applicable to any of the  
27                   predecessor employers on the date of acquisition of the business.

28                   Irrespective of any other provisions of this Chapter, when an  
29                   account is transferred in its entirety by an employer to a successor,  
30                   the transferring employer shall thereafter pay the standard beginning  
31                   rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to  
32                   pay at that rate until the transferring employer qualifies for a  
33                   reduction, reacquires the account transferred or acquires the  
34                   experience rating account of another employer, or is subject to an  
35                   increase in rate under the conditions prescribed in G.S. 96-9(b)(2)  
36                   and (3).

- 37                   c.   In those cases where the organization, trade, or business of a  
38                   deceased person, or insolvent debtor is taken over and operated by an  
39                   administrator, administratrix, executor, executrix, receiver, or trustee  
40                   in bankruptcy, such employing units shall automatically succeed to  
41                   the account and rate of contribution of such deceased person, or  
42                   insolvent debtor without the necessity of the filing of a formal  
43                   application for the transfer of such account.

- 44                   ...  
45                   (6)   If the ~~Commission~~-Division finds that an employer's business is closed  
46                   solely because of the entrance of one or more of the owners, officers,  
47                   partners, or the majority stockholder into the Armed Forces of the United  
48                   States, or of any of its allies, or of the United Nations, such employer's  
49                   experience rating account shall not be terminated; and, if the business is  
50                   resumed within two years after the discharge or release from active duty in  
                    the Armed Forces of such person or persons, the employer's account shall be

1 deemed to have been chargeable with benefits throughout more than 13  
2 consecutive calendar months ending July 31 immediately preceding the  
3 computation date. This subdivision shall apply only to employers who are  
4 liable for contributions under the experience rating system of financing  
5 unemployment benefits. This subdivision shall not be construed to apply to  
6 employers who are liable for payments in lieu of contributions or to  
7 employers using the reimbursable method of financing benefit payments.

8 (d) Benefits paid to employees of nonprofit organizations shall be financed in  
9 accordance with the provisions of this paragraph. For the purposes of this paragraph, a  
10 nonprofit organization is an organization (or group of organizations) described in section  
11 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of  
12 the Internal Revenue Code.

13 (1) a. Any nonprofit organization which becomes subject to this Chapter on  
14 or after January 1, 1972, shall pay contributions under the provisions  
15 of this Chapter, unless it elects in accordance with this paragraph to  
16 pay the ~~Commission~~ Division for the Unemployment Insurance Fund  
17 an amount equal to the amount of regular benefits and of one half of  
18 the extended benefits paid, that is attributable to service in the  
19 employ of such nonprofit organization, to individuals for weeks of  
20 unemployment which begin within a benefit year established during  
21 the effective period of such election.

22 b. Any nonprofit organization which is or becomes subject to this  
23 Chapter on or after January 1, 1972, may elect to become liable for  
24 payments in lieu of contributions for a period of not less than four  
25 calendar years beginning with the date on which subjectivity begins  
26 by filing a written notice of its election with the ~~Commission~~ Division  
27 Division not later than 30 days immediately following the date of  
28 written notification of the determination of such subjectivity.  
29 Provided if notification is not by registered mail, the election may be  
30 made on or after January 1, 1972, within six months following the  
31 date of the written notification of the determination of such  
32 subjectivity. If such election is not made as set forth herein, no  
33 election can be made until after four calendar years have elapsed  
34 under the contributions method of payment.

35 c. Any nonprofit organization which makes an election in accordance  
36 with subparagraph b of this paragraph will continue after such four  
37 calendar years to be liable for payments in lieu of contributions until  
38 it files with the ~~Commission~~ Division a written notice terminating its  
39 election not later than 30 days prior to the next January 1, effective  
40 on such January 1. Provided, however, no employer granted or in  
41 reimbursement status will be allowed refund of any previous  
42 balances used in a transfer to reimbursement status.

43 d. Any nonprofit organization which has been paying contributions  
44 under this Chapter for a period of at least four consecutive calendar  
45 years subsequent to January 1, 1972, may elect to change to a  
46 reimbursement basis by filing with the ~~Commission~~ Division not  
47 later than 30 days prior to the next January 1 a written notice of  
48 election to become liable for payments in lieu of contributions,  
49 effective on such January 1. Such election shall not be terminable for  
50 a period of four calendar years. In the event of such an election, the

account of such employer shall be closed and shall not be used in any future computation of such employer's contribution rate in any manner whatsoever.

- d1. Any nonprofit organization which makes an election in accordance with subparagraph b. of this paragraph must secure such election by making a payment in lieu of contributions as provided in subdivision (2) of this subsection, posting a surety bond from an insurance company duly licensed to conduct business in this State, or obtaining an irrevocable letter of credit with the ~~Commission~~ Division to insure the payments in lieu of contributions as provided in subdivision (2) of this subsection. Any surety bond posted under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the ~~Commission~~ Division. The ~~Commission~~ Division may adopt rules to implement the provisions of this subparagraph.
- e. The ~~Commission~~ Division, in accordance with such regulations as it may adopt, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review.

- (2) Payments in lieu of contributions shall be made in accordance with the provisions of this subparagraph and shall be processed as provided herein.

- a. Quarterly contributions and wage reports and advance payments shall be submitted to the ~~Commission~~ Division quarterly under the same conditions and requirements of G.S. 96-9 and 96-10, except that the amount of advance payments shall be computed as one percent (1%) of taxable wages and entered on such reports; provided that such advance payments shall become effective only with respect to the first four thousand two hundred dollars (\$4,200) in wages paid in a calendar year until January 1, 1978. On and after that date advance payments shall be effective with respect to the federally required wage base provided that after December 31, 1983, the wage base shall be the same as that provided for in G.S. 96-9(a)(5). Collection of such advance payments shall be made as provided for the collection of contributions in G.S. 96-10.

Beginning January 1, 1978, any employer making quarterly reports of employment to the ~~Commission~~ Division and if such employer is a newly electing reimbursement employer he shall pay contributions of one percent (1%) of taxable wages entered on such reports.

Any employer paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, shall continue to file quarterly reports but shall make no payments with those reports.

- b. The ~~Commission~~ Division shall establish a separate account for each such employer and such account shall be credited, and maintained as provided in G.S. 96-9(c)(1), except that advance payments shall be credited in full and voluntary contributions are not applicable.

d. As of July 31 of each year, and prior to January 1 of the succeeding year, the ~~Commission~~-Division shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

Should the balance in such account not equal that requiring a refund, the employer shall upon notice and demand for payment mailed to his last known address pay into his account an amount that will bring such balance to the minimum required for a refund. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment. Any such amount unpaid on the due date shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Should there be a debit balance in such account, the employer shall, upon notice and demand for payment, mailed to his last-known address, pay into his account an amount equal to such debit balance. Such amount shall become due on or before the tenth day following the mailing of such notice and demand for payment.

Any such amount unpaid on the date due shall be collected in the same manner, including interest, as prescribed in G.S. 96-10.

Beginning January 1, 1978, each employer paying by reimbursement shall have his account computed on computation date (August 1) and if there is a deficit shall be billed for an amount necessary to bring his account to one percent (1%) of his taxable payroll. Any amount of his account in excess of that required to equal one percent (1%) of his payroll shall be refunded. Amounts due from any employer to bring his account to a one percent (1%) balance shall be billed as soon as practical and payment will be due within 25 days from the date of mailing of the statement of amount due. Amounts due from any nonprofit organization to bring its account to a one percent (1%) balance shall be billed as soon as practical, and payment will be due within 60 days from the date of mailing of the statement of the amount due.

e. The ~~Commission~~-Division may make necessary rules and regulations with respect to coverage of a group of nonprofit organizations and with respect to the reimbursement of benefits payments by such group of nonprofit organizations.

(e) In order that the ~~Commission~~-Division shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the ~~Commission~~-Division may deem necessary shall be made.

(f) (1) On and after January 1, 1978, all benefits charged to a State or local governmental employing unit shall be paid to the ~~Commission~~-Division within 25 days from the date a list of benefit charges is mailed to the State or local governmental employing agency and the appropriate account(s) shall be credited with such payment(s).

- 1 (2) In lieu of paying for benefits by reimbursement as provided in subdivision  
2 (1) hereof, any State or local governmental employing unit may elect  
3 pursuant to rules and regulations established by the ~~Commission~~ Division:  
4 a. To pay contributions on an experience rating basis as provided in  
5 G.S. 96-9(a), (b), and (c); or,  
6 b. To pay to the ~~Commission~~ Division, within 25 days from the date a  
7 list of benefit charges is mailed to such employing unit, a sum equal  
8 to the amount which its account would be charged if it were a tax  
9 paying employer under G.S. 96-9(c)(2).
- 10 (3) State or local governmental employing units paying for benefits as provided  
11 in subdivision (1) herein may establish pool accounts; provided, that such  
12 pool accounts are established and maintained according to ~~the rules and~~  
13 ~~regulations of the Commission~~ adopted by the Division.
- 14 (4) Any governmental entity paying by reimbursement as provided in  
15 subdivision (1) hereof shall not have any benefits paid against its account  
16 noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.
- 17 (g) Nothing contained in subsections (d), (f), and (i) of this section prevents the  
18 ~~Commission~~ Division from providing any reimbursing employer with informational bills or  
19 lists of charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~  
20 Division considers such action to be in the best interest of the ~~Commission~~ Division and the  
21 affected employer(s).
- 22 (h) (1) Any nonprofit organization which has been paying contributions on a  
23 reimbursement basis for at least three consecutive calendar years during  
24 none of which years the benefit charges exceeded four tenths of one percent  
25 (.4%) of its taxable payroll may, before November 1 of the fourth or  
26 subsequent calendar year, elect to pay contributions by special  
27 reimbursement on the basis provided for in subdivision (2) below but only  
28 upon the following conditions:  
29 ...  
30 b. The election shall apply to no less than the four calendar years  
31 following the year of election unless terminated by the ~~Commission~~  
32 Division under subdivision (3) below.  
33 ...  
34 e. No later than January 1 of the first year to which its election applies,  
35 the electing nonprofit organization shall furnish the ~~Commission~~  
36 Division a letter of credit in an amount equal to one hundred fifty  
37 percent (150%) of the account balance required under subdivision (2)  
38 below.  
39 f. The ~~Commission~~ Division shall by regulation prescribe the form of  
40 the letter of credit and the criteria for the financial institution issuing  
41 such letter of credit along with the form of election under this  
42 section.
- 43 (2) Any qualified nonprofit organization that meets the conditions of  
44 subdivision (1) above shall, upon the approval of its election by the  
45 ~~Commission~~ Division, pay contributions by special reimbursement as  
46 follows:  
47 ...  
48 b. On the first day of each quarter of any calendar year, the  
49 ~~Commission~~ Division shall bill the employer for an amount  
50 necessary to bring its account to the required minimum balance, and

the amount so billed is due no later than 25 days after the bill is mailed.

(3) If any electing organization shall fail to make any quarterly payment when due:

a. The ~~Commission-Division~~ may draw the full amount of the letter of credit for application to the employer's account;

c. If, after demand, the organization shall fail to pay any sums required under paragraph b. above, the ~~Commission-Division~~ may revoke the organization's election for special reimbursement and any difference between the employer's account balance and one percent (1%) of its total taxable payroll shall become immediately due and payable.

d. The ~~Commission-Division~~ may, in addition, exercise any of the powers granted to it in G.S. 96-10 to collect any amount due.

e. Pursuant to ~~such regulations as the Commission may adopt, rules adopted by the Division, the Commission-Division~~ shall afford any organization affected by this paragraph a hearing to determine if any increase in the organization's minimum required balance should be reduced, in whole or in part, or if any revocation of a special reimbursement election should be rescinded. If the ~~Commission-Division~~, in its sole discretion, is satisfied that the conditions giving rise to the increase or revocation have been corrected, it may reduce such increase or rescind such revocation provided that it may require as a condition of such reduction or rescission a new letter of credit up to three times the amount normally required.

(i) Indian Tribes. – Benefits paid to employees of Indian tribe employing units shall be financed in accordance with the provisions of this subsection. For the purposes of this subsection, an "Indian tribe employing unit" is an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(1) Election. –

a. An Indian tribe employing unit shall pay contributions under the provisions of this Chapter, unless it elects in accordance with this subsection to pay the ~~Commission-Division~~ for the Unemployment Insurance Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election.

b. An Indian tribe employing unit may elect to become liable for payments in lieu of contributions for a period of not less than three calendar years by filing a written notice of its election with the ~~Commission-Division~~ at least 30 days before the January 1 effective date of the election.

c. An Indian tribe employing unit that makes an election in accordance with this subsection will continue after the end of the three calendar years to be liable for payments in lieu of contributions until it files with the ~~Commission-Division~~ a written notice terminating its election at least 30 days before the January 1 effective date of the termination.

- 1                   d.     The account of an Indian tribe employing unit that has been paying  
2                   contributions under this Chapter for a period of at least three  
3                   consecutive calendar years and that elects to change to a  
4                   reimbursement basis shall be closed and shall not be used in any  
5                   future computation of the unit's contribution rate in any manner.  
6                   e.     The ~~Commission~~Division, in accordance with regulations it adopts,  
7                   shall notify each Indian tribe employing unit of any determination of  
8                   the effective date of any election it makes and of any termination of  
9                   the election. These determinations shall be subject to reconsideration,  
10                  appeal, and review.
- 11                  (2)    Procedure. – Indian tribe employing units' payments by reimbursement in  
12                  lieu of contributions shall be made and processed as provided in this  
13                  subdivision.
- 14                  a.     Quarterly contributions and wage reports and advance payments shall  
15                  be submitted to the ~~Commission~~Division quarterly under the same  
16                  conditions and requirements of G.S. 96-9 and G.S. 96-10, except that  
17                  the amount of advance payments shall be computed as one percent  
18                  (1%) of taxable wages and entered on the reports, and except that the  
19                  wage base shall be the same as that provided for in G.S. 96-9(a)(5).  
20                  Collection of these advance payments shall be made as provided for  
21                  the collection of contributions in G.S. 96-10.
- 22                         Any Indian tribe employing unit paying by reimbursement having  
23                  been, prior to July 1, under the reimbursement method of payment  
24                  for the preceding calendar year, shall continue to file quarterly  
25                  reports but shall make no payments with those reports.
- 26                  b.     The ~~Commission~~Division shall establish a separate account for each  
27                  Indian tribe employing unit paying by reimbursement. The account  
28                  shall be credited and maintained as provided in G.S. 96-9(c)(1),  
29                  except that advance payments shall be credited in full, and voluntary  
30                  contributions are not applicable.
- 31                  ...
- 32                  d.     As of July 31 of each year, and prior to January 1 of the succeeding  
33                  year, the ~~Commission~~Division shall determine the balance of each  
34                  Indian tribe employing unit's account and shall furnish the unit with a  
35                  statement of all charges and credits to the account.
- 36                         If the balance in the account does not equal one percent (1%) of  
37                  taxable wages, the Indian tribe employing unit must, upon notice and  
38                  demand for payment mailed to its last known address, pay into the  
39                  account an amount that will bring the balance to one percent (1%) of  
40                  taxable wages. This amount becomes due on or before the 25th day  
41                  after the notice and demand for payment is mailed. Any amount  
42                  unpaid on the due date shall be collected in the same manner,  
43                  including interest, as prescribed in G.S. 96-10.
- 44                         If there is a debit balance in the account, the Indian tribe  
45                  employing unit must, upon notice and demand for payment mailed to  
46                  its last known address, pay into the account an amount necessary to  
47                  bring the account to one percent (1%) of taxable wages. This amount  
48                  becomes due on or before the 25th day after the notice and demand  
49                  for payment is mailed. Any amount unpaid on the due date shall be



collected in the same manner, including interest, as prescribed in G.S. 96-10.

- ...
- (4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this subsection after all collection activities considered necessary by the ~~Commission~~ Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the ~~Commission~~ Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The ~~Commission~~ Division shall notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subdivision.

...."

**SECTION 2.9. G.S. 96-10 reads as rewritten:**

**"§ 96-10. Collection of contributions.**

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the ~~Commission~~ Division, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the ~~Commission~~ Division. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this ~~Commission~~ Division, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(b) Collection. –

- (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the ~~Commission~~ Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the ~~Commission~~ Division, under the hand of its ~~chairman~~, the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~ Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the ~~Commission~~ Division

1 may not certify the amount to the clerk of court until a field tax auditor or  
2 another representative of the ~~Commission-Division~~ personally contacts, or  
3 unsuccessfully attempts to personally contact, the delinquent and collect the  
4 amount due. A certificate or a copy of a certificate forwarded to the clerk of  
5 the superior court shall immediately be docketed and indexed on the cross  
6 index of judgments, and from the date of such docketing shall constitute a  
7 preferred lien upon any property which said delinquent may own in said  
8 county, with the same force and effect as a judgment rendered by the  
9 superior court. The ~~Commission-Division~~ shall forward a copy of said  
10 certificate to the sheriff or sheriffs of such county or counties, or to a duly  
11 authorized agent of the ~~Commission-Division~~, and when so forwarded and in  
12 the hands of such sheriff or agent of the ~~Commission-Division~~, shall have  
13 all the force and effect of an execution issued to such sheriff or agent of the  
14 ~~Commission-Division~~ by the clerk of the superior court upon a judgment of  
15 the superior court duly docketed in said county. Provided, however, the  
16 Commission may in its discretion withhold the issuance of said certificate or  
17 execution to the sheriff or agent of the ~~Commission-Division~~ for a period not  
18 exceeding 180 days from the date upon which the original certificate is  
19 certified to the clerk of superior court. The ~~Commission-Division~~ is further  
20 authorized and empowered to issue alias copies of said certificate or  
21 execution to the sheriff or sheriffs of such county or counties, or to a duly  
22 authorized agent of the ~~Commission-Division~~ in all cases in which the sheriff  
23 or duly authorized agent has returned an execution or certificate unsatisfied;  
24 when so issued and in the hands of the sheriff or duly authorized agent of the  
25 ~~Commission-Division~~ such alias shall have all the force and effect of an  
26 alias execution issued to such sheriff or duly authorized agent of the  
27 ~~Commission-Division~~ by the clerk of the superior court upon a judgment of  
28 the superior court duly docketed in said county. Provided, however, that  
29 notwithstanding any provision of this subsection, upon filing one written  
30 notice with the ~~Commission-Division~~, the sheriff of any county shall have  
31 the sole and exclusive right to serve all executions and make all collections  
32 mentioned in this subsection and in such case no agent of the ~~Commission~~  
33 ~~Division~~ shall have the authority to serve any executions or make any  
34 collections therein in such county. A return of such execution, or alias  
35 execution, shall be made to the ~~Commission-Division~~, together with all  
36 moneys collected thereunder, and when such order, execution, or alias is  
37 referred to the agent of the ~~Commission-Division~~ for service the said agent  
38 of the ~~Commission-Division~~ shall be vested with all the powers of the sheriff  
39 to the extent of serving such order, execution or alias and levying or  
40 collecting thereunder. The agent of the ~~Commission-Division~~ to whom such  
41 order or execution is referred shall give a bond not to exceed three thousand  
42 dollars (\$3,000) approved by the ~~Commission-Division~~ for the faithful  
43 performance of such duties. The liability of said agent shall be in the same  
44 manner and to the same extent as is now imposed on sheriffs in the service  
45 of executions. If any sheriff of this State or any agent of the ~~Commission~~  
46 ~~Division~~ who is charged with the duty of serving executions shall willfully  
47 fail, refuse, or neglect to execute any order directed to him by the said  
48 ~~Commission-Division~~ and within the time provided by law, the official bond  
49 of such sheriff or of such agent of the ~~Commission-Division~~ shall be liable  
50 for the contributions, penalty, interest, and costs due by the employer.

(2) Any representative of the ~~Employment Security Commission~~ Division may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the ~~Commission~~ Division shall not be divulged, published, or open to public inspection other than to the ~~Commission's~~ Division's employees in the performance of their public duties. Any employee ~~or member of the Commission of the Division~~ who violates any provision of this section shall be fined not less than twenty dollars (\$20.00), nor more than two hundred dollars (\$200.00), or imprisoned for not longer than 90 days, or both.

(3) When the ~~Commission~~ Division furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the ~~Commission~~ Division against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the ~~chairman of the Commission~~ Secretary of Commerce and attested by ~~its secretary, the Assistant Secretary,~~ with the seal of the ~~Commission~~ Division affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence canceled of record. ~~Such~~ The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the ~~Commission~~ Division. It shall also be the duty of such clerk, when any such certificate is furnished him by the ~~Commission~~ Division showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the ~~Commission~~ Division. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the ~~Commission~~ Division.

(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the ~~Commission~~ Division any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a

1 lien upon the assets of the business of any employer subject to the provisions hereof who shall  
2 lease, transfer or sell out his business, or shall cease to do business and such employer shall be  
3 required, by the next reporting date as prescribed by the ~~Commission~~, Division, to file with the  
4 ~~Commission~~ Division all reports and pay all contributions due with respect to wages payable  
5 for employment up to the date of such lease, transfer, sale or cessation of the business and such  
6 employer's successor in business shall be required to withhold sufficient of the purchase money  
7 to cover the amount of said contributions due and unpaid until such time as the former owner or  
8 employer shall produce a receipt from the ~~Commission~~ Division showing that the contributions  
9 have been paid, or a certificate that no contributions are due. If the purchaser of a business or a  
10 successor of such employer shall fail to withhold purchase money or any money due to such  
11 employer in consideration of a lease or other transfer and the contributions shall be due and  
12 unpaid after the next reporting date, as above set forth, such successor shall be personally liable  
13 to the extent of the assets of the business so acquired for the payment of the contributions  
14 accrued and unpaid on account of the operation of the business by the former owner or  
15 employer.

16 (e) Refunds. – If not later than five years from the last day of the calendar year with  
17 respect to which a payment of any contributions or interest thereon was made, or one year from  
18 the date on which such payment was made, whichever shall be the later, an employer or  
19 employing unit who has paid such contributions or interest thereon shall make application for  
20 an adjustment thereof in connection with subsequent contribution payments, or for a refund,  
21 and the ~~Commission~~ Division shall determine that such contributions or any portion thereof  
22 was erroneously collected, the ~~Commission~~ Division shall allow such employer or employing  
23 unit to make an adjustment thereof, without interest, in connection with subsequent  
24 contribution payments by him, or if such an adjustment cannot be made in the next succeeding  
25 calendar quarter after such application for such refund is received, a cash refund may be made,  
26 without interest, from the fund: Provided, that any interest refunded under this subsection,  
27 which has been paid into the Special Employment Security Administration Fund established  
28 pursuant to G.S. 96-5(c), shall be paid out of such fund. For like cause and within the same  
29 period, adjustment or refund may be so made on the ~~Commission's~~ Division's own initiative.  
30 Provided further, that nothing in this section or in any other section of this Chapter shall be  
31 construed as permitting the refund of moneys due and payable under the law and regulations in  
32 effect at the time such moneys were paid. In any case, where the ~~Commission~~ Division finds  
33 that any employing unit has erroneously paid to this State contributions or interest upon wages  
34 earned by individuals in employment in another state, refund or adjustment thereof shall be  
35 made, without interest, irrespective of any other provisions of this subsection, upon satisfactory  
36 proof to the ~~Commission~~ Division that such other state has determined the employing unit liable  
37 under its law for such contributions or interest.

38 (f) No injunction shall be granted by any court or judge to restrain the collection of any  
39 tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain  
40 the sale of any property under writ of execution, judgment, decree or order of court for the  
41 nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes  
42 or contributions provided for in this Chapter have been assessed, shall claim to have a valid  
43 defense to the enforcement of the tax or contribution so assessed or charged, such employer,  
44 person, firm or corporation shall pay the tax or contribution so assessed to the ~~Commission~~;  
45 Division; but if at the time of such payment he shall notify the ~~Commission~~ Division in writing  
46 that the same is paid under protest, such payment shall be without prejudice to any defenses or  
47 rights he may have in the premises, and he may, at any time within 30 days after such payment,  
48 demand the same in writing from the ~~Commission~~; Division; and if the same shall not be  
49 refunded within 90 days thereafter, he may sue the ~~Commission~~ Division for the amount so  
50 demanded; such suit against the ~~Employment Security Commission of North Carolina~~ Division

1 must be brought in the Superior Court of Wake County, or in the county in which the taxpayer  
2 resides, or in the county where the taxpayer conducts his principal place of business; and if,  
3 upon the trial it shall be determined that such tax or contribution or any part thereof was for any  
4 reason invalid, excessive or contrary to the provisions of this Chapter, the amount paid shall be  
5 refunded by the ~~Commission~~ Division accordingly. The remedy provided by this subsection  
6 shall be deemed to be cumulative and in addition to such other remedies as are provided by  
7 other subsections of this Chapter. No suit, action or proceeding for refund or to recover  
8 contributions or payroll taxes paid under protest according to the provisions of this subsection  
9 shall be maintained unless such suit, action or proceeding is commenced within one year after  
10 the expiration of the 90 days mentioned in this subsection, or within one year from the date of  
11 the refusal of ~~said Commission~~ the Division to make refund should such refusal be made before  
12 the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not  
13 be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed  
14 as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

15 (g) Upon the motion of the ~~Commission~~ Division, any employer refusing to submit any  
16 report required under this Chapter, after 10 days' written notice sent by the ~~Commission~~  
17 Division by registered or certified mail to the employer's last known address, may be enjoined  
18 by any court of competent jurisdiction from hiring and continuing in employment any  
19 employees until such report is properly submitted. When an execution has been returned to the  
20 ~~Commission~~ Division unsatisfied, and the employer, after 10 days' written notice sent by the  
21 ~~Commission~~ Division by registered mail to the employer's last known address, refuses to pay  
22 the contributions covered by the execution, such employer shall upon the motion of the  
23 ~~Commission~~ Division be enjoined by any court of competent jurisdiction from hiring and  
24 continuing in employment any employees until such contributions have been paid.

25 An employer who fails to file a report within the required time shall be assessed a late filing  
26 penalty of five percent (5%) of the amount of contributions due with the report for each month  
27 or fraction of a month the failure continues. The penalty may not exceed twenty-five percent  
28 (25%) of the amount of contributions due. An employer who fails to file a report within the  
29 required time but owes no contributions shall not be assessed a penalty unless the employer's  
30 failure to file continues for more than 30 days.

31 (h) When any uncertified check is tendered in payment of any contributions to the  
32 ~~Commission~~ Division and such check shall have been returned unpaid on account of  
33 insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty  
34 shall be payable to the ~~Commission~~ Division, equal to ten percent (10%) of the amount of said  
35 check, and in no case shall such penalty be less than one dollar (\$1.00) nor more than two  
36 hundred dollars (\$200.00).

37 (i) Except as otherwise provided in this subsection, no suit or proceedings for the  
38 collection of unpaid contributions may be begun under this Chapter after five years from the  
39 date on which the contributions become due, and no suit or proceeding for the purpose of  
40 establishing liability and/or status may be begun with respect to any period occurring more than  
41 five years prior to the first day of January of the year within which the suit or proceeding is  
42 instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat  
43 or evade the payment of any contributions becoming due under this Chapter. A proceeding  
44 shall be deemed to have been instituted or begun upon the date of issuance of an order by the  
45 ~~chairman~~ Assistant Secretary of the Commission Division directing a hearing to be held to  
46 determine liability or nonliability, and/or status under this Chapter of an employing unit, or  
47 upon the date notice and demand for payment is mailed by certified mail to the last known  
48 address of the employing unit. The order shall be deemed to have been issued on the date the  
49 order is mailed by certified mail to the last known address of the employing unit. The running  
50 of the period of limitations provided in this subsection for the making of assessments or

collection shall, in a case under Title II of the United States Code, be suspended for the period during which the ~~Commission~~ Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

(j) Waiver of Interest and Penalties. – The ~~Commission~~ Division may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The ~~Commission~~ Division may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the ~~Commission~~ Division to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the ~~Commission~~ Division upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the ~~Chairman, the Assistant Administrator, or their Secretary, Assistant Secretary, or their designees~~, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the ~~Chairman, the Assistant Administrator, or their Secretary, Assistant Secretary, or their designees~~, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the ~~Commission~~ Division. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

**SECTION 2.10.** G.S. 96-11 reads as rewritten:

**"§ 96-11. Period, election, and termination of employer's coverage.**

...

(b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter only as of the first day of January of any calendar year, if it files with the ~~Commission~~ Division prior to the first day of March of such calendar year a written application for termination of coverage and the ~~Commission~~ Division finds that there were no 20 different weeks in the preceding calendar year (whether or not such weeks are or were consecutive) within which said

1 employing unit employed four or more individuals in employment (not necessarily  
2 simultaneously and irrespective of whether the same individuals were employed in each such  
3 week); provided that on and after January 1, 1972, except as otherwise provided in subsections  
4 (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this  
5 Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~  
6 Division prior to the first day of March of such year a written application for termination of  
7 coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks within the  
8 preceding calendar year (whether or not such weeks are or were consecutive) within which said  
9 employing unit employed one or more individuals in employment (not necessarily  
10 simultaneously and irrespective of whether the same individual was employed in each such  
11 week), and the ~~Commission-Division~~ finds that there was no calendar quarter within the  
12 preceding calendar year in which the total wages of its employees were one thousand five  
13 hundred dollars (\$1,500) or more. Any employing unit, as defined in G.S. 96-8(5)n, shall cease  
14 to be an employer only if it files with the ~~Commission-Division~~ by the first day of March of any  
15 calendar year an application for termination of coverage, and the ~~Commission-Division~~ finds  
16 that there were no 20 different weeks within the preceding calendar year in which such  
17 employing unit had at least 10 individuals in employment, and that there was no calendar  
18 quarter within the preceding calendar year in which such employing unit paid twenty thousand  
19 dollars (\$20,000) or more in wages for services in employment. Any employing unit, as defined  
20 in G.S. 96-8(5)o, shall cease to be an employer if it files with the ~~Commission-Division~~ by the  
21 first day of March of any calendar year an application for termination of coverage and the  
22 ~~Commission-Division~~ finds that there was no calendar quarter within the preceding calendar  
23 year in which such employing unit paid one thousand dollars (\$1,000) or more in wages for  
24 services in employment. Provided further, except as otherwise provided in subsections (a), (c),  
25 and (d) of this section on and after January 1, 1974, an "employer" as the term is used in  
26 G.S. 96-8(5)k shall cease to be an employer subject to this Chapter only as of the first day of  
27 January in any calendar year, if it files with the ~~Commission-Division~~ prior to the first day of  
28 March of such year a written application for termination of coverage and the ~~Commission~~  
29 Division finds that there were no 20 different weeks within the preceding calendar year  
30 (whether or not such weeks are or were consecutive) within which said employing unit  
31 employed four or more individuals in employment (not necessarily simultaneously and  
32 irrespective of whether the same individuals were employed in each such week). For the  
33 purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of  
34 G.S. 96-8, subdivision (5) shall be treated as a single employing unit: Provided, however, that  
35 any employer, as the term is used in G.S. 96-8(5)k, whose liability covers a period of more than  
36 two years when first discovered by the ~~Commission-Division~~, upon filing a written application  
37 for termination within 90 days after notification of his liability by the ~~Commission-Division~~,  
38 may be terminated as an employer effective January 1; and for any subsequent year if the  
39 ~~Commission-Division~~ finds there were no 20 different weeks within the preceding calendar  
40 year (whether or not such weeks are or were consecutive) within which said employing unit  
41 employed four or more individuals in employment (not necessarily simultaneously and  
42 irrespective of whether the same individuals were employed in each such week). Provided  
43 further, any other employer whose liability covers a period of more than two years when first  
44 discovered by the ~~Commission-Division~~, upon filing a written application for termination  
45 within 90 days after notification of his liability by the ~~Commission-Division~~, may be terminated  
46 as an employer effective January 1, and for any subsequent years if the ~~Commission-Division~~  
47 finds that prior to January 1, 1972, there were no 20 different weeks within the preceding  
48 calendar year (whether or not such weeks are or were consecutive) within which said  
49 employing unit employed four or more individuals in employment (not necessarily  
50 simultaneously and irrespective of whether the same individuals were employed in each such

1 week); and with respect to 1972 and subsequent years, if the ~~Commission~~Division finds that  
2 there were no 20 different weeks within the preceding calendar year (whether or not such  
3 weeks are or were consecutive) within which said employing unit employed one or more  
4 individuals in employment (not necessarily simultaneously and irrespective of whether the  
5 same individual was employed in each such week), and the ~~Commission~~Division finds that  
6 there was no calendar quarter within the preceding calendar year in which the total wages of its  
7 employees were one thousand five hundred dollars (\$1,500) or more. In such cases, a protest of  
8 liability shall be considered as an application for termination within the meaning of this  
9 provision where the decision with respect to such protest has not become final; provided  
10 further, this provision shall not apply in any case of willful attempt in any manner to defeat or  
11 evade the payment of contributions becoming due under this Chapter.

12 (c) (1) An employing unit, not otherwise subject to this Chapter, which files with  
13 the ~~Commission~~Division its written election to become an employer subject  
14 hereto for not less than two calendar years shall, with the written approval of  
15 such election by the ~~Commission~~Division, become an employer subject  
16 hereto to the same extent as all other employers, as of the date stated in such  
17 approval, and shall cease to be subject hereto as of January 1 of any calendar  
18 year subsequent to such two calendar years only if, prior to the first day of  
19 March following such first day of January, it has filed with the ~~Commission~~Division  
20 Division a written notice to that effect, provided such employing unit may be  
21 terminated by the ~~Commission~~Division as provided under the provisions of  
22 subdivision (3)(4) of this subsection.

23 (2) Any employing unit for which services that do not constitute employment as  
24 defined in this Chapter are performed may file with the ~~Commission~~Division  
25 Division a written election that all such services performed by individuals in  
26 its employ, in one or more distinct establishments or places of business, shall  
27 be deemed to constitute employment for all the purposes of this Chapter for  
28 not less than two calendar years. Upon the written approval of such election  
29 by the ~~Commission~~Division such services shall be deemed to constitute  
30 employment subject to this Chapter from and after the date stated in such  
31 approval. Such services shall cease to be deemed employment, subject  
32 hereto as of January one of any calendar year subsequent to such two  
33 calendar years only if, prior to the first day of March following such first day  
34 of January, such employing unit has filed with the ~~Commission~~Division a  
35 written notice to that effect, provided such employing unit may be  
36 terminated by the ~~Commission~~Division as provided under the provisions of  
37 subdivision (3)(4) of this subsection.

38 (3) ...

39 d. An election under this section may be terminated as of January 1 of  
40 any calendar year subsequent to such two calendar years only if 30  
41 days prior to such January 1, such employer has filed with the  
42 ~~Commission~~Division a written notice to that effect.

43 (4) On and after July 1, 1965, the ~~Commission~~Division on its own motion and  
44 in its discretion, upon 30 days' written notice mailed to the last known  
45 address of such employer, may terminate coverage of any employer which  
46 has become subject to this Chapter solely by electing coverage under the  
47 provisions of this subsection.

48 (d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered  
49 wages for a period of two consecutive calendar years shall cease to be an employer subject to  
50 this Chapter. An employer who has not had individuals in employment and who has made due



1 application for exemption from filing contributions and wage reports required under this  
2 Chapter and has been so exempted may be terminated from liability upon written application  
3 within 120 days after notification of the reactivation of his account. Such termination shall be  
4 effective January 1 of any calendar year only if the ~~Commission-Division~~ finds there were no  
5 20 different weeks within the preceding calendar year, whether or not such weeks are or were  
6 consecutive, within which said employer employed one or more individuals in employment  
7 (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of  
8 whether the same individuals were employed in each such week, and the ~~Commission-Division~~  
9 finds that there was no calendar quarter within the preceding calendar year in which the total  
10 wages of its employees were one thousand five hundred dollars (\$1,500) or more, except as  
11 otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who  
12 has not had individuals in employment and who has made due application for exemption from  
13 filing contributions and wage reports required under this Chapter and has been so exempted  
14 may be terminated from liability upon written application within 120 days after notification of  
15 the reactivation of its account. Such termination shall be effective January 1 of any calendar  
16 year only if the ~~Commission-Division~~ finds that there were no 20 different weeks within the  
17 preceding calendar year, whether or not such weeks are or were consecutive, within which said  
18 employer employed four or more individuals in employment, not necessarily simultaneously  
19 and irrespective of whether the same individuals were employed in each such week. In such  
20 cases a protest of liability shall be considered as an application for termination within the  
21 meaning of this provision where the decision with respect to such protest has not become final."

22 **SECTION 2.11. G.S. 96-12 reads as rewritten:**

23 **"§ 96-12. Benefits.**

24 (a) Payment of Benefits. – Twenty-four months after the date when contributions first  
25 accrue under this Chapter benefits shall become payable from the fund. All benefits shall be  
26 paid through employment offices, in accordance with ~~such regulations as the Commission may~~  
27 ~~prescribe rules adopted by the Division.~~

28 (b) (1) a. Repealed by Session Laws 1977, c. 727, s. 52.

29 b. An individual who is totally unemployed shall be paid the  
30 individual's weekly benefit amount. The weekly benefit amount for  
31 an individual is the amount of the high-quarter wages paid to the  
32 individual in the individual's base period, divided by 26 and, if the  
33 quotient is not a whole dollar, rounded to the next lower whole  
34 dollar. If this amount is less than fifteen dollars (\$15.00), the  
35 individual is not eligible for benefits.

36 c. Repealed by Session Laws 1981, c. 160, s. 17.

37 (2) Each August 1, the ~~Commission-Division~~ shall calculate the maximum  
38 weekly benefit amount available to an individual. The maximum weekly  
39 benefit amount is sixty-six and two-thirds percent (66 2/3%) of the average  
40 weekly insured wage rounded, if the amount is not a whole dollar, to the  
41 next lower whole dollar. The maximum weekly benefit amount set on  
42 August 1 of a year applies to an individual whose benefit year begins on or  
43 after that date and before August 1 of the following year.

44 ...

45 (d) Duration of Benefits. – The total benefits paid to an individual shall not be less than  
46 the minimum total benefit and shall not exceed the lesser of the maximum total benefit or the  
47 individual's total benefit amount. The total benefit amount for an individual is determined by  
48 dividing the individual's base-period wages by the individual's high-quarter wages, multiplying  
49 that quotient by eight and two thirds, rounding the result to the nearest whole number, and then  
50 multiplying the resulting amount by the individual's weekly benefit amount. The minimum total

benefit for an individual is 13 times the individual's weekly benefit amount. The maximum total benefit for an individual is 26 times the individual's weekly benefit amount, unless the benefits are extended further in accordance with G.S. 96-12.01. The ~~Commission-Division~~ shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits.

...  
(g) **Income Tax Withholding.** – When an individual files a new claim for unemployment compensation, the individual shall be advised in writing at the time of filing that:

- (1) Unemployment compensation is subject to federal and State individual income tax.
- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.
- (4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.
- (5) The individual may change a previously elected withholding status.

The ~~Commission-Division~~ shall follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions will be deducted and withheld in accordance with priorities established by the ~~Commission-Division~~."

**SECTION 2.12.** G.S. 96-12.01 reads as rewritten:

**"§ 96-12.01. Extended benefits.**

...  
(a1) **Definitions.** – As used in this section, unless the context clearly requires otherwise .

...  
(4) There is an "on indicator" for this State for a week if the ~~Commission Division~~ determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

...  
(5) There is an "off indicator" for this State for a week if the ~~Commission Division~~ determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

- a. Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and was less than six percent (6%),  
or
- b. Was less than five percent (5%).

- (6) "Rate of insured unemployment," for the purposes of subparagraphs (4) and (5) of this subsection, means the percentage derived by dividing
- a. The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the Commission-Division, on the basis of its reports to the United States Secretary of Labor, by
  - b. The average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

...

(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. – Except when the result would be inconsistent with the other provisions of this section and in matters of eligibility determination, as provided in the regulations-of-by rules adopted by the Commission-Division the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility Requirements for Extended Benefits. – An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission-Division finds that with respect to such week:

- (1) ~~He~~ The individual is an "exhaustee" as defined in subsection (a)(10).
- (2) ~~He~~ The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term "suitable work" means any work which is within the individual's capabilities to perform if: (i) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(C)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14(3) for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the Commission-Division that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the Commission-Division deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14(3) without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder.

1            Provided, further, that any individual who has been disqualified for  
2            voluntarily leaving employment, being discharged for misconduct or  
3            substantial fault, or refusing suitable work under G.S. 96-14 and who has  
4            had the disqualification terminated, shall have such disqualification  
5            reinstated when claiming extended benefits unless the termination of the  
6            disqualification was based upon employment subsequent to the date of the  
7            disqualification.

- 8            (3) After March 31, 1981, he has not failed either to apply for or to accept an  
9            offer of suitable work, as defined in G.S. 96-12.01(c)(2), to which he was  
10           referred by an employment office of the ~~Commission~~, Division, and he has  
11           furnished the ~~Commission~~- Division with tangible evidence that he has  
12           actively engaged in a systematic and sustained effort to find work. If an  
13           individual is found to be ineligible hereunder, he shall be ineligible  
14           beginning with the week in which he either failed to apply for or to accept  
15           the offer of suitable work or failed to furnish the ~~Commission~~-Division with  
16           tangible evidence that he has actively engaged in a systematic and sustained  
17           effort to find work and such individual shall continue to be ineligible for  
18           extended benefits until he has been employed in each of four subsequent  
19           weeks (whether or not consecutive) and has earned remuneration equal to  
20           not less than four times his weekly benefit amount.

21           ...  
22           (f) **Beginning and Termination of Extended Benefit Period. –**

- 23           (1) Whenever an extended benefit period is to become effective in this State as  
24           a result of an "on" indicator, or an extended benefit period is to be terminated  
25           in this State as a result of an "off" indicator, the ~~Commission~~-Division shall  
26           make an appropriate public announcement; and  
27           (2) Computations required by the provisions of subsection (a)(6) shall be made  
28           by the ~~Commission~~-Division, in accordance with regulations prescribed by  
29           the United States Secretary of Labor.

30           ...."

31           **SECTION 2.13. G.S. 96-12.1 reads as rewritten:**

32           **"§ 96-12.1. Extended base period for certain job related injuries.**

33           If an individual lacks sufficient base period wages because of a job related injury for which  
34           he received workers' compensation, upon written application by the claimant, an extended base  
35           period will be substituted for the current base period on a quarter-by-quarter basis as needed to  
36           establish a valid claim. "Extended base period" means the four quarters prior to the claimant's  
37           base period. These four quarters may be substituted for base period quarters on a  
38           quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been  
39           used to establish a prior claim, except any wages earned that would render the ~~Employment~~  
40           ~~Security Commission of North Carolina~~-Division of Employment Security out of compliance  
41           with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis  
42           of an extended base period, which would not otherwise be payable, shall be noncharged."

43           **SECTION 2.14. G.S. 96-13 reads as rewritten:**

44           **"§ 96-13. Benefit eligibility conditions.**

45           (a) An unemployed individual shall be eligible to receive benefits with respect to any  
46           week only if the ~~Commission~~-Division finds that -

- 47           (1) The individual has registered for work at and thereafter has continued to  
48           report at an employment office as directed by the ~~Commission in accordance~~  
49           ~~with such regulations as the Commission may prescribe~~; Division pursuant to  
50           rules adopted by the Division.

1 ...  
2 (3) The individual is able to work, and is available for work: Provided that,  
3 unless temporarily excused by ~~Commission regulations, Division rules,~~ no  
4 individual shall be deemed available for work unless he establishes to the  
5 satisfaction of the ~~Commission-Division~~ that ~~he the individual~~ is actively  
6 seeking work: Provided further, that an individual customarily employed in  
7 seasonal employment shall, during the period of nonseasonal operations,  
8 show to the satisfaction of the ~~Commission-Division~~ that ~~such the individual~~  
9 is actively seeking employment which ~~such the individual~~ is qualified-able to  
10 perform ~~by past experience or training~~ during such nonseasonal period:  
11 Provided further, however, that no individual shall be considered available  
12 for work for any week not to exceed two in any calendar year in which the  
13 ~~Commission-Division~~ finds that his unemployment is due to a vacation. In  
14 administering this proviso, benefits shall be paid or denied on a payroll-week  
15 basis as established by the employing unit. A week of unemployment due to  
16 a vacation as provided herein means any payroll week within which the  
17 equivalent of three customary full-time working days consist of a vacation  
18 period. For the purpose of this subdivision, any unemployment which is  
19 caused by a vacation period and which occurs in the calendar year following  
20 that within which the vacation period begins shall be deemed to have  
21 occurred in the calendar year within which such vacation period begins. For  
22 purposes of this subdivision, no individual shall be deemed available for  
23 work during any week that the individual tests positive for a controlled  
24 substance if (i) the test is a controlled substance examination administered  
25 under Article 20 of Chapter 95 of the General Statutes, (ii) the test is  
26 required as a condition of hire for a job, and (iii) the job would be suitable  
27 work for the claimant. The employer shall report to the ~~Commission,~~  
28 ~~Division,~~ in accordance with ~~regulations adopted by the Commission, rules~~  
29 ~~adopted by the Division,~~ each claimant that tests positive for a controlled  
30 substance under this subdivision. An unemployed individual shall not be  
31 disqualified for eligibility for unemployment compensation solely on the  
32 basis that the individual is in school. For the purposes of this subdivision:

- 33 a. No individual shall be deemed to be available for work during any  
34 week that the person is incarcerated or has received notice to report  
35 or is otherwise detained in any state or federal jail or penal  
36 institution.  
37 b. An individual is exempted for any week that the individual  
38 participates in the Trade Jobs For Success initiative under  
39 G.S. 143B-438.16.

40 ...  
41 (c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive  
42 benefits with respect to any week only if the ~~Commission-Division~~ finds that he has been  
43 totally, partially, or part-totally unemployed for a waiting period of one week with respect to  
44 each benefit year. No week shall be counted as a week of unemployment for waiting-period  
45 credit under this provision unless the claimant except for the provisions of this subdivision was  
46 otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting  
47 period for a benefit year shall not be required of any claimant if all of the following conditions  
48 are met:  
49 ...

- (4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The ~~Employment Security Commission, Division~~ for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the ~~Employment Security Commission Division~~ may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The ~~Employment Security Commission Division~~ shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(c1) As to claims filed on or after January 29, 2003, the waiting period for a benefit year shall not be required of a claimant if all of the following conditions are met:

- ...
- (3) The Governor has issued an Executive Order directing and authorizing the ~~Employment Security Commission Division~~ to waive the waiting week for employees of the manufacturer.
- (4) The ~~Employment Security Commission Division~~ shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b).

(d) Benefit entitlement based on services for governmental entities that become subject to the ~~Employment Security Commission law~~ Law effective January 1, 1978, will be administered in the same manner and under the same conditions of the laws of this Chapter as are applicable to individuals whose benefit rights are based on other service subject to this Chapter.

- ...
- (g) (1) Except as herein provided, no individual shall be eligible for benefits for any week during any part of which the ~~Commission Division~~ finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work but such acts or omissions need not alone be disqualifying under G.S. 96-14.

...."

**SECTION 2.15.** G.S. 96-14 reads as rewritten:

**"§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission Division~~ that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and

b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the ~~Commission~~ Division that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

...

(1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. ~~conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the~~

1 ~~employer has the right to expect of an employee, or in carelessness or~~  
2 ~~negligence of such degree or recurrence as to manifest equal culpability,~~  
3 ~~wrongful intent or evil design, or to show an intentional and substantial~~  
4 ~~disregard of the employer's interests or of the employee's duties and~~  
5 ~~obligations to the employer.~~

6 "Discharge for misconduct with the work" as used in this section is  
7 defined to include but not be limited to separation initiated by an employer  
8 for violating the employer's written alcohol or illegal drug policy; reporting  
9 to work significantly impaired by alcohol or illegal drugs; consuming  
10 alcohol or illegal drugs on employer's premises; conviction by a court of  
11 competent jurisdiction for manufacturing, selling, or distribution of a  
12 controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2)  
13 while in the employ of said employer; employer; being terminated or  
14 suspended from employment after arrest or conviction for an offense  
15 involving violence, sex crimes, illegal drugs, or other activities which could  
16 negatively affect the employer's reputation in the community or business  
17 dealings; any physical violence whatsoever related to an employee's work  
18 for an employer including, but not limited to, physical violence directed at  
19 supervisors, subordinates, coworkers, vendors, customers, or the general  
20 public; inappropriate comments or behavior towards supervisors,  
21 subordinates, coworkers, vendors, customers, or to the general public  
22 relating to any federally protected characteristic which creates a hostile work  
23 environment; theft in connection with the employment; forging or falsifying  
24 any document or data related to employment, including a previously  
25 submitted application for employment; violation of an employer's written  
26 absenteeism policy; refusing to perform reasonably assigned work tasks; and  
27 the failure to adequately perform any other employment duties as evidenced  
28 by no fewer than three written reprimands received in the 12 months  
29 immediately preceding the employee's termination. This phrase does not  
30 include discharge or employer-initiated separation of a severely disabled  
31 veteran, as defined in G.S. 96-8, for ~~acts or omissions~~ any act or omission of  
32 the veteran that the ~~Commission~~ Division determines are attributed to a  
33 disability incurred or aggravated in the line of duty during active military  
34 service, or to the veteran's absence from work to obtain care and treatment of  
35 a disability incurred or aggravated in the line of duty during active military  
36 service.

- 37 (2a) For a period of not less than four nor more than 13 weeks beginning with the  
38 first day of the first week during which or after the disqualifying act occurs  
39 with respect to which week an individual files a claim for benefits if it is  
40 determined by the ~~Commission~~ Division that such individual is, at the time  
41 the claim is filed, unemployed because he was discharged for substantial  
42 fault on his part connected with his work not rising to the level of  
43 misconduct. Substantial fault is defined to include those acts or omissions of  
44 employees over which they exercised reasonable control and which violate  
45 reasonable requirements of the job but shall not include (1) minor infractions  
46 of rules unless such infractions are repeated after a warning was received by  
47 the employee, (2) inadvertent mistakes made by the employee, nor (3)  
48 failures to perform work because of insufficient skill, ability, or equipment.  
49 Upon a finding of discharge under this subsection, the individual shall be  
50 disqualified for a period of nine weeks unless, based on findings by the



~~Commission—~~ Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the ~~Commission—~~ Division shall not be disturbed by a reviewing court except upon a finding of plain error.

(2b) For the duration of the individual's unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission—~~ Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision.

(2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the ~~Commission~~ Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time.

(3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the ~~Commission—~~ Division that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the ~~Commission;~~ Division; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the ~~Commission—~~ Division. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the ~~Commission—~~ Division for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the ~~Commission—~~ Division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
  - b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
  - c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
  - d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).
- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission~~ Division that:
- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the ~~Commission~~; Division;
  - b. Such individual has discontinued his training course without good cause; or
  - c. If the individual is separated from his training course or vocational school due to misconduct.
- (5) For any week with respect to which the ~~Commission-Division~~ finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.
- (6) If the ~~Commission-Division~~ finds he is customarily self-employed and can reasonably return to self-employment.
- (6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the ~~Commission-Division~~ that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:
- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
  - b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
  - c. The employing entity was a proprietorship, and the individual was a proprietor.

...  
(8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the ~~Commission~~-Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the ~~Commission~~-Division by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the ~~Commission~~-Division and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the ~~Commission~~-Division or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

...  
(10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:

- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
- b. Subsequently becomes unemployed through no fault of his own; and
- c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the ~~Commission~~-Division in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

- 1  
2           ...  
3           (12) Notwithstanding any other provision of this Chapter, no otherwise eligible  
4           individual shall be denied benefits for any weeks if it is determined by the  
5           ~~Commission-Division~~ that such individual is, at the time such claim is filed,  
6           unemployed because he left work solely as a result of a lack of work caused  
7           by the bankruptcy of his employer."

8           **SECTION 2.16.** G.S. 96-15 reads as rewritten:

9           **"§ 96-15. Claims for benefits.**

10          (a) Filing. – Claims for benefits shall be made in accordance with such regulations as  
11          the ~~Commission-Division~~ may prescribe. Employers may file claims for employees through the  
12          use of automation in the case of partial unemployment. Each employing unit shall post and  
13          maintain in places readily accessible to individuals performing services for it printed  
14          statements, concerning benefit rights, claims for benefits, and such other matters relating to the  
15          administration of this Chapter as the ~~Commission-Division~~ may direct. Each employing unit  
16          shall supply to such individuals copies of such printed statements or other materials relating to  
17          claims for benefits as the ~~Commission-Division~~ may direct. Such printed statements and other  
18          materials shall be supplied by the ~~Commission-Division~~ to each employing unit without cost to  
19          the employing unit.

- 20          (b) (1) Initial Determination. – A representative designated by the ~~Commission~~  
21          Division shall promptly examine the claim and shall determine whether or  
22          not the claim is valid. If the claim is determined to be not valid for any  
23          reason other than lack of base period earnings, the claim shall be referred to  
24          an Adjudicator for a decision as to the issues presented. If the claim is  
25          determined to be valid, a monetary determination shall be issued showing  
26          the week with respect to when benefits shall commence, the weekly benefit  
27          amount payable, and the potential maximum duration thereof. The claimant  
28          shall be furnished a copy of such monetary determination showing the  
29          amount of wages paid him by each employer during his base period and the  
30          employers by whom such wages were paid, his benefit year, weekly benefit  
31          amount, and the maximum amount of benefits that may be paid to him for  
32          unemployment during the benefit year. When a claim is not valid due to lack  
33          of earnings in his base period, the determination shall so designate. The  
34          claimant shall be allowed 10 days from the earlier of mailing or delivery of  
35          his monetary determination to him within which to protest his monetary  
36          determination and upon the filing of such protest, unless said protest be  
37          satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy~~  
38          Commissioner-Assistant Secretary or his designee for a decision as to the  
39          issues presented. All base period employers, as well as the most recent  
40          employer of a claimant on a temporary layoff, shall be notified upon the  
41          filing of a claim which establishes a benefit year.

42          At any time within one year from the date of the making of an initial  
43          determination, the ~~Commission-Division~~ on its own initiative may reconsider  
44          such determination if it finds that an error in computation or identity has  
45          occurred in connection therewith or that additional wages pertinent to the  
46          claimant's benefit status have become available, or if such determination of  
47          benefit status was made as a result of a nondisclosure or misrepresentation of  
48          a material fact.

- 49          (2) Adjudication. – When a protest is made by the claimant to the initial or  
50          monetary determination, or a question or issue is raised or presented as to the  
51          eligibility of a claimant under G.S. 96-13, or whether any disqualification

1 should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant  
2 to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator  
3 may consider any matter, document or statement deemed to be pertinent to  
4 the issues, including telephone conversations, and after such consideration  
5 shall render a conclusion as to the claimant's benefit entitlements. The  
6 adjudicator shall notify the claimant and all other interested parties of the  
7 conclusion reached. The conclusion of the adjudicator shall be deemed the  
8 final decision of the ~~Commission-Division~~ unless within ~~15~~30 days after the  
9 date of notification or mailing of the conclusion, whichever is earlier, a  
10 written appeal is filed pursuant to ~~such regulations as the Commission may~~  
11 ~~adopt. The Commission rules adopted by the Division. The Division shall be~~  
12 deemed an interested party for such purposes and may remove to itself or  
13 transfer to an appeals referee the proceedings involving any claim pending  
14 before an adjudicator.

15 Provided, any interested employer shall be allowed ~~10~~30 days from the  
16 earlier of mailing or delivery of the notice of the filing of a claim against the  
17 employer's account to protest the claim and have the claim referred to an  
18 adjudicator for a decision on the question or issue raised. A copy of the  
19 notice of the filing shall be sent contemporaneously to the employer by  
20 telefacsimile transmission if a fax number is on file. Provided further, no  
21 question or issue may be raised or presented by the ~~Commission-Division~~ as  
22 to the eligibility of a claimant under G.S. 96-13, or whether any  
23 disqualification should be imposed under G.S. 96-14, after 45 days from the  
24 first day of the first week after the question or issue occurs with respect to  
25 which week an individual filed a claim for benefits. None of the provisions  
26 of this subsection shall have the force and effect nor shall the same be  
27 construed or interested as repealing any other provisions of G.S. 96-18.

28 An employer shall receive written notice of the employer's appeal rights  
29 and any forms that are required to allow the employer to protest the claim.  
30 The forms shall include a section referencing the appropriate rules pertaining  
31 to appeals and the instructions on how to appeal.

32 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee  
33 or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be  
34 heard. The conduct of hearings shall be governed by suitable ~~regulations established rules~~  
35 ~~adopted by the Commission-Division. The regulations rules need not conform to common law~~  
36 or statutory rules of evidence or technical or formal rules of procedure but shall provide for the  
37 conduct of hearings in such manner as to ascertain the substantial rights of the parties. The  
38 hearings may be conducted by conference telephone call or other similar means provided that if  
39 any party files with the ~~Commission-Division~~ prior written objection to the telephone  
40 procedure, that party will be afforded an opportunity for an in-person hearing at such place in  
41 the State as the ~~Commission-Division~~ by ~~regulation rule~~ shall provide. The hearing shall be  
42 scheduled for a time that, as much as practicable, least intrudes on and reasonably  
43 accommodates the ordinary business activities of an employer and the return to employment of  
44 a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the  
45 adjudicator or issue a new decision in which findings of fact and conclusions of law will be set  
46 out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute  
47 the appeal after having been duly notified of the appeals hearing. The evidence taken at the  
48 hearings before the appeals referee shall be recorded and the decision of the appeals referee  
49 shall be deemed to be the final decision of the ~~Commission-Division~~ unless within 10 days after  
50 the date of notification or mailing of the decision, whichever is earlier a written appeal is filed

1 pursuant to such ~~regulations-rules~~ as the ~~Commission-Board~~ of Review and the Division may  
2 adopt. No person may be appointed as an appeals referee or hearing officer unless he or she  
3 possesses the minimum qualifications necessary to be a staff attorney eligible for designation  
4 by the ~~Commission-Division~~ as a hearing officer under ~~G.S. 96-4(m)~~. G.S. 96-4(q). No appeals  
5 referee or hearing officer in full-time permanent status may engage in the private practice of  
6 law as defined in G.S. 84-2.1 while serving in office as appeals ~~referee; referee or hearing~~  
7 ~~officer~~; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken  
8 from a decision of the appeals ~~referee; referee or hearings officer~~; the appealing party shall  
9 submit a clear written statement containing the grounds for the appeal within the time allowed  
10 by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~  
11 Board of Review may dismiss the appeal.

12 (c1) Unless required for disposition of an ex parte matter authorized by law, a  
13 ~~Commissioner, Division~~ appeals referee, or employee assigned to make a decision or to make  
14 findings of facts and conclusions of law in a case shall not communicate, directly or indirectly,  
15 in connection with any issue of fact, or question of law, with any person or party or his  
16 representative, except on notice and opportunity for parties to participate.

17 (c2) Whenever a party is notified of an ~~Adjudicator's, Appeals Referee's, or Deputy~~  
18 ~~Commissioner's~~ the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule  
19 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

20 (d) Repealed by Session Laws 1977, c. 727, s. 54.

21 (d1) No continuance shall be granted except upon application to the ~~Commissioner,~~  
22 Division, the appeals referee, or other authority assigned to make the decision in the matter to  
23 be continued. A continuance may be granted only for good cause shown and upon such terms  
24 and conditions as justice may require. Good cause for granting a continuance shall include, but  
25 not be limited to, those instances when a party to the proceeding, a witness, or counsel of  
26 record has an obligation of service to the State, such as service as a member of the North  
27 Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater  
28 jurisdiction.

29 (e) Review by the ~~Commission-Board of Review.~~ – The Board of Review may on its  
30 own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or  
31 other employee assigned to make a decision on the basis of the evidence previously submitted  
32 in such case, or direct the taking of additional evidence, or may permit any of the parties to  
33 such decision to initiate further appeals before it, or may provide for group hearings in such  
34 cases as the Board of Review finds appropriate. The Board of Review may remove itself or  
35 transfer to an appeals referee, hearing officer, or other employee assigned to make a decision  
36 the proceedings on any claim pending before an appeals referee, hearing officer, or other  
37 employee assigned to make a decision. Interested parties shall be promptly notified of the  
38 findings and decision of the Board of Review. Commission or Deputy Commissioner may on  
39 its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of  
40 the evidence previously submitted in such case, or direct the taking of additional evidence, or  
41 may permit any of the parties to such decision to initiate further appeals before it, or may  
42 provide for group hearings in such cases as the Commission or Deputy Commissioner may  
43 deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to  
44 another appeals referee the proceedings on any claim pending before an appeals referee. The  
45 Commission shall promptly notify the interested parties of its findings and the decision. In all  
46 Commission matters heard by a Deputy Commissioner, the decision of the Deputy  
47 Commissioner shall constitute the decision of the Commission; except, the Commission may  
48 remove unto itself, upon its own motion, any claim pending for rehearing and redetermination,  
49 provided such removal is done prior to the expiration of appeal period applicable to the  
50 decision of the Deputy Commissioner.

(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with ~~regulations prescribed by the Commission~~ rules adopted by the Division for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the ~~recording is waived by all interested parties, the parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the decision,~~ but need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such ~~regulations as the Commission may prescribe, rules as the Division may adopt,~~ to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the ~~Commission~~ Division such reasonable fee for the transcript as the ~~Commission~~ Division may by regulation provide. The fee so prescribed by the ~~Commission~~ Division for a party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The ~~Commission~~ Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the ~~Commission~~ Division shall waive the fee.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the ~~Commission~~ Division. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Commission~~ Division, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, shall become final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review shall be permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Commission~~ Division as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly state what exceptions are taken to the decision or procedure of the ~~Commission~~ Division and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the ~~Commission~~ Division and upon all parties of record to the ~~Commission~~ Division proceedings. Names and addresses of the parties shall be furnished to the petitioner by the ~~Commission~~ Division upon request. The ~~Commission~~ Division shall be deemed to be a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. ~~Upon motion of the Commission, the court shall dismiss any review for which the petition is untimely filed, untimely or improperly served, or for which it otherwise fails to comply with the requirements of this subsection. Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court.~~ Any party to the ~~Commission~~ Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the ~~Commission~~ Division shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by

1 the court for such additional cost as is occasioned by the refusal. The court may require or  
2 permit subsequent corrections or additions to the record when deemed desirable.

3 (i) Review Proceedings. – If a timely petition for review has been filed and served as  
4 provided in G.S. 96-15(h), the court may make party defendant any other party it deems  
5 necessary or proper to a just and fair determination of the case. The ~~Commission~~ Division may,  
6 in its discretion, certify to the reviewing court questions of law involved in any decision by it.  
7 In any judicial proceeding under this section, the findings of fact by the ~~Commission~~ Division,  
8 if there is any competent evidence to support them and in the absence of fraud, shall be  
9 conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions  
10 and the questions so certified shall be heard in a summary manner and shall be given  
11 precedence over all civil cases. An appeal may be taken from the judgment of the superior  
12 court, as provided in civil cases. The ~~Commission~~ Division shall have the right to appeal to the  
13 appellate division from a decision or judgment of the superior court and for such purpose shall  
14 be deemed to be an aggrieved party. No bond shall be required of the ~~Commission~~ Division  
15 upon appeal. Upon the final determination of the case or proceeding, the ~~Commission~~ Division  
16 shall enter an order in accordance with the determination. When an appeal has been entered to  
17 any judgment, order, or decision of the court below, no benefits shall be paid pending a final  
18 determination of the cause, except in those cases in which the final decision of the ~~Commission~~  
19 Division allowed benefits.

20 (j) Repealed by Session Laws 1985, c. 197, s. 9.

21 (k) Irrespective of any other provision of this Chapter, the ~~Commission~~ Division may  
22 adopt minimum regulations necessary to provide for the payment of benefits to individuals  
23 promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42  
24 U.S.C.A., section 503(a)(1))."

25 SECTION 2.17. G.S. 96-16 reads as rewritten:

26 "§ 96-16. Seasonal pursuits.

27 (a) A seasonal pursuit is one which, because of seasonal conditions making it  
28 impracticable or impossible to do otherwise, customarily carries on production operations only  
29 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a  
30 calendar year. No pursuit shall be deemed seasonal unless and until so found by the  
31 ~~Commission~~ Division. ~~Provided, however,~~ except that from March 27, 1953, any successor  
32 under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall  
33 within 120 days after the acquisition request cancellation of the determination of status of such  
34 seasonal pursuit; provided further that this provision shall not be applicable to pending cases  
35 nor retroactive in effect.

36 (b) Upon application therefor by a pursuit, the ~~Commission~~ Division shall determine or  
37 redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods  
38 thereof. The ~~Commission~~ Division may, on its own motion, redetermine the active period or  
39 periods of a seasonal pursuit. An application for a seasonal determination must be made on  
40 forms prescribed by the ~~Commission~~ Division and must be made at least 20 days prior to the  
41 beginning date of the period of production operations for which a determination is requested.

42 (c) Whenever the ~~Commission~~ Division has determined or redetermined a pursuit to be  
43 seasonal, such pursuit shall be notified immediately, and such notice shall contain the  
44 beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display  
45 notices of its seasonal determination conspicuously on its premises in a sufficient number of  
46 places to be available for inspection by its workers. Such notices shall be furnished by the  
47 ~~Commission~~ Division.

48 ...

49 (j) As used in this section:

50 ...



- (5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its active period or periods. The ~~Commission-Division~~ may prescribe by regulation the manner in which seasonal wages shall be reported.

...."

SECTION 2.18. G.S. 96-17 reads as rewritten:

**"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees; deductions for child support obligations.**

(b) Representation. – Any claimant or employer who is a party to any proceeding before the ~~Commission-Division~~ may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the ~~Commission-Division~~.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual claiming benefits in any administrative proceeding under this Chapter shall be charged fees of any kind by the ~~Commission-Division~~ or its representative, and in any court proceeding under this Chapter each party shall bear its own costs and legal fees.

(d) (1) Definitions. – For the purpose of this subsection and when used herein:

a. "Unemployment compensation" means any compensation found by the ~~Commission-Division~~ to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the ~~Commission-Division~~ pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the ~~Commission's Division's~~ ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.

(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the ~~Commission Division~~ to be eligible for payment of unemployment compensation, the ~~Commission-Division~~ shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the ~~Commission-Division~~, the ~~Commission-Division~~ shall deduct and withhold from any unemployment compensation

otherwise payable to an individual who owes child support obligations:

1. The amount specified by the individual to the ~~Commission Division~~ to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or
2. The amount, if any, determined pursuant to an agreement submitted to the ~~Commission—Division~~ under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or
3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the ~~Employment Security Commission Division~~ to the appropriate State or local child support enforcement agency.

d. The Department of Health and Human Services and the ~~Commission Division~~ are hereby authorized to enter into one or more agreements which may provide for the payment to the ~~Commission—Division~~ of the processing fees referred to in subparagraph b. and the payment to the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the ~~Commission Division~~ will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the ~~Commission—Division~~. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the ~~Commission—Division~~ of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.

...

- (4) a. On or before April 1 of 1983 and each calendar year thereafter, the ~~Commission—Division~~ shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the ~~Commission Division~~ generated thereby.

- 1                   b.     At least 20 days prior to September 25, 1982, the ~~Commission~~  
2                   Division shall set and forward to the Secretary of Health and Human  
3                   Services an interim schedule of fees which will be in effect until July  
4                   1, 1983.
- 5                   c.     The provisions of this subsection apply only if arrangements are  
6                   made for reimbursement by the State or local child support agency  
7                   for all administrative costs incurred by the ~~Commission-Division~~  
8                   under this subsection attributable to child support obligations  
9                   enforced by the agency."

10                   **SECTION 2.19. G.S. 96-18 reads as rewritten:**

11                   **"§ 96-18. Penalties.**

12                   ...

13                   (b1) Except as provided in this subsection, the penalties and other provisions in  
14                   subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance  
15                   contributions under this Chapter to the same extent that they apply to taxes as defined in  
16                   G.S. 105-228.90(b)(7). The ~~Commission-Division~~ has the same powers under those  
17                   subdivisions with respect to unemployment insurance contributions as does the Secretary of  
18                   Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

19                   G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it  
20                   applies to an income tax preparer. As used in this subsection, a "contribution tax return  
21                   preparer" is a person who prepares for compensation, or who employs one or more persons to  
22                   prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of  
23                   tax imposed by this Chapter. For purposes of this definition, the completion of a substantial  
24                   portion of a return or claim for refund is treated as the preparation of the return or claim for  
25                   refund. The term does not include a person merely because the person (i) furnishes typing,  
26                   reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the  
27                   employer, or an officer or employee of the employer, by whom the person is regularly and  
28                   continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person,  
29                   or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

30                   The penalty in G.S. 105-236(7) applies with respect to unemployment insurance  
31                   contributions under this Chapter only when one of the following circumstances exist in  
32                   connection with the violation:

- 33                   (1)     Any employing units employing more than 10 employees.  
34                   (2)     A contribution of more than two thousand dollars (\$2,000) has not been  
35                   paid.  
36                   (3)     An experience rating account balance is more than five thousand dollars  
37                   (\$5,000) overdrawn.

38                   If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist  
39                   in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is  
40                   guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate  
41                   offense.

42                   If the ~~Commission-Division~~ finds that any person violated G.S. 105-236(9a) and is not  
43                   subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00)  
44                   per violation for each day the violations continue, plus the reasonable costs of investigation and  
45                   enforcement.

- 46                   ...
- 47                   (g)    (1)     Any person who, under subsection (e) above, has been held ineligible for  
48                   benefits and who, because of those same acts or omissions has received any  
49                   sum as benefits under this Chapter to which ~~he-the person~~ was not entitled,  
50                   shall be liable to repay any such sum to the ~~Commission-Division~~ as

provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after 10 years from the last day of the year in which the overpayment occurred.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the ~~Commission~~-Division) other than subparagraph (1) above shall be liable to repay such sum to the ~~Commission~~-Division as provided in subparagraph (3) below, provided no such recovery or recoupment of such sum may be initiated after three years from the last day of the year in which the overpayment occurred.

(3) The ~~Commission~~-Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the ~~Commission~~-Division may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the ~~Commission~~-Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the ~~Commission~~-Division, under the hand of its ~~Chairman~~, the ~~Assistant Secretary~~, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the ~~Commission~~-Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The ~~Commission~~-Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the ~~Commission~~-Division, and when so forwarded and in the hands of such sheriff or agent of the ~~Commission~~-Division, shall have all the force and effect of an execution issued to such sheriff or agent of the ~~Commission~~-Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The ~~Commission~~-Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the ~~Commission~~-Division in all cases in which the sheriff or duly

1 authorized agent has returned an execution or certificate unsatisfied;  
2 when so issued and in the hands of the sheriff or duly authorized  
3 agent of the ~~Commission, Division~~, such alias shall have all the force  
4 and effect of an alias execution issued to such sheriff or duly  
5 authorized agent of the ~~Commission, Division~~ by the clerk of the  
6 superior court upon a judgment of the superior court duly docketed in  
7 said county. Provided, however, that notwithstanding any provision  
8 of this subsection, upon filing one written notice with the  
9 ~~Commission, Division~~, the sheriff of any county shall have the sole  
10 and exclusive right to serve all executions and make all collections  
11 mentioned in this subsection and in such case, no agent of the  
12 ~~Commission, Division~~ shall have the authority to serve any  
13 executions or make any collections therein in such county. A return  
14 of such execution or alias execution, shall be made to the  
15 ~~Commission, Division~~, together with all moneys collected  
16 thereunder, and when such order, execution or alias is referred to the  
17 agent of the ~~Commission, Division~~ for service, the said agent of the  
18 ~~Commission, Division~~ shall be vested with all the powers of the  
19 sheriff to the extent of serving such order, execution or alias and  
20 levying or collecting thereunder. The agent of the ~~Commission~~  
21 ~~Division~~ to whom such order or execution is referred shall give a  
22 bond not to exceed three thousand dollars (\$3,000) approved by the  
23 ~~Commission, Division~~ for the faithful performance of such duties.  
24 The liability of said agent shall be in the same manner and to the  
25 same extent as is now imposed on sheriffs in the service of  
26 execution. If any sheriff of this State or any agent of the ~~Commission~~  
27 ~~Division~~ who is charged with the duty of serving executions shall  
28 willfully fail, refuse or neglect to execute any order directed to him  
29 by the said ~~Commission, Division~~ and within the time provided by  
30 law, the official bond of such sheriff or of such agent of the  
31 ~~Commission, Division~~ shall be liable for the overpayments and costs  
32 due by the claimant. Additionally, the ~~Commission, Division~~ or its  
33 designated representatives in the collection of overpayments shall  
34 have the powers enumerated in G.S. 96-10(b)(2) and (3).

- 35 c. Any person who has been found by the ~~Commission, Division~~ to have  
36 been overpaid under subparagraph (1) above shall be liable to have  
37 such sums deducted from future benefits payable to him under this  
38 Chapter.
- 39 d. Any person who has been found by the ~~Commission, Division~~ to have  
40 been overpaid under subparagraph (2) above shall be liable to have  
41 such sums deducted from future benefits payable to him under this  
42 Chapter in such amounts as the ~~Commission, Division~~ may by  
43 regulation prescribe but no such benefit payable for any week shall  
44 be reduced by more than fifty percent (50%) of that person's weekly  
45 benefit amount.
- 46 e. To the extent permissible under the laws and Constitution of the  
47 United States, the ~~Commission, Division~~ is authorized to enter into or  
48 cooperate in arrangements or reciprocal agreements with appropriate  
49 and duly authorized agencies of other states or the United States  
50 Secretary of Labor, or both, whereby: (1) Overpayments of

unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.

- f. The ~~Commission-Division~~ may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the ~~Commission-Division~~ may remove the debt of the deceased claimant from its records."

**SECTION 2.20. G.S. 96-19 reads as rewritten:**

**"§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.**

(a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of

1 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance  
2 Act shall in no way affect the administration of this law except as herein expressly provided.

3 All federal grants and all contributions theretofore collected, and all funds in the treasury by  
4 virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible,  
5 under the terms of this Chapter: Provided, however, that contributions already due from any  
6 employer shall be collected and paid into the said fund, subject to such distribution; and  
7 provided further, that the personnel of the ~~State Employment Security Commission~~ Division of  
8 Employment Security shall be reduced as rapidly as possible.

9 The funds remaining available for use by the ~~North Carolina Employment Security~~  
10 ~~Commission~~ Division of Employment Security shall be expended, as necessary, in making  
11 payment of all such awards as have been made and are fully approved at the date aforesaid, and  
12 the payment of the necessary costs for the further administration of this Chapter, and the final  
13 settlement of all affairs connected with same. After complete payment of all administrative  
14 costs and full payment of all awards made as aforesaid, any and all moneys remaining to the  
15 credit of any employer shall be refunded to such employer, or his duly authorized assignee:  
16 Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and  
17 transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former  
18 Employment Security Commission of North Carolina, and that is now part of the Division of  
19 Employment Security of the North Carolina Department of Commerce, shall in such event  
20 return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of  
21 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on  
22 the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment~~  
23 ~~Security Commission of North Carolina~~ Division, the said State employment service shall  
24 render such service in connection therewith as shall be demanded or required under the  
25 provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

26 (b) The ~~Employment Security Commission~~ Division of Employment Security may,  
27 upon receiving notification from the U.S. Department of Labor that any provision of this  
28 Chapter is out of conformity with the requirements of the federal law or of the U.S. Department  
29 of Labor, suspend the enforcement of the contested section or provision until the North  
30 Carolina Legislature next has an opportunity to make changes in the North Carolina law. The  
31 ~~Employment Security Commission shall,~~ Division, in order to implement the above suspension:

- 32 (1) Notify the Governor's office and provide that office with a copy of the  
33 determination or notification of the U.S. Department of Labor;
- 34 (2) Advise the Governor's office as to whether the contested portion or provision  
35 of the law would, if not enforced, so seriously hamper the operations of the  
36 agency as to make it advisable that a special session of the legislature be  
37 called;
- 38 (3) Take all reasonable steps available to obtain a reprieve from the  
39 implementation of any federal conformity failure sanctions until the State  
40 legislature has been afforded an opportunity to consider the existing  
41 conflict."

42 SECTION 2.21. G.S. 96-20 reads as rewritten:

43 "**§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;**  
44 **employees.**

45 The ~~Employment Service Division of the Employment Security Commission~~ Employment  
46 Security Section of the Division of Employment Security, Department of Commerce, shall  
47 establish and maintain free public employment offices in such number and in such places as  
48 may be necessary for the proper administration of this Chapter, and for the purpose of  
49 performing such duties as are within the purview of the act of Congress entitled "An act to  
50 provide for the establishment of a national employment system and for cooperation with the

states in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered by a full-time salaried director. The ~~Employment Security Commission~~ Division shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this State, in conformity with section 4 of said act, and this State will observe and comply with the requirements thereof. The ~~Employment Security Commission~~ Division is hereby designated and constituted the agency of this State for the purpose of said act. The ~~Commission Secretary~~ is directed to appoint the ~~director, head,~~ other officers, and employees of the ~~Employment Service Division~~ Security Section."

**SECTION 2.22.** G.S. 96-21 reads as rewritten:

**"§ 96-21. Duties concerning veterans and worker profiling.**

The duties of the ~~Employment Service Division~~ Employment Security Section include the following:

- ...
- (2) To establish and use a worker profiling system that complies with 42 U.S.C. § 503(a)(10) to identify claimants for benefits whom the ~~Division~~ Section must refer to reemployment services in accordance with that law."

**SECTION 2.23.** G.S. 96-22 reads as rewritten:

**"§ 96-22. Employment of and assistance to minors.**

The Employment Service Division ~~Security Section~~ shall have jurisdiction over all matters contemplated in this Article pertaining to securing employment for all minors who avail themselves of the free employment service. The ~~Employment Service Division~~ Security Section shall have power to so conduct its affairs that at all times it shall be in harmony with laws relating to child labor and compulsory education; to aid in inducing minors over 16, who cannot or do not for various reasons attend day school, to undertake promising skilled employment; to aid in influencing minors who do not come within the purview of compulsory education laws, and who do not attend day school, to avail themselves of continuation or special courses in existing night schools, vocational schools, part-time schools, trade schools, business schools, library schools, university extension courses, etc., so as to become more skilled in such occupation or vocation to which they are respectively inclined or particularly adapted, including assisting those minors who are interested in securing vocational employment in agriculture and to aid in the development of good citizenship and in the study and development of vocational rehabilitation capabilities for handicapped minors."

**SECTION 2.24.** G.S. 96-24 reads as rewritten:

**"§ 96-24. Local offices; cooperation with United States service; financial aid from United States.**

The ~~Employment Service Division~~ Security Section is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the State for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States Employment Service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses."

**SECTION 2.25.** G.S. 96-25 reads as rewritten:

**"§ 96-25. Acceptance and use of donations.**



1 It shall be lawful for the ~~Employment Service Division Security Section~~ to receive, accept,  
2 and use, in the name of the people of the State, or any community or municipal corporation, as  
3 the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose  
4 of extending the benefits of this Article and for the purpose of giving assistance to handicapped  
5 citizens through vocational rehabilitation."

6 **SECTION 2.26.** G.S. 96-26 reads as rewritten:

7 **"§ 96-26. Cooperation of towns, townships, and counties with Division.**

8 It shall be lawful for the governing authorities of any municipality, county, township, or  
9 school corporation in the State to enter into cooperative agreement with the Employment  
10 ~~Service Division Security Section~~ and to appropriate and expend the necessary money upon  
11 such conditions as may be approved by the Employment ~~Service Division Security Section~~ and  
12 to permit the use of public property for the joint establishment and maintenance of such offices  
13 as may be mutually agreed upon, and which will further the purpose of this Article."

14 **SECTION 2.27.** G.S. 96-27 reads as rewritten:

15 **"§ 96-27. Method of handling employment service funds.**

16 All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title  
17 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the  
18 Employment ~~Service Division Security Section~~ shall be paid into the Employment Security  
19 Administration Fund, and said moneys are hereby made available to the State employment  
20 service to be expended as provided in this Article and by said act of Congress. For the purpose  
21 of establishing and maintaining free public employment offices, ~~said Division the Section~~ is  
22 authorized to enter into agreements with any political subdivision of this State or with any  
23 private, nonprofit organization, and as a part of any such agreement the ~~Commission Division~~  
24 may accept moneys, services, or quarters as a contribution to the Employment Security  
25 Administration Fund."

26 **SECTION 2.28.** G.S. 96-29 reads as rewritten:

27 **"§ 96-29. Openings listed by State agencies.**

28 Every State agency shall list with the ~~Employment Security Commission of North Carolina~~  
29 ~~Division of Employment Security~~ every job opening occurring within the agency which  
30 opening the agency wishes filled and which will not be filled solely by promotion or transfer  
31 from within the existing State government work force. The listing shall include a brief  
32 description of the duties and salary range and shall be filed with the ~~Commission Division~~  
33 within 30 days after the occurrence of the opening. The State agency may not fill the job  
34 opening for at least 21 days after the listing has been filed with the ~~Commission Division~~. The  
35 listing agency shall report to the ~~Commission Division~~ the filling of any listed opening within  
36 15 days after the opening has been filled.

37 The ~~Employment Security Commission Division~~ may act to waive the 21-day listing period  
38 for job openings in job classifications declared to be in short supply by the State Personnel  
39 Commission, upon the request of a State agency, if the 21-day listing requirement for these  
40 classifications hinders the agency in providing essential services."

41 **SECTION 2.29.** G.S. 96-31 reads as rewritten:

42 **"§ 96-31. Definitions.**

43 As used in this Article, unless the context clearly requires otherwise, the term:

- 44 (1) "CFS" means the common follow-up information management system  
45 developed by ~~DES the Employment Security Commission of North Carolina~~  
46 ~~as authorized under this Article.~~  
47 (2) ~~"ESC" means the Employment Security Commission of North Carolina.~~  
48 ~~"DES" means the Division of Employment Security.~~  
49 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).

- (4) "State job training, education, and placement program" or "State-funded program" means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development."

**SECTION 2.30.** G.S. 96-32 reads as rewritten:

**"§ 96-32. Common follow-up information management system created.**

(a) The ~~Employment Security Commission of North Carolina-DES~~ shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ~~ESC-DES~~ shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ~~ESC-DES~~ shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the ~~ESC-DES~~ shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated."

**SECTION 2.31.** G.S. 96-33 reads as rewritten:

**"§ 96-33. State agencies required to provide information and data.**

(a) Every State agency and local government agency or entity that receives State or federal funds for the direct or indirect support of State job training, education, and placement programs shall provide to the ~~Employment Security Commission of North Carolina-DES~~ all data and information available to or within the agency or entity's possession requested by the ~~ESCDES~~ for input into the common follow-up information management system authorized under this Article.

(b) Each agency or entity required to report information and data to the ~~ESC-DES~~ under this Article shall maintain true and accurate records of the information and data requested by the ~~ESC-DES~~. The records shall be open to ~~ESC-DES~~ inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by ~~ESCDES~~, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the ~~ESC-DES~~ to carry out the purposes of this Article. Information obtained by the ~~ESCDES~~ from the agency or entity shall be held by ~~ESC-DES~~ as confidential and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers."

**SECTION 2.32.** G.S. 96-35 reads as rewritten:

**"§ 96-35. Reports on common follow-up system activities.**

(a) The ~~Employment Security Commission of North Carolina-DES~~ shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) The ~~ESC-DES~~ shall report to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS."

### **PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

#### **SECTION 3.1. G.S. 7A-343.1 reads as rewritten:**

#### **"§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
<u>Employment Security Commission</u>	4
Department of Commerce	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.

1	Emergency and Special Judges of the Superior Court	1 ea.
2	Supreme Court Library	AS MANY AS
3		REQUESTED
4	Appellate Division Reporter	1
5	University of North Carolina, Chapel Hill	71
6	University of North Carolina, Charlotte	1
7	University of North Carolina, Greensboro	1
8	University of North Carolina, Asheville	1
9	North Carolina State University, Raleigh	1
10	Appalachian State University	1
11	East Carolina University	1
12	Fayetteville State University	1
13	North Carolina Central University	17
14	Western Carolina University	1
15	Duke University	17
16	Davidson College	2
17	Wake Forest University	25
18	Lenoir Rhyne College	1
19	Elon College	1
20	Campbell University	25
21	Federal, Out-of-State and Foreign Secretary of State	1
22	Secretary of Defense	1
23	Secretary of Health, Education and Welfare	1
24	Secretary of Housing and Urban Development	1
25	Secretary of Transportation	1
26	Attorney General	1
27	Department of Justice	1
28	Internal Revenue Service	1
29	Veterans' Administration	1
30	Library of Congress	5
31	Federal Judges resident in North Carolina	1 ea.
32	Marshal of the United States Supreme Court	1
33	Federal District Attorneys resident in North Carolina	1 ea.
34	Federal Clerks of Court resident in North Carolina	1 ea.
35	Supreme Court Library exchange list	1
36	Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

37

38 Each justice of the Supreme Court and judge of the Court of Appeals shall receive for  
 39 private use, one complete and up-to-date set of the appellate division reports. The copies of  
 40 reports furnished each justice or judge as set out in the table above may be retained personally  
 41 to enable the justice or judge to keep up-to-date the personal set of reports."

42 **SECTION 3.2.** G.S. 8-45.3(a1) reads as rewritten:

43 "(a1) ~~The Employment Security Commission Division of Employment Security~~ is hereby  
 44 specifically authorized to have photographed, photocopied, or microphotocopied all records of  
 45 the ~~Commission, Division,~~ including filings required by law to be made to the ~~Commission,~~  
 46 ~~Division,~~ and said photographs, photocopies, or microphotocopies, when certified by the  
 47 ~~Commission Division~~ as true and correct photographs, photocopies, or microphotocopies, shall  
 48 be as admissible in evidence in all actions, proceedings, and matters as the originals thereof  
 49 would have been."

50

**SECTION 3.3.** G.S. 52C-5-501(a) reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from ~~the North Carolina Employment Security Commission~~, the Division of Employment Security (DES) in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the ~~Employment Security Commission-DES~~ without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the ~~Employment Security Commission-DES~~ shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order. The ~~Employment Security Commission-DES~~ shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

**SECTION 3.4.** G.S. 58-89A-120 reads as rewritten:

**"§ 58-89A-120. Unemployment taxes; payroll.**

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and 96-8(6). The ~~Employment Security Commission-Department of Commerce, Division of Employment Security (DES)~~, shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the ~~Employment Security Commission-DES~~."

**SECTION 3.5.** G.S. 84-5(a) reads as rewritten:

"(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the ~~Employment Security Commission, Division of Employment Security, Department of Commerce~~, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in

- 1 connection with the attorney's performance of services for a client  
2 who desires to appoint the corporation executor or trustee or  
3 otherwise to utilize the fiduciary services of the corporation.  
4 b. Give legal advice or legal counsel, orally or written, to any customer  
5 or prospective customer or to any person who is considering  
6 renunciation of the right to qualify as executor or administrator or  
7 who proposes to resign as guardian or trustee, or to any other person,  
8 firm or corporation.  
9 c. Advertise to perform any of the acts prohibited herein; solicit to  
10 perform any of the acts prohibited herein; or offer to perform any of  
11 the acts prohibited herein.

12 (2) Except as provided in subsection (b) of this section, when any of the  
13 following acts are to be performed in connection with the fiduciary activities  
14 of such a corporation, said acts shall be performed for the corporation by a  
15 duly licensed attorney, not a salaried employee of the corporation, retained  
16 to perform legal services required in connection with the particular estate,  
17 trust or other fiduciary matter:

- 18 a. Offering wills for probate.  
19 b. Preparing and publishing notice of administration to creditors.  
20 c. Handling formal court proceedings.  
21 d. Drafting legal papers or giving legal advice to spouses concerning  
22 rights to an elective share under Article 1A of Chapter 30 of the  
23 General Statutes.  
24 e. Resolving questions of domicile and residence of a decedent.  
25 f. Handling proceedings involving year's allowances of widows and  
26 children.  
27 g. Drafting deeds, notes, deeds of trust, leases, options and other  
28 contracts.  
29 h. Drafting instruments releasing deeds of trust.  
30 i. Drafting assignments of rent.  
31 j. Drafting any formal legal document to be used in the discharge of the  
32 corporate fiduciary's duty.  
33 k. In matters involving estate and inheritance taxes, gift taxes, and  
34 federal and State income taxes:  
35 1. Preparing and filing protests or claims for refund, except  
36 requests for a refund based on mathematical or clerical errors  
37 in tax returns filed by it as a fiduciary.  
38 2. Conferring with tax authorities regarding protests or claims  
39 for refund, except those based on mathematical or clerical  
40 errors in tax returns filed by it as a fiduciary.  
41 3. Handling petitions to the tax court.  
42 l. Performing legal services in insolvency proceedings or before a  
43 referee in bankruptcy or in court.  
44 m. In connection with the administration of an estate or trust:  
45 1. Making application for letters testamentary or letters of  
46 administration.  
47 2. Abstracting or passing upon title to property.  
48 3. Handling litigation relating to claims by or against the estate  
49 or trust.

- SECTION 3.6. G.S. 95-25.3(d) reads as rewritten:**

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the ~~Employment Security Commission~~Division of Employment Security.

**SECTION 3.7. G.S. 94-144(b) reads as rewritten:**

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1 number of reporting units; average employment; establishment size code; geographical area;  
2 any four-digit code; and any other information deemed necessary by the ~~Commissioner~~  
3 Division to meet federal reporting requirements."

4 **SECTION 3.8.** G.S. 105-129.4(b) reads as rewritten:

5 "(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an  
6 enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average  
7 wage of the jobs for which the credit is claimed meets the wage standard and the average wage  
8 of all jobs at the location with respect to which the credit is claimed meets the wage standard.  
9 No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the  
10 credit for investing in machinery and equipment, the credit for research and development, or  
11 the credit for investing in real property for a central office or aircraft facility in a tier three,  
12 four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for  
13 the credit, the average wage of all jobs at the location with respect to which the credit is  
14 claimed meets the wage standard. In making the wage calculation, the taxpayer must include  
15 any positions that were filled for at least 1,600 hours during the calendar year the taxpayer  
16 engages in the activity that qualifies for the credit even if those positions are not filled at the  
17 time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar  
18 year, the taxpayer must use the wage standard for the calendar year in which the taxable year  
19 begins. No wage standard applies to credits for activities in an enterprise tier one or two area.  
20 For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential  
21 manufacturing process in which separate parts of the sequential manufacturing process are  
22 performed in different facilities within the same county, the term "location" may mean either  
23 the specific establishment or all facilities in the county in which parts of the process are  
24 performed.

25 Part-time jobs for which the taxpayer provides health insurance as provided in subsection  
26 (b2) of this section are considered to have an average weekly wage at least equal to the  
27 applicable percentage times the applicable average weekly wage for the county in which the  
28 jobs will be located. There may be a period of up to 100 days between the time at which an  
29 employee begins a part-time job and the time at which the taxpayer begins to provide health  
30 insurance for that employee.

31 Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one  
32 hundred ten percent (110%) of the applicable average weekly wage for the county in which the  
33 jobs will be located, as computed by the Secretary of Commerce from data compiled by the  
34 ~~Employment Security Commission~~ Division of Employment Security for the most recent  
35 period for which data are available. The applicable average weekly wage is the lowest of the  
36 following: (i) the average wage for all insured private employers in the county, (ii) the average  
37 wage for all insured private employers in the State, and (iii) the average wage for all insured  
38 private employers in the county multiplied by the county income/wage adjustment factor. The  
39 county income/wage adjustment factor is the county income/wage ratio divided by the State  
40 income/wage ratio. The county income/wage ratio is average per capita income in the county  
41 divided by the annualized average wage for all insured private employers in the county. The  
42 State income/wage ratio is the average per capita income in the State divided by the annualized  
43 average wage for all insured private employers in the State. The Department of Commerce  
44 must annually publish the wage standard for each county."

45 **SECTION 3.9.** G.S. 105-259(b)(9) and (9a) read as rewritten:

46 "(9) To furnish to the ~~Employment Security Commission~~ Division of  
47 Employment Security the name, address, and account and identification  
48 numbers of a taxpayer when the information is requested by the ~~Commission~~  
49 Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of  
50 the General Statutes.



(9a) To furnish information to the ~~Employment Security Commission~~ Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The ~~Employment Security Commission~~ Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

- a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
- b. Filing status and federal personal exemptions.
- c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
- d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
- e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
- f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

**SECTION 3.10.** G.S. 105A-8(b) reads as rewritten:

"(b) Hearing. – A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security Commission~~ Division of Employment Security must be conducted in accordance with rules adopted by that ~~Commission~~ Division. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

**SECTION 3.11.** G.S. 105A-9 reads as rewritten:

"§ 105A-9. Appeals from hearings.

1 Appeals from hearings allowed under this Chapter, other than those conducted by the  
2 ~~Employment Security Commission, Division of Employment Security~~, shall be in accordance  
3 with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act,  
4 except that the place of initial judicial review shall be the superior court for the county in which  
5 the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the  
6 ~~Employment Security Commission of North Carolina Division of Employment Security~~ shall  
7 be in accordance with the provisions of Chapter 96 of the General Statutes."

8 **SECTION 3.12.** G.S. 108A-29 reads as rewritten:

9 **"§ 108A-29. Priority for employment services.**

10 (a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

11 (b) Individuals seeking to apply or reapply for Work First Program assistance and who  
12 are not exempt from work requirements shall register with the ~~Employment Security~~  
13 ~~Commission-Division of Employment Security~~ for employment services. The point of  
14 registration shall be at an office of the ~~Employment Security Commission-Division~~ in the  
15 county in which the individual resides or at another location designated in a Memorandum of  
16 Understanding between the ~~Employment Security Commission-Division~~ and the local  
17 department of social services.

18 ...

19 (f) Each county department of social services shall enter into a cooperative agreement  
20 with the local ~~Employment Security Commission-Division~~ to operate the Job Search  
21 component on behalf of Work First Program registrants. The cooperative agreement shall  
22 include a provision for payment to the Employment Security Commission by the county  
23 department of social services for the cost of providing those services, not otherwise available to  
24 all clients of the ~~Employment Security Commission-Division~~, described in this subsection as  
25 the same are reflected as a component of the County Plan payable from fund allocations in the  
26 county block grant. The county department of social services may also enter into a cooperative  
27 agreement with the community college system or any other entity to operate the Job  
28 Preparedness component. This cooperative agreement shall include a provision for payment to  
29 that entity by the county department of social services for the cost of providing those services,  
30 not otherwise available to all clients of the ~~Employment Security Commission-Division~~,  
31 described in this subsection as the same are reflected as a component of the County Plan  
32 payable from fund allocations in the county block grant.

33 (g) The ~~Employment Security Commission-Division~~ shall further assist registrants  
34 through job search, job placement, or referral to community service, if contracted to do so.

35 (h) An individual placed in the Job Search component of the ~~Employment Security~~  
36 ~~Commission-Division~~ or other agency providing Job Search services shall look for work and  
37 shall accept any suitable employment. If contracted, the ~~Employment Security Commission~~  
38 ~~Division~~ shall refer individuals to current job openings and shall make job development  
39 contacts for individuals. Individuals so referred shall be required to keep a record of their job  
40 search activities on a job search record form provided by the ~~Commission-Division~~, and the  
41 ~~Employment Security Commission-Division~~ will monitor these activities. A "job search record"  
42 means a written list of dates, times, places, addresses, telephone numbers, names, and  
43 circumstances of job interviews. The Job Search component shall include at least one weekly  
44 contact with the ~~Employment Security Commission-Division~~. The ~~Employment Security~~  
45 ~~Commission-Division~~ shall adopt rules to accomplish this subsection.

46 (i) The ~~Employment Security Commission Division of Employment Security~~ shall  
47 notify all employers in the State of the "Exclusive No-Fault" Referral Service available through  
48 the ~~Employment Security Commission-Division of Employment Security~~ to employers who  
49 hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the ~~Employment Security Commission~~ Division of Employment Security shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment Security Commission~~ Division who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

(l) The ~~Employment Security Commission~~ Division of Employment Security shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the ~~Employment Security Commission~~ Division of Employment Security.

(n) If after evaluation of an individual the ~~Employment Security Commission~~ Division of Employment Security believes it necessary, the ~~Employment Security Commission~~ Division or the county department of social services also may refer an individual to a Job Preparedness provider. The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs that are already in existence as a part of the Job Preparedness component. Additionally, the ~~Commission~~ Division or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the ~~Employment Security Commission~~ Division of Employment Security, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The ~~Employment Security Commission~~ Division of Employment Security or Job Preparedness provider shall adopt rules to accomplish this subsection.

(p) The ~~Employment Security Commission~~ Division shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

...."

**SECTION 3.13.** G.S. 110-129.2(g)(1) reads as rewritten:

"(g) Other Uses of Directory Information. – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

- (1) The ~~Employment Security Commission~~ Division of Employment Security for the purpose of administering employment security programs."

**SECTION 3.14.** G.S. 110-136.2 reads as rewritten:

**"§ 110-136.2. Use of unemployment compensation benefits for child support.**

(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the ~~Employment Security Commission~~ Division of Employment Security shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the ~~Employment Security Commission~~ Division of Employment Security to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the ~~Employment Security Commission~~ Division of Employment Security receives notification from the Department of Health and Human Services of an express written revocation by the responsible parent.

1 ...  
2 (f) In the absence of a voluntary assignment of unemployment compensation benefits,  
3 the Department of Health and Human Services shall implement income withholding as  
4 provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five  
5 percent (25%) of the unemployment compensation benefits. Notice of the requirement to  
6 withhold shall be served upon the ~~Employment Security Commission Division~~ and payment  
7 shall be made by the ~~Employment Security Commission Division~~ directly to the Department of  
8 Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501.  
9 Except for the requirement to withhold from unemployment compensation benefits and the  
10 forwarding of withheld funds to the Department of Health and Human Services or to another  
11 state under G.S. 52C-5-501, the ~~Employment Security Commission Division~~ is exempt from  
12 the provisions of G.S. 110-136.8."

13 **SECTION 3.15.** G.S. 113-276(j) reads as rewritten:

14 "(j) A migrant farm worker who has in his possession a temporary certification of his  
15 status as such by the Rural Employment Service of the ~~North Carolina Employment Security~~  
16 ~~Commission Division of Employment Security~~ on a form provided by the Wildlife Resources  
17 Commission is entitled to the privileges of a resident of the State and of the county indicated on  
18 such certification during the term thereof for the purposes of purchasing and using the resident  
19 fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

20 **SECTION 3.16.** G.S. 132-3(c) reads as rewritten:

21 "(c) Employment Security ~~Commission-Records~~. – Notwithstanding subsection (a) of  
22 this section and G.S. 121-5, when a record of the ~~Employment Security Commission Division~~  
23 ~~of Employment Security~~ has been copied in any manner, the original record may be destroyed  
24 upon the order of the ~~Chairman of the Employment Security Commission Division~~. If a record  
25 of the ~~Commission that Division~~ has not been copied, the original record shall be preserved for  
26 at least three years. After three years the original record may be destroyed upon the order of the  
27 ~~Chairman of the Employment Security Commission Assistant Secretary of Commerce~~."

28 **SECTION 3.17.** G.S. 135-16 reads as rewritten:

29 **"§ 135-16. Employees transferred to North Carolina State Employment Service by act of**  
30 **Congress.**

31 Notwithstanding any provision contained in this Chapter, any employee of the United  
32 States Employment Service who was transferred to and became employed by the State of North  
33 Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th  
34 Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower  
35 Commission or the United States Employment Service between January 1, 1942, and  
36 November 15, 1946, shall be deemed to have been engaged in membership service as defined  
37 by this Chapter for any payroll period or periods between such dates: Provided, that any such  
38 employee or member on or before January 1, 1948, pays to the Board of Trustees for the  
39 benefit of the proper fund or account an amount equal to the accumulated contributions, with  
40 interest thereon, that such employee or member would have made during such period if he had  
41 been a member of the Retirement System with earnable compensation based on the salary  
42 received for such period and as limited by this Chapter: Provided, further that funds are made  
43 available by the United States Employment Service, or other federal agency, to the  
44 ~~Employment Security Commission Division of Employment Security~~ for the payment of and  
45 the ~~Employment Security Commission Division of Employment Security~~ pays to the Board of  
46 Trustees for the benefit of the proper fund a sum equal to the employer's contributions that  
47 would have been paid for such period for members or employees who pay the accumulated  
48 contributions provided in this section.

49 The Board of Trustees is authorized to adopt and issue all necessary rules and regulations  
50 for the purpose of administering and enforcing the provisions of this section."

1           **SECTION 3.18.** G.S. 138A-24(14)c. reads as rewritten:

2           "c.     A covered person serving on, or a prospective appointee to, one of  
3                 the following panels or boards:

- 4                 1.     Alcoholic Beverage Control Commission.
- 5                 2.     Coastal Resources Commission.
- 6                 3.     State Board of Education.
- 7                 4.     State Board of Elections.
- 8                 5.     ~~Employment Security Commission~~ Division of Employment  
9                         Security.
- 10                6.     Environmental Management Commission.
- 11                7.     Industrial Commission.
- 12                8.     State Personnel Commission.
- 13                9.     Rules Review Commission.
- 14                10.    Board of Transportation.
- 15                11.    Board of Governors of the University of North Carolina.
- 16                12.    Utilities Commission.
- 17                13.    Wildlife Resources Commission."

18           **SECTION 3.19.** G.S. 143B-181 reads as rewritten:

19           **"§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum;**  
20                 **compensation.**

21           The Governor's Advisory Council on Aging of the Department of Health and Human  
22           Services shall consist of 33 members, 29 members to be appointed by the Governor, two  
23           members to be appointed by the President Pro Tempore of the Senate, and two members to be  
24           appointed by the Speaker of the House of Representatives. The composition of the Council  
25           shall be as follows: one representative of the Department of Administration; one representative  
26           of the Department of Cultural Resources; one representative of the ~~Employment Security~~  
27           ~~Commission; Division of Employment Security;~~ one representative of the Teachers' and State  
28           Employees' Retirement System; one representative of the Commissioner of Labor; one  
29           representative of the Department of Public Instruction; one representative of the Department of  
30           Environment and Natural Resources; one representative of the Department of Insurance; one  
31           representative of the Department of Crime Control and Public Safety; one representative of the  
32           Department of Community Colleges; one representative of the School of Public Health of The  
33           University of North Carolina; one representative of the School of Social Work of The  
34           University of North Carolina; one representative of the Agricultural Extension Service of North  
35           Carolina State University; one representative of the collective body of the Medical Society of  
36           North Carolina; and 19 members at large. The at large members shall be citizens who are  
37           knowledgeable about services supported through the Older Americans Act of 1965, as  
38           amended, and shall include persons with greatest economic or social need, minority older  
39           persons, and participants in programs under the Older Americans Act of 1965, as amended. The  
40           Governor shall appoint 15 members at large who meet these qualifications and are 60 years of  
41           age or older. The four remaining members at large, two of whom shall be appointed by the  
42           President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the  
43           House of Representatives, shall be broadly representative of the major private agencies and  
44           organizations in the State who are experienced in or have demonstrated particular interest in the  
45           special concerns of older persons. At least one of each of the at-large appointments of the  
46           President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be  
47           persons 60 years of age or older. The Council shall meet at least quarterly.

48           Members at large shall be appointed for four-year terms and until their successors are  
49           appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

1 The Governor shall have the power to remove any member of the Council from office in  
2 accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

3 The Governor shall designate one member of the Council as chair to serve in such capacity  
4 at his pleasure.

5 Members of the Council shall receive per diem and necessary travel and subsistence  
6 expenses in accordance with the provisions of G.S. 138-5.

7 A majority of the Council shall constitute a quorum for the transaction of business.

8 All clerical and other services required by the Council shall be supplied by the Secretary of  
9 Health and Human Services."

10 **SECTION 3.20.** G.S. 143B-407(a) reads as rewritten:

11 "(a) The State Commission of Indian Affairs shall consist of two persons appointed by  
12 the General Assembly, the Secretary of Health and Human Services, the ~~Director of the~~  
13 ~~Employment Security Commission, Assistant Secretary of Commerce in charge of the Division~~  
14 ~~of Employment Security~~; the Secretary of Administration, the Secretary of Environment and  
15 Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the  
16 Indian community. These Indian members shall be selected by tribal or community consent  
17 from the Indian groups that are recognized by the State of North Carolina and are principally  
18 geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern  
19 Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the  
20 Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the  
21 Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band  
22 of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in  
23 Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall  
24 have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees,  
25 three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland  
26 County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina  
27 Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native  
28 American Society, one. Of the two appointments made by the General Assembly, one shall be  
29 made upon the recommendation of the Speaker, and one shall be made upon recommendation  
30 of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be  
31 made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with  
32 G.S. 120-122."

33 **SECTION 3.21.** G.S. 143B-417(1)bb. reads as rewritten:"

34 "(1) To determine the number of student interns to be allocated to each of the  
35 following offices or departments:

36 ...

37 bb. ~~Employment Security Commission~~Division of Employment Security  
38 ...."

39 **SECTION 3.22.** G.S. 143B-426.25(b)(7) reads as rewritten:

40 "(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

41 ...

42 (7) ~~The Chairman of the Employment Security Commission Assistant Secretary~~  
43 ~~of Commerce in charge of the Division of Employment Security or his that~~  
44 officer's designee shall serve ex officio.

45 ...."

46 **SECTION 3.23.** G.S. 147-86.1 reads as rewritten:

47 **"§ 147-86.1. Pool account for local government unemployment compensation.**

48 (a) The State Treasurer is authorized to establish a pool account, in accordance with  
49 rules and regulations of the ~~Employment Security Commission, Division of Employment~~  
50 Security (DES), in cooperation with any one or more units of local government, for the purpose

1 of reimbursing the ~~Employment Security Commission-DES~~ for unemployment benefits paid by  
2 the ~~Commission-DES~~ and chargeable to each local unit of government participating in the pool  
3 account. In the pool account established pursuant to this section, the funds contributed by a unit  
4 of local government shall remain the funds of the particular unit, and interest or other  
5 investment income earned by the pool account shall be prorated and credited to the various  
6 contributing local units on the basis of the amounts thereof contributed, figured according to an  
7 average periodic balance or some other sound accounting principle.

8 (b) The State Treasurer shall pay to the ~~Employment Security Commission, Division of~~  
9 ~~Employment Security~~, within 25 days from receipt of a list thereof, all unemployment benefits  
10 charged by the ~~Commission-DES~~ to each unit of local government participating in the pool  
11 account from the funds in the pool account belonging to each such unit, to the extent that said  
12 funds are sufficient to do so.

13 (c) Notwithstanding the participation by a unit of local government in the pool account  
14 authorized by this section, such unit shall remain liable to the ~~Employment Security~~  
15 ~~Commission-Division of Employment Security~~ for any benefits duly charged by the  
16 ~~Commission-Division~~ to the unit which are not paid by the State Treasurer from funds in the  
17 pool account belonging to the unit. Notwithstanding its participation in the pool account, each  
18 unit of local government shall continue to maintain an individual account with the ~~Employment~~  
19 ~~Security Commission-DES~~.

20 (d) The Director of the Budget shall be authorized to transfer from the interest earned  
21 on the pool account, to the State Treasurer's departmental budget, such funds as may be  
22 necessary to defray the Treasurer's cost of administering the pool account."

23 **SECTION 3.24.** G.S. 158-7.1(d2)(1) reads as rewritten:

24 "(d2) In arriving at the amount of consideration that it receives, the Board may take into  
25 account prospective tax revenues from improvements to be constructed on the property,  
26 prospective sales tax revenues to be generated in the area, as well as any other prospective tax  
27 revenues or income coming to the county or city over the next 10 years as a result of the  
28 conveyance or lease provided the following conditions are met:

29 (1) The governing board of the county or city shall determine that the  
30 conveyance of the property will stimulate the local economy, promote  
31 business, and result in the creation of a substantial number of jobs in the  
32 county or city that pay at or above the median average wage in the county or,  
33 for a city, in the county where the city is located. A city that spans more than  
34 one county is considered to be located in the county where the greatest  
35 population of the city resides. For the purpose of this subdivision, the  
36 median average wage in a county is the median average wage for all insured  
37 industries in the county as computed by the ~~Employment Security~~  
38 ~~Commission-Department of Commerce, Division of Employment Security~~,  
39 for the most recent period for which data is available."

40 **SECTION 3.25.** G.S. 165-10 reads as rewritten:

41 **"§ 165-10. Transfer of veterans' activities.**

42 The Governor may transfer to the Department such funds, facilities, properties and  
43 activities now being held or administered by the State for the benefit of veterans, their families  
44 and dependents, as he may deem proper; provided, that the provisions of this section shall not  
45 apply to the activities of the ~~North Carolina Employment Security Commission-Department of~~  
46 ~~Commerce, Division of Employment Security~~, in respect to veterans."

47  
48 **PART IV. REPORTING; OTHER MATTERS**

49 **SECTION 4.1.** By November 15, 2011, the Board of Review established by this  
50 act shall be appointed and the Department of Commerce shall assign staff to the Board.

1           **SECTION 4.2.** By June 30, 2012, the Secretary of the Department of Commerce  
2 shall make a detailed written report to the Joint Legislative Program Evaluation Oversight  
3 Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal  
4 Research Division on the consolidation of the Employment Security Commission into the  
5 Department of Commerce and on any changes the Secretary recommends to maintain the  
6 solvency of the Employment Security Fund.

7  
8 **PART V.     AUTHORITY OF THE REVISOR**

9           **SECTION 5.1.** Deletion of References. – The Revisor of Statutes may delete any  
10 reference in the General Statutes to the Employment Security Commission, or any derivative  
11 thereof, and substitute references to the Division of Employment Security (DES) of the  
12 Department of Commerce created by this act wherever conforming changes are necessary. The  
13 Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the  
14 Employment Security Commission, or any derivative thereof, and substitute references to the  
15 Secretary of Commerce, as appropriate.

16  
17 **PART VI.    EFFECTIVE DATE**

18           **SECTION 6.1.** Except as otherwise provided, this act becomes effective November  
19 1, 2011.





# HOUSE BILL 587: NC Job Growth through Regulatory Reform

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	May 31, 2011
<b>Introduced by:</b>	Reps. Bradley, H. Warren, Torbett, Hastings	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	PCS to First Edition H587-CSRO-17		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute for House Bill 587 amends the Administrative Procedure Act (APA) to require State agencies to prepare cost benefit analyses and small business regulatory flexibility analyses when adopting certain administrative rules. The bill also increases the oversight of the Office of State Budget and Management (OSBM) in the rulemaking process and directs OSBM to conduct an annual review of rules. The bill strengthens the standards used by the Rules Review Commission (RRC) and directs the RRC to oversee the annual review of rules conducted by OSBM. Finally, the bill creates the Legislative Study Commission on Occupational Licensing.*

## BILL ANALYSIS:

**Section 1.** - adds two new definitions to the APA. "Significant rule change" is defined as a rule that has a significant effect on the economy, State or local funds, creates an inconsistency with actions of another agency, or raises novel policy issues. The term "small business" means a business entity that is independently owned and operated and either has gross annual sales of less than \$6,000,000 or employs fewer than 500 full-time employees.

**Section 2.** - prohibits State agencies from adopting rules that exceed standards or requirements established by a federal law unless expressly required by an act of the General Assembly.

**Section 3.** - expands the requirements of what must be included in a Notice of Text which is filed with the Office of Administrative Hearings by an agency as the first step in the rulemaking process under the APA. The agency must include a summary of the proposed rule in plain language and must provide a detailed explanation of its statutory authority to adopt the rule.

**Section 4.** - amends the APA with regard to fiscal notes. Under current law, an agency must do three different fiscal analyses and prepare a fiscal note when appropriate when it proposed to adopt a rule. The agency must determine whether the proposed rule affects State funds or local fund, or has a substantial economic impact. A substantial economic impact is defined as an aggregate financial impact on all persons affected of at least \$3,000,000 in a 12-month period. If the rule would have a substantial economic impact, the agency must prepare a fiscal note that contains (i) a description of the persons affected, (ii) a description of the types of expenditures these persons would have to make to comply with the rule, (iii) a description of the purpose and benefits of the rule, and (iv) an explanation of how the expenditures were computed.

The bill eliminates the substantial economic impact fiscal note and substitutes a requirement that the agency prepare a cost-benefit analysis for any significant rule change. The OSBM must approve the cost-benefit analysis before the rule can proceed. The OSBM must reject the cost-benefit analysis if (i) the projected costs exceed projected benefits, (ii) an alternative to the proposed rule is less costly, or (iii) the proposed rule would not achieve the stated purpose. However, OSBM is authorized to approve the

# House PCS 587

Page 2

analysis under certain circumstances, such as an emergency, an act of the General Assembly or Congress expressly requiring the rule, a change in budgetary policy, or a court order.

The OSBM is also directed to conduct ongoing annual reviews of existing rules. Each agency must its rules each year to insure that the rules minimize their economic impact. The agencies must submit a list of its rules including economic impact to OSBM annually. OSBM can direct an agency to amend or repeal a rule that is unnecessary, burdensome, too complex, or duplicative.

Agencies are also required to prepare a small business regulatory flexibility analysis for any rule that would have an adverse impact on small businesses. The agency must consider and provide various methods of reducing the impact on small businesses. OSBM must reject the rule if the agency has not taken reasonable steps to reduce the impact on small businesses.

Section 5. – amends the standards for review of rules by the Rules Review Commission. The bill requires that in determining if an agency has statutory authority to adopt a rule, the RRC must find that there is no reasonable argument that authority does not exist, and in determining that a rule is necessary, the RRC must determine that the General Assembly intended for the agency to adopt such a rule. The RRC must also determine that OSBM properly approved the cost-benefit analysis or the small business regulatory flexibility analysis. Under current law, entry of a rule into the Administrative Code after review by the RRC creates a rebuttable presumption that the rule was properly adopted. This bill deletes this provision.

Section 6. – adds a new section to the APA directing the RRC to participate in the annual review of existing rules. OSBM is directed to forward an annual summary of its findings to the RRC. The RRC must review the summary and direct OSBM to have a rule repealed or amended if the RRC does not feel that the agency has met the standard established in the statute.

Section 7. – authorizes a person to seek judicial review to determine if a rule was properly adopted, within one year of the effective date of a final rule. Under current law, only an aggrieved person who has exhausted all administrative remedies is entitled to seek judicial review of an administrative action.

Section 8. – creates the Legislative Study Commission on Occupational Licensing. The Commission would consist of 12 members; 4 appointed by the Governor, 4 appointed by the Speaker, including 2 House members and 2 public members; and 4 appointed by the President Pro Tempore, including 2 Senators and 2 public members. The Commission is charged to study issues relating to occupational licensing, including identifying outdated and unnecessary licensing law, studying alternatives to occupational licensing, and studying the extent to which licensing laws create barriers for low-income individuals entering new occupations. The Commission must make its final report to the General Assembly on the convening of the 2012 Regular Session.

The bill appropriates \$50,000 for the 2011-2012 fiscal year to fund the work of the Commission.

**EFFECTIVE DATE:** This act would become effective July 1, 2011.

*H587-SMRO-27(CSRO-17) v1*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 587

Short Title: North Carolina Jobs Bill.

(Public)

Sponsors: Representatives Bradley, H. Warren, Torbett, and Hastings (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 5, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROMOTE NORTH CAROLINA JOB GROWTH THROUGH REGULATORY  
REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 150B-2 is amended by adding the following subdivisions to  
read:

**"§ 150B-2. Definitions.**

As used in this Chapter,

(8b) "Significant rule change" means a proposed rule that may do one or more of  
the following:

a. Have a significant effect on the economy, State, or local funds.

b. Create an inconsistency with an action taken or planned by another  
agency.

c. Raise novel policy issues.

(8c) "Small business" means a business entity, including its affiliates, that (i) is  
independently owned and operated and (ii) either has gross annual sales of  
less than six million dollars (\$6,000,000) or employs fewer than 500  
full-time employees.

(8d) "Substantial evidence" means relevant evidence a reasonable mind might  
accept as adequate to support a conclusion.

...."

**SECTION 2.** G.S. 150B-19 is amended by adding a new subdivision to read:  
**"§ 150B-19. Restrictions on what can be adopted as a rule.**

An agency may not adopt a rule that does one or more of the following:

(8) Exceeds standards or requirements established by an act of Congress or  
federal regulation, unless expressly required by an act of the General  
Assembly."

**SECTION 3.** G.S. 150B-21.2 reads as rewritten:  
**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, it must take the following  
actions:

(1) Publish a notice of text in the North Carolina Register.



\* H 5 8 7 - V - 1 \*

- (2) When required by G.S. 150B-21.4, prepare or obtain a ~~fiscal note~~note, cost-benefit analysis, and small business regulatory flexibility analysis for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.
- (b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (c) Notice of Text. – A notice of the proposed text of a ~~rule~~rule, or textual changes to an existing rule, must include all of the following:
- (1) The text of the proposed rule.
  - (2) A short ~~explanation of the reason for the proposed rule~~summary of the existing regulations and an explanation of how the proposed rule would change the existing regulations. This information should explain the purpose of the proposed rule and what specific problem or problems the proposed rule is attempting to address. In order to meet the requirements of this subdivision, the agency shall use plain language that is easily understandable to the general public.
  - (3) A citation to the law that gives the agency the authority to adopt the ~~rule~~rule and a detailed explanation as to why the specific citations provide the necessary authority. The explanation should clarify why there is no reasonable argument that statutory authority does not exist.
  - ...
  - (8) If a ~~fiscal note~~note, cost-benefit analysis, or small business regulatory flexibility analysis has been prepared for the rule, a statement explaining that a note or analysis has been conducted and how to obtain the note or analysis on the agency Web site and how to obtain a hard copy of the fiscal note can be obtained from the agency.
  - (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.
  - (10) The right of judicial review for any person that seeks to challenge the adoption of a rule.

...."

SECTION 4. G.S. 150B-21.4 reads as rewritten:

"§ 150B-21.4. ~~Fiscal notes on notes, cost-benefit analysis, periodic review, and small business regulatory flexibility analysis for rules.~~

...

(b1) ~~Substantial Economic Impact.~~ Significant Rule Change. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a ~~substantial economic impact~~be a significant rule change and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a ~~fiscal note~~cost-benefit analysis for the proposed rule change from the Office of State Budget and Management or prepare a ~~fiscal note~~cost-benefit analysis for the proposed rule change and have the ~~note~~analysis approved by that Office. If an agency requests the Office of State Budget and Management to prepare a ~~fiscal note~~cost-benefit analysis for a proposed rule change, that Office must prepare the ~~note~~analysis within 90 days after receiving a written request for the ~~note~~analysis. If the Office of State Budget and Management fails to prepare a ~~fiscal note~~cost-benefit analysis within this time period, the agency proposing the rule change may prepare a ~~fiscal note~~. ~~A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.~~cost-benefit analysis.

1 If an agency prepares the required fiscal-note-cost-benefit analysis, the agency must submit  
2 the ~~note-analysis~~ to the Office of State Budget and Management for review. The Office of State  
3 Budget and Management must review the ~~fiscal-note-cost-benefit analysis~~ within 14 days after it  
4 is submitted and either approve the ~~note-analysis~~ or inform the agency in writing of the reasons  
5 why it does not approve the ~~fiscal-note-cost-benefit analysis~~. After addressing these reasons, the  
6 agency may submit the revised ~~fiscal-note-cost-benefit analysis~~ to that Office for its review. If  
7 an agency is not sure whether a proposed rule change would ~~have a substantial economic~~  
8 ~~impact~~, be a significant rule change, the agency may ask the Office of State Budget and  
9 Management to determine whether the proposed rule change ~~has a substantial economic~~  
10 ~~impact~~. is a significant rule change.

11 As used in this subsection, the term "~~substantial economic impact~~" means an "significant  
12 rule change" would include any rule that has an aggregate financial impact on all persons  
13 affected of at least three million dollars (\$3,000,000) in a 12-month period.

14 (b2) Content. – A ~~fiscal-note-cost-benefit analysis~~ required by subsection (b1) of this  
15 section must contain the following:

- 16 (1) A description of the persons who would be affected by the proposed rule  
17 change.
- 18 (2) A description of the types of expenditures that persons affected by the  
19 proposed rule change would have to make to comply with the rule and an  
20 estimate of these expenditures.
- 21 (3) A description of the purpose and benefits of the proposed rule change.
- 22 (4) An explanation of how the estimate of expenditures was computed.
- 23 (5) A comprehensive list of the costs and benefits resulting from the proposed  
24 rule change. In developing this list, the costs and benefits should be  
25 quantified in monetary terms to the greatest extent possible. Costs shall  
26 include opportunity costs borne by affected people.
- 27 (6) Alternatives considered instead of the proposed rule change and why the  
28 proposed rule was selected instead of one of the alternatives.
- 29 (7) Other factors that the Office of State Budget and Management deems  
30 necessary for an exhaustive cost-benefit analysis.

31 (b3) The Office of State Budget and Management shall reject the proposed rule based on  
32 a cost-benefit analysis if any of the following are true:

- 33 (1) The projected costs exceed projected benefits. In making this determination,  
34 the Office of State Budget and Management shall base its decision on  
35 whether any reasonable scenario yields costs that exceed benefits.
- 36 (2) An alternative to the proposed change is less costly and is reasonably likely  
37 to achieve, in significant part, the same objective.
- 38 (3) The proposed rule change would not achieve the stated purpose of the rule.

39 (b4) The Office of State Budget and Management shall approve the proposed rule,  
40 notwithstanding subsection (b3) of this section, if the rule minimizes the economic impact to  
41 the greatest extent possible and the rule is required to respond to at least one of the following:

- 42 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 43 (2) An act of the General Assembly that expressly requires the specific rule.
- 44 (3) An act of Congress or federal regulation that expressly requires the specific  
45 rule and the General Assembly has given the agency authority to respond to  
46 the federal requirement.
- 47 (4) A change in federal or State budgetary policy.
- 48 (5) A court order.

49 (b5) Periodic Review of Rules. –

- 50 (1) Within six months after enactment of this law, each agency shall review all  
51 of its rules existing at the time of enactment to determine whether such rules

- 1 should be continued without change or should be amended or rescinded to  
2 minimize the economic impact of the rules. Each agency shall invite and  
3 review written public comments, as prescribed under this Article. Each  
4 agency shall submit a report to the Joint Legislative Administrative  
5 Procedure Oversight Committee on or before six months after enactment of  
6 this law to justify the existence of its rules and may take action to amend or  
7 rescind rules at any time.
- 8 (2) Rules adopted after the enactment of this law shall be reviewed every year to  
9 ensure that the rules minimize their economic impact.
- 10 (3) In reviewing rules to minimize their economic impact, each agency shall  
11 consider the following factors:  
12 a. The continued need for the rule.  
13 b. The nature of complaints or comments received concerning the rule  
14 from the public.  
15 c. The complexity of the rule.  
16 d. The extent to which the rule overlaps, duplicates, or conflicts with  
17 other federal, State, or local governmental rules.  
18 e. The length of time since the rule has been evaluated or the degree to  
19 which technology, economic conditions, or other factors have  
20 changed in the area affected by the rule.
- 21 (4) Each agency shall annually submit a list of its rules to the Office of State  
22 Budget and Management, including an explanation as to its economic  
23 impact.
- 24 (5) The Office of State Budget and Management shall direct an agency to amend  
25 or rescind a rule if the agency is unable to demonstrate each of the  
26 following:  
27 a. There is a continued need for the rule.  
28 b. The nature of complaints or comments received concerning the rule  
29 from the public does not justify amending or rescinding the rule.  
30 c. The rule is not too complex.  
31 d. The rule does not overlap, duplicate, or conflict with other federal,  
32 State, and local governmental rules or such overlap is nominal.  
33 e. Technology, economic conditions, or other factors have not changed  
34 in the area affected by the rule.
- 35 (6) Notwithstanding subdivision (5) of this subsection, a rule may be amended  
36 or rescinded only if the rule is not required to respond to at least one of the  
37 following:  
38 a. A serious and unforeseen threat to the public health, safety, or  
39 welfare.  
40 b. An act of the General Assembly that expressly requires the specific  
41 rule.  
42 c. An act of Congress or federal regulation that expressly requires the  
43 specific rule and the General Assembly has given the agency  
44 authority to respond to the federal requirement.  
45 d. A change in federal or State budgetary policy.  
46 e. A court order.
- 47 (7) The Office of State Budget and Management shall submit an annual  
48 summary of its findings to the Commission as required under  
49 G.S. 150B-21.17.
- 50 (b6) Small Business Regulatory Flexibility Analysis. –

- (1) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare a small business impact statement that includes each of the following:
- a. An identification and estimate of the number of the small businesses subject to the proposed regulation.
  - b. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
  - c. A statement of the probable effect on impacted small businesses.
- (2) Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change, it shall consider and provide to the Office of State Budget and Management, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:
- a. The establishment of less stringent compliance or reporting requirements for small businesses.
  - b. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
  - c. The consolidation or simplification of compliance or reporting requirements for small businesses.
  - d. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation.
  - e. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.
- (3) The Office of State Budget and Management shall reject a proposed rule if the agency has not taken reasonable steps to reduce the impact on small businesses.
- (c) Errors. – An erroneous fiscal note, cost-benefit analysis, or small business regulatory flexibility analysis prepared and reviewed in good faith does not affect the validity of a rule, except as provided under G.S. 150B-21.9."
- SECTION 5. G.S. 150B-21.9 reads as rewritten:**
- "§ 150B-21.9. Standards and timetable for review by Commission.**
- (a) Standards. – The Commission must determine whether a rule meets all of the following criteria:
- (1) It is within the clear authority delegated to the agency by the General Assembly, and no reasonable argument can be made that that authority does not exist.
  - (2) It is clear and unambiguous.
  - (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency and the General Assembly, when enacting the law, likely intended for the agency to adopt such a rule. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
  - (4) The Office of State Budget and Management properly approved the cost-benefit analysis and small business regulatory flexibility analysis developed for the rule, in accordance with G.S. 150B-21.4.
  - (5) It was adopted in accordance with Part 2 of this Article.

1 The Commission shall not consider questions relating to the quality or efficacy of the rule  
2 but shall restrict its review to determination of the standards set forth in this subsection.

3 The Commission may ask the Office of State Budget and Management to determine if a  
4 rule ~~has a substantial economic impact~~ is a significant rule change and is therefore required to  
5 have a ~~fiscal note~~ cost-benefit analysis. The Commission must ask the Office of State Budget  
6 and Management to make this determination if a ~~fiscal note~~ cost-benefit analysis was not  
7 prepared for a rule and the Commission receives a written request for a determination of  
8 whether the rule ~~has a substantial economic impact~~ is a significant rule change.

9 The Commission may ask the Office of State Budget and Management to determine if a  
10 rule may have an adverse impact on small businesses and is therefore required to have a small  
11 business regulatory flexibility analysis. The Commission must ask the Office of State Budget  
12 and Management to make this determination if a small business regulatory flexibility analysis  
13 was not prepared for a rule and the Commission receives a written request for a determination  
14 of whether the rule may have an adverse impact on small businesses.

15 (a1) ~~Entry of a rule in the North Carolina Administrative Code after review by the~~  
16 ~~Commission creates a rebuttable presumption that the rule was adopted in accordance with Part~~  
17 ~~2 of this Article.~~

18 ...."

19 SECTION 6. Chapter 150B of the General Statutes is amended by adding a new  
20 section to read:

21 "**§ 150B-21.17. Periodic review of rules by Commission.**

22 (a) The Office of State Budget and Management shall provide an annual summary of its  
23 findings to the Commission explaining why it directed each agency to rescind or amend a rule,  
24 or decided that no action on a rule was necessary.

25 (b) The Commission shall direct the Office of State Budget and Management to amend  
26 or rescind a rule if the Commission believes that an agency was unable to demonstrate all of the  
27 following:

28 (1) There is a continued need for the rule.

29 (2) The nature of complaints or comments received concerning the rule from the  
30 public does not justify amending or rescinding the rule.

31 (3) The rule is not too complex.

32 (4) The rule does not overlap, duplicate, or conflict with other federal, State, and  
33 local governmental rules, or such overlap is nominal.

34 (5) Technology, economic conditions, or other factors have not changed in the  
35 area affected by the rule.

36 (c) Notwithstanding subsection (b) of this section, a rule may be amended or rescinded  
37 only if the rule is not required to respond to at least one of the following:

38 (1) A serious and unforeseen threat to the public health, safety, or welfare.

39 (2) An act of the General Assembly that expressly requires the specific rule.

40 (3) An act of Congress or federal regulation that expressly requires the specific  
41 rule and the General Assembly has given the agency authority to respond to  
42 the federal requirement.

43 (4) A change in federal or State budgetary policy.

44 (5) A court order."

45 SECTION 7. G.S. 150B-43 reads as rewritten:

46 "**§ 150B-43. Right to judicial review.**

47 Any person who is aggrieved by the final decision in a contested case, and who has  
48 exhausted all administrative remedies made available to him by statute or agency rule, is  
49 entitled to judicial review of the decision under this Article, unless adequate procedure for  
50 judicial review is provided by another statute, in which case the review shall be under such  
51 other statute. Within one year after the effective date of a final rule, any person is entitled to



1 judicial review in order to determine whether a rule has been properly adopted as required  
2 under this Article. Nothing in this Chapter shall prevent any person from invoking any judicial  
3 remedy available to him under the law to test the validity of any administrative action not made  
4 reviewable under this Article."

5 **SECTION 8.** G.S. 62-3 is amended by adding a new subdivision to read:

6 **"§ 62-3. Definitions.**

7 As used in this Chapter, unless the context otherwise requires, the term:

8 ...  
9 (31) "Using and consuming public" means utility consumers solely in their role as  
10 consumers."

11 **SECTION 9.** G.S. 62-15 reads as rewritten:

12 **"§ 62-15. Office of executive director; public staff, structure and function.**

13 ...  
14 (e) In representing the using and consuming public, the Public Staff shall not consider  
15 general societal interests but only the interests of the using and consuming public in their  
16 interest as consumers. The Public Staff may not take any action that would lead to higher prices  
17 for consumers unless the higher prices are clearly justified because of more reliable, or  
18 otherwise better quality, utility services for the using and consuming public.

19 (e1) The public staff shall have no duty, responsibility, or authority with respect to the  
20 laws, rules or regulations pertaining to the physical facilities or equipment of common, contract  
21 and exempt carriers, the registration of vehicles or of insurance coverage of vehicles of  
22 common, contract and exempt carriers; the licensing, training, or qualifications of drivers or  
23 other persons employed by common, contract and exempt carriers, or the operation of motor  
24 vehicle equipment by common, contract and exempt carriers in the State.

25 ...  
26 (j) A member of the using and consuming public may petition the Commission to  
27 initiate a review of whether the Public Staff has acted consistently with subsection (e) of this  
28 section. If the Commission determines that the Public Staff has not acted consistently with  
29 subsection (e) of this section, it shall make formal public notice of this finding and submit a  
30 written finding to the Joint Legislative Utility Review Committee and request the Public Staff  
31 to reconsider any action taken that is inconsistent with subsection (e) of this section."

32 **SECTION 10.1.** Commission Created. – There is created the Legislative Study  
33 Commission on Occupational Licensing. The Commission shall consist of 12 voting members  
34 appointed as follows:

- 35 (1) Four members appointed by the Governor, to include at least one member of  
36 the general public.  
37 (2) Four members appointed by the President Pro Tempore of the Senate, to  
38 include the following:  
39 a. Two members of the Senate.  
40 b. Two members of the general public.  
41 (3) Four members appointed by the Speaker of the House of Representatives, to  
42 include the following:  
43 a. Two members of the House of Representatives.  
44 b. Two members of the general public.

45 **SECTION 10.2.** Duties. – The Commission shall do each of the following:

- 46 (1) Identify outdated and unnecessary occupational licensing laws that should be  
47 repealed.  
48 (2) Identify existing occupations that are regulated that do not require licensing.  
49 (3) Study alternatives to occupational licensing laws that would work  
50 effectively.

(4) Study to what extent occupational licensing laws create barriers for individuals, including low-income individuals, from entering into new occupations.

(5) Study any other matters that the Commission deems relevant.

**SECTION 10.3.** Report. – The Commission shall make a final report to the General Assembly with specific recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening. The Commission shall terminate upon filing its final report.

**SECTION 10.4.** Administration. – The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Commission. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and the Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

**SECTION 10.5.** Appropriation. – There is appropriated from the General Fund to the General Assembly the sum of fifty thousand dollars (\$50,000) for the 2011-2012 fiscal year to fund the work of the Legislative Study Commission on Occupational Licensing created by this act.

**SECTION 11.** This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 587  
PROPOSED COMMITTEE SUBSTITUTE H587-CSRO-17 [v.3]

6/1/2011 9:23:11 AM

Short Title: NC Job Growth through Regulatory Reform.

(Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROMOTE AN ENVIRONMENT OF JOB GROWTH IN NORTH CAROLINA  
THROUGH REGULATORY REFORM OF THE MARKETPLACE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 150B-2 is amended by adding the following subdivisions to read:

**"§ 150B-2. Definitions.**

As used in this Chapter,

(8d) "Significant rule change" means a proposed rule that may do one or more of the following:

a. Have a significant effect on the economy, State, or local funds.

b. Create an inconsistency with an action taken or planned by another agency.

c. Raise novel policy issues.

(8e) "Small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) either has gross annual sales of less than six million dollars (\$6,000,000) or employs fewer than 500 full-time employees.

...."

**SECTION 2.** G.S. 150B-19 is amended by adding a new subdivision to read:

**"§ 150B-19. Restrictions on what can be adopted as a rule.**

An agency may not adopt a rule that does one or more of the following:

(8) Exceeds standards or requirements established by an act of Congress or federal regulation, unless expressly required by an act of the General Assembly."

**SECTION 3.** G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.



- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal ~~note-note~~, cost-benefit analysis, and small business regulatory flexibility analysis for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.
- (b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (c) Notice of Text. – A notice of the proposed text of a ~~rule-rule~~, or textual changes to an existing rule, must include all of the following:
- (1) The text of the proposed rule.
  - (2) A short ~~explanation of the reason for the proposed rule-summary of the existing rule and an explanation of how the proposed rule would change the existing rules. This information should explain the purpose of the proposed rule and what specific problem or problems the proposed rule is attempting to address. In order to meet the requirements of this subdivision, the agency shall use plain language that is easily understandable to the general public.~~
  - (3) A citation to the law that gives the agency the authority to adopt the ~~rule-rule~~ and a detailed explanation as to why the specific citations provide the necessary authority. The explanation should clarify why there is no reasonable argument that statutory authority does not exist.
  - ...
  - (8) If a fiscal ~~note-note~~, cost-benefit analysis, or small business regulatory flexibility analysis has been prepared for the rule, a statement explaining that a note or analysis has been conducted and how to obtain the note or analysis on the agency Web site and how to obtain a hard copy of the fiscal note can be obtained from the agency.
  - (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.
  - (10) The right of judicial review for any person that seeks to challenge the adoption of a rule.

...."

SECTION 4. G.S. 150B-21.4 reads as rewritten:

"§ 150B-21.4. Fiscal ~~notes-on-notes~~, cost-benefit analysis, periodic review, and small business regulatory flexibility analysis for rules.

...  
 (b1) ~~Substantial Economic Impact.~~—Significant Rule Change. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would ~~have a substantial economic impact~~be a significant rule change and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a ~~fiscal notecost-benefit analysis~~ for the proposed rule change from the Office of State Budget and Management or prepare a ~~fiscal notecost-benefit analysis~~ for the proposed rule change and have the ~~note-analysis~~ approved by ~~that Office.~~ the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the cost-benefit analysis only after, working with the Office, it has exhausted all resources internal and external, to otherwise prepare the cost-benefit analysis. If an agency requests the Office of State Budget and Management to prepare a ~~fiscal notecost-benefit analysis~~ for a proposed rule change, that Office must prepare the ~~note-analysis~~ within 90 days after receiving a written request for the ~~note-analysis~~. If the Office of State Budget and Management fails to prepare a ~~fiscal~~

1 ~~not~~cost-benefit analysis within this time period, the agency proposing the rule change may  
2 prepare a ~~fiscal note~~. ~~A fiscal note prepared in this circumstance does not require approval of~~  
3 ~~the Office of State Budget and Management~~cost-benefit analysis.

4 If an agency prepares the required ~~fiscal note~~cost-benefit analysis, the agency must submit  
5 the ~~note~~analysis to the Office of State Budget and Management for review. The Office of State  
6 Budget and Management must review the ~~fiscal note~~cost-benefit analysis within 14 days after it  
7 is submitted and either approve the ~~note~~analysis or inform the agency in writing of the reasons  
8 why it does not approve the ~~fiscal note~~cost-benefit analysis. After addressing these reasons, the  
9 agency may submit the revised ~~fiscal note~~cost-benefit analysis to that Office for its review. If  
10 an agency is not sure whether a proposed rule change would ~~have a substantial economic~~  
11 ~~impact~~be a significant rule change, the agency may ask the Office of State Budget and  
12 Management to determine whether the proposed rule change ~~has a substantial economic~~  
13 ~~impact~~is a significant rule change. An agency may not adopt a rule if the Office of State  
14 Budget and Management has not approved the cost-benefit analysis.

15 As used in this subsection, the term ~~"substantial economic impact"~~ means an "significant  
16 rule change" includes any rule that has an aggregate financial impact on all persons affected of  
17 at least ~~three million dollars (\$3,000,000)~~ five hundred thousand dollars (\$500,000) in a  
18 12-month period.

19 (b2) Content. – A ~~fiscal note~~cost-benefit analysis required by subsection (b1) of this  
20 section must contain the following:

- 21 (1) A description of the persons who would be affected by the proposed rule  
22 change.
- 23 (2) A description of the types of expenditures that persons affected by the  
24 proposed rule change would have to make to comply with the rule and an  
25 estimate of these expenditures.
- 26 (3) A description of the purpose and benefits of the proposed rule change.
- 27 (4) An explanation of how the estimate of expenditures was computed.
- 28 (5) A comprehensive list of the costs and benefits resulting from the proposed  
29 rule change. In developing this list, the costs and benefits should be  
30 quantified in monetary terms to the greatest extent possible. Costs shall  
31 include opportunity costs borne by affected people.
- 32 (6) A description of at least two alternatives to the proposed rule that were  
33 considered by the agency and the reason the alternatives were rejected. The  
34 alternatives may have been identified by the agency or by members of the  
35 public.
- 36 (7) Other factors that the Office of State Budget and Management deems  
37 necessary for an exhaustive cost-benefit analysis.

38 (b3) The Office of State Budget and Management shall reject the proposed rule based on  
39 a cost-benefit analysis if any of the following are true:

- 40 (1) The projected costs exceed projected benefits. In making this determination,  
41 the Office of State Budget and Management shall base its decision on  
42 whether any reasonable scenario yields costs that exceed benefits.
- 43 (2) An alternative to the proposed change is less costly and is reasonably likely  
44 to achieve, in significant part, the same objective.
- 45 (3) The proposed rule change would not achieve the stated purpose of the rule.

46 (b4) The Office of State Budget and Management shall approve the proposed rule,  
47 notwithstanding subsection (b3) of this section, if the rule minimizes the economic impact to  
48 the greatest extent possible and the rule is required to respond to at least one of the following:

- 49 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 50 (2) An act of the General Assembly that expressly requires the specific rule.

(3) An act of Congress or federal regulation that expressly requires the specific rule and the General Assembly has given the agency authority to respond to the federal requirement.

(4) A change in federal or State budgetary policy.

(5) A court order.

(b5) Periodic Review of Rules. –

(1) Within six months after the effective date of this act, each agency shall review all of its rules existing at the time of enactment to determine whether such rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules. Each agency shall invite and review written public comments, as prescribed under this Article. Each agency shall submit a report to the Joint Legislative Administrative Procedure Oversight Committee on or before January 1, 2012, to justify the existence of its rules and may take action to amend or repeal rules at any time.

(2) Rules adopted after the effective date of this act shall be reviewed every year to ensure that the rules minimize their economic impact.

(3) In reviewing rules to minimize their economic impact, each agency shall consider the following factors:

a. The continued need for the rule.

b. The nature of complaints or comments received concerning the rule from the public.

c. The complexity of the rule.

d. The extent to which the rule overlaps, duplicates, or conflicts with other federal, State, or local governmental rules.

e. The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(4) Each agency shall annually submit a list of its rules to the Office of State Budget and Management, including an explanation as to its economic impact.

(5) The Office of State Budget and Management shall direct an agency to amend or repeal a rule if the agency is unable to demonstrate each of the following:

a. There is a continued need for the rule.

b. The nature of complaints or comments received concerning the rule from the public does not justify amending or repealing the rule.

c. The rule is not too complex.

d. The rule does not overlap, duplicate, or conflict with other federal, State, and local governmental rules or such overlap is nominal.

e. Technology, economic conditions, or other factors have not changed in the area affected by the rule.

(6) Notwithstanding subdivision (5) of this subsection, a rule may be amended or repealed only if the rule is not required to respond to at least one of the following:

a. A serious and unforeseen threat to the public health, safety, or welfare.

b. An act of the General Assembly that expressly requires the specific rule.

- 1           c.     An act of Congress or federal regulation that expressly requires the  
2                 specific rule and the General Assembly has given the agency  
3                 authority to respond to the federal requirement.  
4           d.     A change in federal or State budgetary policy.  
5           e.     A court order.  
6       (7)   The Office of State Budget and Management shall submit an annual  
7             summary of its findings to the Commission as required under  
8             G.S. 150B-21.17.  
9   (b6)   Small Business Regulatory Flexibility Analysis. –  
10       (1)   Prior to the adoption of any proposed rule that may have an adverse impact  
11             on small businesses, each agency shall prepare a small business impact  
12             statement that includes each of the following:  
13           a.     An identification and estimate of the number of the small businesses  
14                 subject to the proposed rule.  
15           b.     The projected reporting, record keeping, and other administrative  
16                 costs required for compliance with the proposed rule, including the  
17                 type of professional skills necessary for preparation of the report or  
18                 record.  
19           c.     A statement of the probable effect on impacted small businesses.  
20       (2)   Before an agency publishes in the North Carolina Register the proposed text  
21             of a permanent rule change, it shall consider and provide to the Office of  
22             State Budget and Management, without limitation, each of the following  
23             methods of reducing the impact of the proposed rule on small businesses:  
24           a.     The establishment of less stringent compliance or reporting  
25                 requirements for small businesses.  
26           b.     The establishment of less stringent schedules or deadlines for  
27                 compliance or reporting requirements for small businesses.  
28           c.     The consolidation or simplification of compliance or reporting  
29                 requirements for small businesses.  
30           d.     The establishment of performance standards for small businesses to  
31                 replace design or operational standards required in the proposed rule.  
32           e.     The exemption of small businesses from all or any part of the  
33                 requirements contained in the proposed rule.  
34       (3)   The Office of State Budget and Management shall reject a proposed rule if  
35             the agency has not taken reasonable steps to reduce the impact on small  
36             businesses.  
37       (c)   Errors. – An erroneous fiscal note-note, cost-benefit analysis, or small business  
38             regulatory flexibility analysis prepared and reviewed in good faith does not affect the validity  
39             of a rule-rule, except as provided under G.S. 150B-21.9."

40       SECTION 5. G.S. 150B-21.9 reads as rewritten:

41       "§ 150B-21.9. Standards and timetable for review by Commission.

42       (a)   Standards. – The Commission must determine whether a rule meets all of the  
43       following criteria:

- 44       (1)   It is within the clear authority delegated to the agency by the General  
45             ~~Assembly-Assembly~~, and no reasonable argument can be made that clear  
46             authority does not exist.  
47       (2)   It is clear and unambiguous.  
48       (3)   It is reasonably necessary to implement or interpret an enactment of the  
49             ~~General Assembly, or of Congress, or a regulation of a federal agency and~~  
50             the General Assembly, when enacting the law, likely intended for the agency

to adopt such a rule. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) The Office of State Budget and Management properly approved the cost-benefit analysis and small business regulatory flexibility analysis developed for the rule, in accordance with G.S. 150B-21.4.

(5) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule ~~has a substantial economic impact~~ is a significant rule change and is therefore required to have a ~~fiscal note~~ cost-benefit analysis. The Commission must ask the Office of State Budget and Management to make this determination if a ~~fiscal note~~ cost-benefit analysis was not prepared for a rule and the Commission receives a written request for a determination of whether the rule ~~has a substantial economic impact~~ is a significant rule change.

The Commission may ask the Office of State Budget and Management to determine if a rule may have an adverse impact on small businesses and is therefore required to have a small business regulatory flexibility analysis. The Commission must ask the Office of State Budget and Management to make this determination if a small business regulatory flexibility analysis was not prepared for a rule and the Commission receives a written request for a determination of whether the rule may have an adverse impact on small businesses.

~~(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.~~

...."

SECTION 6. Chapter 150B of the General Statutes is amended by adding a new section to read:

**"§ 150B-21.16A. Periodic review of rules by Commission.**

(a) The Office of State Budget and Management shall provide an annual summary of its findings to the Commission explaining why it directed each agency to repeal or amend a rule, or decided that no action on a rule was necessary.

(b) The Commission shall direct the Office of State Budget and Management to direct the agency to amend or repeal a rule if the Commission believes that an agency was unable to demonstrate all of the following:

(1) There is a continued need for the rule.

(2) The nature of complaints or comments received concerning the rule from the public does not justify amending or rescinding the rule.

(3) The rule is not too complex.

(4) The rule does not overlap, duplicate, or conflict with other federal, State, and local governmental rules, or such overlap is nominal.

(5) Technology, economic conditions, or other factors have not changed in the area affected by the rule.

(c) Notwithstanding subsection (b) of this section, a rule may be amended or repealed only if the rule is not required to respond to at least one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly that expressly requires the specific rule.

(3) An act of Congress or federal regulation that expressly requires the specific rule and the General Assembly has given the agency authority to respond to the federal requirement.

(4) A change in federal or State budgetary policy.



1           (5) A court order."

2           **SECTION 7.** G.S. 150B-43 reads as rewritten:

3   **"§ 150B-43. Right to judicial review.**

4       Any person who is aggrieved by the final decision in a contested case, and who has  
5 exhausted all administrative remedies made available to him by statute or agency rule, is  
6 entitled to judicial review of the decision under this Article, unless adequate procedure for  
7 judicial review is provided by another statute, in which case the review shall be under such  
8 other statute. Within one year after the effective date of a final rule, any person is entitled to  
9 judicial review in order to determine whether a rule has been properly adopted as required  
10 under this Article. Nothing in this Chapter shall prevent any person from invoking any judicial  
11 remedy available to him under the law to test the validity of any administrative action not made  
12 reviewable under this Article."

13           **SECTION 8.(a).** Commission Created. – There is created the Legislative Study  
14 Commission on Occupational Licensing. The Commission shall consist of 12 voting members  
15 appointed as follows:

- 16           (1) Four members appointed by the Governor, to include at least one member of  
17 the general public.  
18           (2) Four members appointed by the President Pro Tempore of the Senate, to  
19 include the following:  
20               a. Two members of the Senate.  
21               b. Two members of the general public.  
22           (3) Four members appointed by the Speaker of the House of Representatives, to  
23 include the following:  
24               a. Two members of the House of Representatives.  
25               b. Two members of the general public.

26           **SECTION 8.(b).** Duties. – The Commission shall do each of the following:

- 27           (1) Identify outdated and unnecessary occupational licensing laws that should be  
28 repealed.  
29           (2) Identify existing occupations that are regulated that do not require licensing.  
30           (3) Study alternatives to occupational licensing laws that would work  
31 effectively.  
32           (4) Study to what extent occupational licensing laws create barriers for  
33 individuals, including low-income individuals, from entering into new  
34 occupations.  
35           (5) Study any other matters that the Commission deems relevant.

36           **SECTION 8.(c).** Report. – The Commission shall make a final report to the  
37 General Assembly with specific recommendations, including any proposed legislation, to the  
38 2012 Regular Session of the 2011 General Assembly upon its convening. The Commission  
39 shall terminate upon filing its final report.

40           **SECTION 8.(d).** Administration. – The Speaker of the House of Representatives  
41 and the President Pro Tempore of the Senate each shall appoint a cochair for the Commission.  
42 The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon  
43 approval of the Legislative Services Commission, the Legislative Services Officer shall assign  
44 professional and clerical staff to assist in the work of the Commission. Clerical staff shall be  
45 furnished to the Commission through the offices of the House of Representatives and the  
46 Senate Directors of Legislative Assistants. The Commission may meet in the Legislative  
47 Building or the Legislative Office Building upon the approval of the Legislative Services  
48 Commission. Members of the Commission shall receive per diem, subsistence, and travel  
49 allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies.  
50 The Commission, while in the discharge of its official duties, may exercise all the powers

1 provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to  
2 request all officers, agents, agencies, and departments of the State to provide any information,  
3 data, or documents within their possession, ascertainable from their records, or otherwise  
4 available to them and the power to subpoena witnesses.

5 **SECTION 8.(e).** Appropriation. – There is appropriated from the General Fund to  
6 the General Assembly the sum of fifty thousand dollars (\$50,000) for the 2011-2012 fiscal year  
7 to fund the work of the Legislative Study Commission on Occupational Licensing created by  
8 this act.

9 **SECTION 9.** This act becomes effective July 1, 2011.

# State of North



**BEVERLY EAVES PERDUE**  
GOVERNOR



**REPRESENTATIVE GLEN BRADLEY**  
N.C. HOUSE OF REPRESENTATIVES  
49<sup>th</sup> DISTRICT

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DISTRICT ADDRESS  
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(919) 728-0446  
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## EXECUTIVE ORDER NO. 70

### RULES MODIFICATION AND IMPROVEMENT PROGRAM

**WHEREAS**, rulemaking is one of the most significant public policy actions government can take, directly affecting businesses and citizens alike; and

**WHEREAS**, improved rulemaking provides more effective protections for public health, safety, welfare, and the environment; and

**WHEREAS**, outdated, unnecessary, or vague rules often impose unnecessary costs and burdens on local governments, small businesses, and other regulated entities; and

**WHEREAS**, North Carolina citizens deserve better access to regulatory information; and

**WHEREAS**, rules, as defined by N.C. Gen. Stat. § 150B-2(8a), are required for a functioning market economy; and

**WHEREAS**, the development of rules should be informed with rigorous analysis; and

**WHEREAS**, in promulgating rules, agencies should seek to achieve statutory goals as effectively and efficiently as possible; and

**WHEREAS**, public comment is encouraged for all rules, including both new and existing rules; and

**WHEREAS**, N.C. Gen. Stat. § 150B-21.26 requires a preliminary review of certain rules before the proposed text is published in the North Carolina Register; and

**WHEREAS**, for the last fifteen years, the Office of State Budget and Management has reviewed all significant rule changes before the proposed text is published in the North Carolina Register under N.C. Gen. Stat. §150B-21.4.

**NOW, THEREFORE**, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

## **Section 1. Scope of Executive Order**

This Executive Order applies to all Cabinet agencies and all boards and commission with rule-making powers located within the Cabinet agencies.

The Governor urges the heads of Council of State agencies, the Board of Governors of the University of North Carolina, the State Board of Community Colleges, the State Board of Education, and all other boards with rule-making authority to participate in this Order.

## **Section 2. Statement of Regulatory Principles**

1. The following principles shall guide the drafting, adoption, modification and review of any rules and regulations:
  - a. Rules shall only be adopted when required by federal or state law or when deemed necessary by the agency to serve the public interest.
  - b. Rules shall not impose undue burden upon those persons or entities who must comply with the rules.
  - c. Rules shall be clearly written, relevant and up-to-date.
  - d. Rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall cite this information in support of regulatory proposals.
  - e. Rules shall be designed to achieve their regulatory objective in a cost-effective and timely manner.
2. All agency heads shall implement the following requirements to ensure that regulations are drafted and adopted in accordance with the above principles.
  - a. Rules shall be subject to periodic evaluation and review in accordance with the procedures described in this Executive Order.
  - b. Agencies shall encourage public comment and involvement on all rules by posting new rule actions and rule analysis and fiscal notes online.
  - c. Agencies shall ensure citizens have better access to timely and accurate rule information.
  - d. Fiscal notes and rule analysis shall be updated to reflect any significant changes before the rule is adopted.

- e. Approved rule actions shall be completed in a timely manner to ensure proper protection of the public and clear implementation of law.
- f. Agencies shall coordinate rule actions with other agencies where rules, policies and programs overlap.
- g. Agencies shall quantify the costs and benefits to all parties of a rule to the greatest extent possible. The level of analysis shall be proportional to the significance of the rule.
- h. Agencies shall identify and assess available alternatives to regulation, including the use of economic incentives, information disclosure requirements, and performance standards.
- i. Each agency head will be held accountable for ensuring that the policies and objectives in this Executive Order are put into effect and that information requested in connection with the requirements of this Executive Order is provided on a timely basis.

### **Section 3. Review of Existing Rules**

A Rules Modification and Improvement Program ("RMIP") shall be established to annually evaluate, reform, expand, or, where necessary, repeal existing rules and associated requirements in order to promote the goals of this Executive Order. The Office of State Budget and Management ("OSBM") shall coordinate and oversee the RMIP. OSBM shall consult with experts, stakeholders and other relevant parties in implementing the RMIP.

- 1. The RMIP shall accomplish the following within the first 30 days after publication of this Executive Order:
  - a. Invite comment on whether any existing rules, implementation processes and associated requirements are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order. Comments may include modifying, expanding, or rescinding existing rule programs or the rule review and publication process.
  - b. Direct agencies to undertake an internal review to identify existing rules and associated requirements that are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order.
- 2. The RMIP shall continue to invite and consider comment on rule reforms beyond the first 30 days after publication of this Executive Order. Comments received during the first 30 days will inform the first annual report required by paragraph 8 of this section, while comments received after the first 30 days will inform future reports.

3. The State Chief Information Officer shall ensure that there is a single web portal for receiving public comments and tracking agency progress on any resulting rule reform actions.
4. OSBM shall assemble and evaluate the reform suggestions resulting from the public comment process and internal agency reviews.
5. Agencies, as requested by OSBM, shall review the merits of the reform suggestions.
6. Agencies shall prepare a report, in a form designated by OSBM, on whether reform suggestions have potential merit and justify further action. The report shall be submitted to OSBM by January 31 each year.
7. OSBM shall make final determinations on which reform suggestions have potential merit and justify further action. OSBM shall also consider and propose recommended improvements to the rule process to the Governor, including any legislation that may be necessary to achieve reforms.
8. OSBM shall publish by April 30 every year an annual report summarizing all reform comments and any resulting actions taken or planned.
9. OSBM shall receive assistance, services, or data from any state agency as it determines is reasonably necessary to carry out the purposes of this Executive Order.
10. The State CIO shall coordinate and consolidate systems across state government required to comply with existing rules at the direction of OSBM.

#### **Section 4. Review of New Rules**

Rule improvement efforts shall extend beyond an evaluation of existing rules to the current process used to promulgate new rules. Given the significant impact of rules, rule decisions shall be informed by a careful assessment of the likely consequences of rule action.

1. During OSBM's review and approval process for fiscal notes and rule analysis under N.C. Gen. Stat. §150B-21.4, OSBM shall ensure agencies adhere to the principles outlined in Section 2 of this Executive Order.
2. For significant rules, agency heads shall certify completion of a fiscal note and rule analysis and submit them to OSBM for review under N.C. Gen. Stat. § 150B-21.4 and other related statutes, at least 60 days prior to rule publication.
3. In order that an independent analysis can be made, state agencies shall not request OSBM to prepare a fiscal note and rule analysis under N.C. Gen. Stat. § 150B-21.4(b1) until the agency, working with OSBM, has exhausted all resources, internal and external, to otherwise prepare the required analysis.

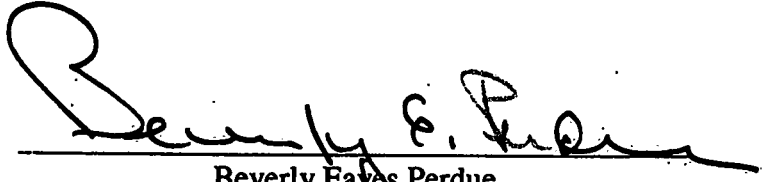
4. OSBM, as part of the Office of the Governor, shall conduct the preliminary review in N.C. Gen. Stat. § 150B-21.26 on behalf of the Governor.
5. Consistent with N.C. Gen. Stat. § 150B-21.26, agencies shall submit the required rule information to OSBM at least 60 days prior to rule publication for rules that impact local governments.

**Section 5. Effect and Duration**

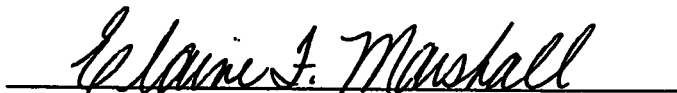
This Executive Order is effective immediately and shall remain in effect until rescinded. It supersedes and replaces all other executive orders on this subject.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of October in the year of our Lord two thousand and ten and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 450** A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE AUTOMATIC RENEWAL OF MERCHANT CREDIT CARD PROCESSING CONTRACTS.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill # be re-referred to the Committee on RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.

**(FOR JOURNAL USE ONLY)**

---

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

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

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



**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

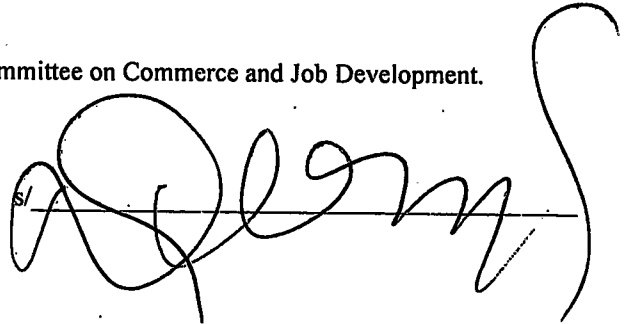
☐ Committee Substitute for

**HB 654** A BILL TO BE ENTITLED AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

A handwritten signature in black ink, appearing to read 'McComas', is written over a horizontal line. The signature is stylized and cursive.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a); the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

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

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

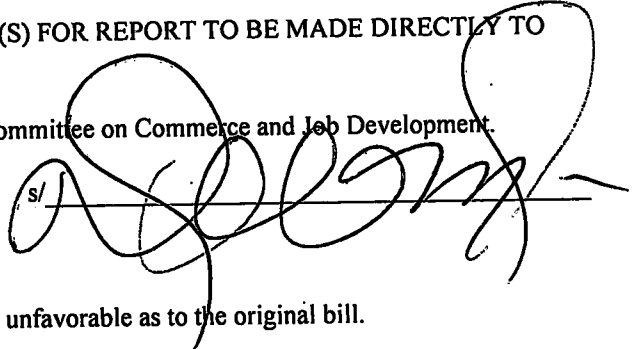
By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 713** A BILL TO BE ENTITLED AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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

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

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 813** A BILL TO BE ENTITLED AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2 OF CHAPTER 150B OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF THE SECRETARY OF COMMERCE.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

---

**(FOR JOURNAL USE ONLY)**

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

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

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.

# MINUTES

## Business and Labor Subcommittee

Friday, June 3, 2011

10:00 a.m.

Room 643 LOB

The Business and Labor Subcommittee met on Wednesday, June 3, 2011 at 10:00 a.m. in Room 643 of the Legislative Office Building. Representative Darrell G. McCormick presided.

The following members were present:

- |  |   |
|--|---|
| 1. Representative Kelly Alexander                | 8. Representative Stephen LaRoque           |
| 2. Representative Harold Brubaker                | 9. Representative Danny McComas             |
| 3. Representative Becky Carney                   | <i>Chair – Commerce and Job Development</i> |
| 4. Representative Jeff Collins                   | 10. Representative Rodney Moore             |
| 5. Representative Elmer Floyd ( <i>excused</i> ) | 11. Representative Phillip Shepard          |
| 6. Representative Ken Goodman                    | 12. Representative Mike Stone               |
| 7. Representative Mike Hager                     | 13. Representative Winkie Wilkins           |

Meeting was called to Order at 10:00 a.m.

Introduction of Sergeant at Arms:

- |                 |                |
|-----------------|----------------|
| • R.L. Carter   | • Doug Harris  |
| • Wayne Davis   | • Reggie Sills |
| • Larry Elliott |                |

Introduction of Pages: No Pages for this meeting - Friday

Bills:

BILL NO.	SHORT TITLE	SPONSOR
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HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
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**HB 721 was pulled from the agenda and not heard.**

HB 462	Study Business Opportunity & Franchise Sales.	Representative McCormick
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Representative Darrell McCormick requested Representative Mike Stone chair the committee while Representative McCormick presented his bill, HB 462.

Representative McCormick explained HB 462.

Representative Howard Brubaker motioned for a favorable report. – Passed

**HB 462 – Received a favorable report.**

Representative Darrell McCormick resumed his role as chair for the meeting.

HB 749      Modify State Ports Authority.      Representative McComas  
Representative Jeff Collins motioned to hear the proposed committee substitute (PCS).  
Representative Danny McComas explained HB 749. Amendment proposed by Rep. McComas.  
Representative Harold Brubaker moves for the adoption of the amendment. – Adopted  
Representative Mike Hager motioned for a favorable report to the proposed committee substitute  
as amended, unfavorable to the original bill. – Passed  
**HB 749 – Received a favorable report as to the committee substitute bill, unfavorable  
as to the original bill.**

HB 903      Port Enhancement Zones.      Representative Justice  
Representative McComas

Representative Danny McComas and Representative Carolyn Justice explained HB 903.  
Amendment proposed by Rep. McComas. Representative Mike Hager moves for the adoption  
of the amendment. – Adopted

Public Speaker:

- Laura Blair, Director of Government Relations State Port Authority, spoke in favor.

Representative Mike Hager motioned for a favorable report to the proposed committee substitute  
as amended, unfavorable to the original bill. – Passed

**HB 903 – Received a favorable report as to the committee substitute bill, unfavorable  
as to the original bill.**

HB 832      Allow Nonattorney Ownership of PC Law      Representative Brubaker  
Firms.      Representative McComas

Representative Harold Brubaker and Representative Danny McComas explained HB 832.

Public Speaker:

- Bob Crumley, Principal, Crumley & Associates, spoke in favor
- Paul Meggett, North Carolina Bar Association Board of Governors, spoke in opposition

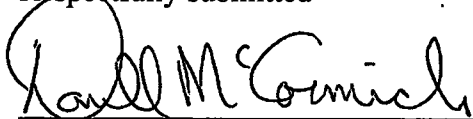
Representative Mike Stone motioned for a favorable report – Passed


**HB 832 – Received a favorable report**

## Adjournment

Meeting adjourned at 10:40 am

Respectfully submitted

  
Representative Darrell McCormick  
Chairman

  
Anne Murtha  
Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Friday, June 3, 2011

**TIME:** 10:00 am

**LOCATION:** 643 LOB

**COMMENTS: NOTE – Room change – 643 LOB**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 462	Study Business Opportunity & Franchise Sales.	Representative McCormick
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
HB 749	Modify State Ports Authority.	Representative McComas
HB 832	Allow Nonattorney Ownership of PC Law Firms.	Representative Brubaker
HB 903	Port Enhancement Zones.	Representative McComas
		Representative Justice
		Representative McComas

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **June 02, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)

# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 3, 2011**

**10:00 a.m.**

**Room 643 LOB**

**Chair: Representative Darrell G. McCormick**

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Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 462	Study Business Opportunity & Franchise Sales.	Representative McCormick
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
HB 749	Modify State Ports Authority.	Representative McComas
HB 832	Allow Nonattorney Ownership of PC Law Firms.	Representative Brubaker Representative McComas
HB 903	Port Enhancement Zones.	Representative Justice Representative McComas

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 721

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors: Representative McCormick (Primary Sponsor).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
EXTERMINATE BEDBUGS IN DWELLING UNITS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-42(a) reads as rewritten:

**"§ 42-42. Landlord to provide fit premises.**

(a) The landlord shall:

...

(9) Not offer for lease any premises that, at the time the landlord and tenant enter into a rental agreement, the landlord knows to be infested by the species cimex lectularius, also known as bedbugs. The landlord may, prior to leasing the premises, obtain a certificate from a licensed pest control company certifying that the premises are free of an infestation of bedbugs, and the certificate shall serve as conclusive evidence of the landlord's compliance with the provisions of this subdivision."

**SECTION 2.** G.S. 42-43(a) reads as rewritten:

**"§ 42-43. Tenant to maintain dwelling unit.**

(a) The tenant shall:

...

(8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation of the species cimex lectularius, also known as bedbugs."

**SECTION 3.** Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

**"§ 42-43.1. Bedbug infestation; landlord and tenant obligations.**

(a) A tenant shall notify his or her landlord, in writing, within five days of suspecting the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the landlord did not obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than 30 days before the written notification was given, then, within five days of receiving the notice from the tenant, the landlord shall contract with a licensed pest control company to exterminate any bedbugs in the premises. If the landlord did obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), or if at least 30 days have passed since the tenant took initial possession of the premises, it shall be the tenant's responsibility to have the bedbugs in the premises exterminated.



\* H 7 2 1 - V - 1 \*



(b) Where the tenant is responsible for the extermination of bedbugs, the landlord may provide the tenant with either the name, address, and telephone number of the licensed pest control company that certified the premises were free of an infestation of bedbugs or with the name, address, and telephone number of pest control companies that the landlord deems reputable. Within seven days of notifying the landlord of the suspected presence of bedbugs, the tenant shall do both of the following: (i) contract with one of the licensed pest control companies suggested by the landlord or, if no companies were suggested, with any licensed pest control company, and (ii) have the premises treated for bedbugs by the licensed pest control company. In all situations, the tenant shall allow the landlord and the licensed pest control company access to the premises and shall carefully follow all instructions provided by the landlord or licensed pest control company to facilitate the elimination of bedbugs. Where the tenant is responsible for the extermination of bedbugs, the tenant shall be solely responsible for any fees charged by the licensed pest control company and any damages associated with the presence and elimination of bedbugs from the premises and any attached units and spaces, and the tenant shall furnish to the landlord proof from the licensed pest control company of the services performed.

(c) After a licensed pest control company has treated the premises and deemed the premises free of an infestation of bedbugs, the tenant shall be responsible for all subsequent infestations. However, whenever a tenant notifies the landlord of the presence of bedbugs, if it is determined by a licensed pest control company that the source of the bedbugs is an adjacent unit, then the tenant in the source unit shall be responsible for the extermination of the bedbugs in accordance with the provisions of this section.

(d) The failure of any tenant to comply with the provisions of this section shall be a breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of the following: (i) contract with a licensed pest control company at the tenant's expense to exterminate the bedbugs; (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for damages."

**SECTION 4.** G.S. 42-51 reads as rewritten:

**"§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

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

# Daily Bulletin

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## School of Government

The University of North Carolina at Chapel Hill

Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601  
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March 24, 2011

**H 462. STUDY BUSINESS OPPORTUNITY & FRANCHISE SALES.** Filed 3/24/11. *TO STUDY THE ADEQUACY OF CURRENT CONSUMER PROTECTIONS FOR BUSINESS OPPORTUNITY AND FRANCHISE SALES.*

Authorizes the Legislative Research Commission (Commission) to conduct a study as title indicates. Permits the Commission to consider proposed reforms in House Bill 2036 of the 2010 Session of the General Assembly, titled the NC Franchisee Protection Act.

Intro. by McCormick.

STUDY

Business and Commerce; General  
Assembly

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 462**

**Short Title:** Study Business Opportunity & Franchise Sales. (Public)

**Sponsors:** Representative McCormick (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

**Referred to:** Commerce and Job Development.

March 28, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO STUDY THE ADEQUACY OF CURRENT CONSUMER PROTECTIONS FOR  
3 BUSINESS OPPORTUNITY AND FRANCHISE SALES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The Legislative Research Commission is authorized to study the  
6 adequacy of current consumer protections for business opportunity and franchise sales in this  
7 State. In conducting the study, the Commission may consider the proposed reforms found in  
8 House Bill 2036 of the 2010 Regular Session of the 2009 General Assembly.

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



\* H 4 6 2 - V - 1 \*

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

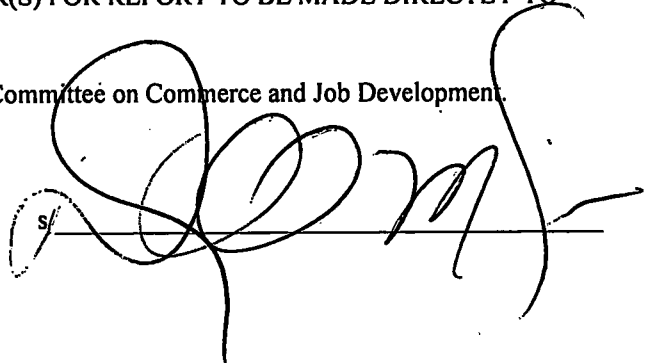
☐ Committee Substitute for

**HB 462** A BILL TO BE ENTITLED AN ACT TO PROTECT LANDOWNER RIGHTS.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

A large, stylized handwritten signature in black ink, likely belonging to Representative McComas, is written over a horizontal line. The signature is cursive and somewhat abstract, with a small 'S/' visible at the beginning of the line.

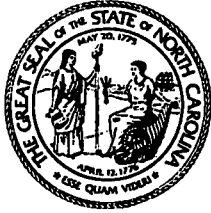
☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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



## HOUSE BILL 749: Modify State Ports Authority

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 3, 2011
<b>Introduced by:</b>	Rep. McComas	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H749-CSME-22		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute (PCS) for House Bill 749 would make various changes to the laws governing the State Ports Authority.*

**BILL ANALYSIS:** The PCS for House Bill 749 does all of the following:

- Amends the statute dealing with appointments to the North Carolina State Ports Authority (Authority) to clarify that appointments made by the General Assembly have 2-year terms except for terms expiring on or after June 30, 2011 (after that time, the terms will be for 4 years).
- Provides that no member of the Authority shall serve more than 12 consecutive years.
- Provides that in carrying out its purposes, the Authority must foster and stimulate private industry, rather than actively compete with private industry.
- Provides that the North Carolina State Ports Authority is subject to G.S. 146-29.1 (governing the lease or sale of real property) and must report all transactions involving the acquisition or disposition of real property to the Joint Legislative Commission on Governmental Operations.
- Repeals G.S. 143B-457, which provides the Authority's power of eminent domain.
- Provides that all the provisions of Article 3 of Chapter 143B (Purchases and Contracts for State Government) relating to the purchase of services apply to the Authority (current law mentions supplies, materials, and equipment).
- Provides that with respect to exemptions under certain statutes, the Executive Director must report to the Authority board at each meeting, any contract to which an exemption applied since the last meeting of the Authority board.
- Enacts a new section, G.S. 143B-468, which directs the Authority to publish on the Authority's website within 48 hours of submission certain requests and bids. They include requests for contracts with the Authority and contracts bid by the Authority for any services not otherwise provided by the Authority's latest published tariff. This does not apply to bids received by the Authority. Directs the Authority to publish an annual report of contract activity.
- Provides that any contract for services published in the Authority's tariff for which the price deviates more than 20% from the published price must be approved by the Council of State prior to the Authority entering into the contract. It also provides that the Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any contracts required to be approved by the Council of State.
- Provides that the Legislative Research Commission must conduct a relocation of power lines study. This includes studying the cost and feasibility of burying or raising the power lines that currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear Plant toward Castle Hayne so as to allow ocean going vessels to travel past the point that the power

# House PCS 749

Page 2

lines cross the river. The Commission must compare the costs of moving the power lines to the economic benefit to the State from increased shipping up the Cape Fear River. The study is to be paid by the Authority.

**EFFECTIVE DATE:** The provisions dealing with the relocation of power lines study are effective when the bill becomes law. The remainder of the act becomes effective October 1, 2011.

*H749-SMRN-56(CSME-22) v4*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 749**

**Short Title:**    **Modify State Ports Authority.** **(Public)**

**Sponsors:**    **Representative McComas (Primary Sponsor).**  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

**Referred to:**   **Commerce and Job Development.**

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT TO ENSURE THAT THE NORTH CAROLINA STATE PORTS AUTHORITY  
DEVELOPS BUSINESSES RATHER THAN COMPETING WITH BUSINESSES; AND  
TO STUDY A PROJECT TO FACILITATE SHIPPING UP THE CAPE FEAR RIVER.

The General Assembly of North Carolina enacts:

**SECTION 1. G.S. 143B-452(e) reads as rewritten:**

"(e) The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of ~~two years~~ two years, except for terms expiring on or after June 30, 2011, after which appointments shall be for terms of four years."

**SECTION 2. G.S. 143B-453 reads as rewritten:**

**"§ 143B-453. Purposes of Authority.**

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and



operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

- (1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.
- (2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.
- (3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.
- (4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.
- (5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.
- (6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.
- (7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. In carrying out its purposes, the Authority shall foster and stimulate private industry rather than directly compete with private industry."

SECTION 3. G.S. 143B-454 reads as rewritten:

**"§ 143B-454. Powers of Authority.**

(a) In order to enable it to carry out the purposes of this Part, the said Authority shall: shall, subject to the other provisions of this Article, including G.S. 143B-465 and G.S. 143B-465.1:

- (1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;
- (3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said



- 1 Authority may deem proper to carry out the purposes and provisions of this  
2 Part, all or any of them;
- 3 (4) Be authorized and empowered to acquire, construct, maintain, equip and  
4 operate any wharves, docks, piers, quays, elevators, compresses,  
5 refrigeration storage plants, warehouses and other structures, and any and all  
6 facilities needful for the convenient use of the same in the aid of commerce,  
7 including the dredging of approaches thereto, and the construction of beltline  
8 roads and highways and bridges and causeways thereon, and other bridges  
9 and causeways necessary or useful in connection therewith, and shipyards,  
10 shipping facilities, and transportation facilities incident thereto and useful or  
11 convenient for the use thereof, and to acquire, construct, and maintain, but  
12 not operate, such rail facilities as may be necessary or useful in connection  
13 with the operation of the State Ports, provided that nothing in this  
14 subdivision shall be construed as requiring or allowing the North Carolina  
15 State Ports Authority to become a carrier by rail subject to the federal laws  
16 regulating those carriers;
- 17 (5) The Authority shall appoint an Executive Director, whose salary shall be  
18 fixed by the Authority, to serve at its pleasure. The Executive Director or his  
19 designee shall appoint, employ, dismiss and, within the limits of available  
20 funding, fix the compensation of such other employees as he deems  
21 necessary to carry out the purposes of this Part. There shall be an executive  
22 committee consisting of the chairman of the Authority and two other  
23 members elected annually by the Authority. The executive committee shall  
24 be vested with authority to do all acts which are authorized by the bylaws of  
25 the Authority. Members of the executive committee shall serve until their  
26 successors are elected;
- 27 (6) Establish an office for the transaction of its business at such place or places  
28 as, in the opinion of the Authority, shall be advisable or necessary in  
29 carrying out the purposes of this Part;
- 30 (7) Be authorized and empowered to create and operate such agencies and  
31 departments as said board may deem necessary or useful for the furtherance  
32 of any of the purposes of this Part;
- 33 (8) Be authorized and empowered to pay all necessary costs and expenses  
34 involved in and incident to the formation and organization of said Authority,  
35 and incident to the administration and operation thereof, and to pay all other  
36 costs and expenses reasonably necessary or expedient in carrying out and  
37 accomplishing the purposes of this Part;
- 38 (9) Be authorized and empowered to apply for and accept loans and grants of  
39 money from any federal agency or the State of North Carolina or any  
40 political subdivision thereof or from any public or private sources available  
41 for any and all of the purposes authorized in this Article, and to expend the  
42 same in accordance with the directions and requirements attached thereto, or  
43 imposed thereon by any such federal agency, the State of North Carolina, or  
44 any political subdivision thereof, or any public or private lender or donor,  
45 and to give such evidences of indebtedness as shall be required, provided,  
46 however, that no indebtedness of any kind incurred or created by the  
47 Authority shall constitute an indebtedness of the State of North Carolina, or  
48 any political subdivision thereof, and no such indebtedness shall involve or  
49 be secured by the faith, credit or taxing power of the State of North Carolina,  
50 or any political subdivision thereof;

- (10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;
- (11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.
- (12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and
- (13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

(b) In order to execute the powers enumerated in subsection (a), the Authority shall determine the policies of the North Carolina State Ports Authority by majority vote of all members of the Authority present and voting. Once a policy is determined, the Authority shall communicate it to the Executive Director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority shall have responsibility or authority to give operational directives to any employee of the North Carolina State Ports Authority other than the Executive Director."

**SECTION 4.** G.S. 143B-457 is repealed.

**SECTION 5.** G.S. 143B-465 reads as rewritten:

**"§ 143B-465. Purchase of services, supplies, material and equipment and building contracts.**

(a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of services, supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority.

(b) All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.

~~(c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State Ports Authority finds that the delivery of a particular port facility must be expedited for good cause, the Authority shall be exempt from the following statutes, and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through (e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this subsection, the North Carolina State Ports Authority, through its Executive Director, shall give notice in writing of the Authority's intent to exercise the exemption to the Secretary of Administration. The notice shall contain, at a minimum, the following information: (i) the specific statutory requirement or requirements from which the Authority intends to exercise an exemption; (ii) the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way the Authority anticipates the exemption will expedite the delivery of a port facility.~~

~~The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contracts exceeding two hundred fifty thousand dollars (\$250,000) to which an exemption authorized by this subsection is applied."~~

**SECTION 6.** Part 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

**"§ 143B-468. Publication of requests and bids for contracts.**

**(a)** In order to foster competition with other service providers, the North Carolina State Ports Authority shall publish all requests for contracts with the Authority and all contracts bid by the Authority, including the name of the vendor requesting a contract or vendor for which the Authority is bidding, the cost of services requested or bid, and the date the parties are to enter into a contract.

**(b)** The requests and bids shall be published upon the Web site of the Authority within 48 hours of submission to the Authority. The Authority shall also publish an annual report of contract activity that consists of all requests and bids within a given year.

**(c)** This section shall not apply to bids received by the Authority."

**SECTION 7.** Part 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

**"§ 143B-468.1. Rental of Authority properties.**

Prior to leasing any of its properties, the North Carolina State Ports Authority shall publicly publish the availability of any given property and shall allow members of the public to acquire the lease. Unless the property is fungible property such as berths or storage areas, the lease of Authority property shall be subject to a competitive bid process."

**SECTION 8.** Relocation of Power Lines Study. – The Legislative Research Commission is authorized to study the cost and feasibility of burying or raising the power lines that currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear Plant toward Castle Hayne so as to allow ocean-going vessels to travel past the point that the power lines cross the river. In conducting the study, the Commission shall consider methods to help Progress Energy move the power lines in a manner that maximizes the use of the Cape Fear River for commerce, including, but not limited to, grants to Progress Energy using the proceeds from the sale of unused State Ports Authority land. In conducting the study, the Commission shall compare the costs of moving the power lines to the economic benefit to the State from increased shipping up the Cape Fear River. If the Legislative Research Commission undertakes the study authorized under this section, the costs of the study shall be paid by the North Carolina State Ports Authority.

**SECTION 9.** Sections 1 through 7 of this act becomes effective October 1, 2011. The remainder of this act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

H

D

**HOUSE BILL 749  
PROPOSED COMMITTEE SUBSTITUTE H749-CSME-22 [v.3]**

6/2/2011 4:16:23 PM

Short Title:   Modify State Ports Authority.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE NORTH CAROLINA STATE PORTS AUTHORITY  
DEVELOPS BUSINESSES RATHER THAN COMPETING WITH BUSINESSES; AND  
TO STUDY A PROJECT TO FACILITATE SHIPPING UP THE CAPE FEAR RIVER.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-452(e) reads as rewritten:

"(e) The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of ~~two years~~ two years, except for terms expiring on or after June 30, 2011, after which appointments shall be for terms of four years."

**SECTION 2.** G.S. 143B-452 is amended by adding a new subsection to read as follows:

"(i) No member of the Authority shall serve more than 12 consecutive years."

**SECTION 3.** G.S. 143B-453 reads as rewritten:



**"§ 143B-453. Purposes of Authority.**

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

- (1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.
- (2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.
- (3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.
- (4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.
- (5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.
- (6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.
- (7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. In carrying out its purposes, the Authority shall primarily foster and stimulate private industry rather than actively compete with private industry."

**SECTION 4.** G.S. 143B-455 reads as rewritten:

**"§ 143B-455. Approval of acquisition and disposition of real property.**

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest

1 or estate therein, the instrument of conveyance or transfer shall be executed by the North  
2 Carolina State Ports Authority. The approval of any transaction by the Governor and Council of  
3 State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the  
4 Governor and Council of State, attested by the private secretary to the Governor or the  
5 Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said  
6 certificate may be recorded as a part thereof, and the same shall be conclusive evidence of  
7 review and approval of the subject transaction by the Governor and Council of State. The  
8 Governor, acting with the approval of the Council of State, may delegate the review and  
9 approval of such classes of lease, rental, easement, or right-of-way transactions as he or she  
10 deems advisable, and he may likewise delegate the review and approval of the severance of  
11 buildings and timber from the land. Additionally, the North Carolina State Ports Authority is  
12 subject to G.S. 146-29.1 and shall report in detail all transactions relating to the acquisition or  
13 disposition of real property or any estate or interest in real property to the Joint Legislative  
14 Commission on Governmental Operations."

15 **SECTION 5.** G.S. 143B-457 is repealed.

16 **SECTION 6.** G.S. 143B-465 reads as rewritten:

17 **"§ 143B-465. Purchase of services, supplies, material and equipment and building**  
18 **contracts.**

19 (a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to  
20 the purchase of services, supplies, material and equipment by the State government are hereby  
21 made applicable to the North Carolina State Ports Authority.

22 (b) All of the provisions of Chapter 143 of the General Statutes relating to public  
23 building contracts are hereby made applicable to the North Carolina State Ports Authority for  
24 those construction projects which may be funded, in whole or in part, by appropriations from  
25 the General Assembly.

26 (c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State  
27 Ports Authority finds that the delivery of a particular port facility must be expedited for good  
28 cause, the Authority shall be exempt from the following statutes, and rules implementing those  
29 statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through  
30 (e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this  
31 subsection, the North Carolina State Ports Authority, through its Executive Director, shall give  
32 notice in writing of the Authority's intent to exercise the exemption to the Secretary of  
33 ~~Administration.~~ Administration and to the individual members of the Authority's board. The  
34 notice shall contain, at a minimum, the following information: (i) the specific statutory  
35 requirement or requirements from which the Authority intends to exercise an exemption; (ii)  
36 the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way  
37 the Authority anticipates the exemption will expedite the delivery of a port facility. The  
38 Executive Director shall report to the Authority's board at each meeting of the board on any  
39 contracts to which an exemption authorized by this section was applied since the last meeting  
40 of the Authority's board. The Authority shall report quarterly to the Joint Legislative  
41 Commission on Governmental Operations on any building contracts exceeding two hundred  
42 fifty thousand dollars (\$250,000) to which an exemption authorized by this subsection is  
43 applied."

44 **SECTION 7.** Part 10 of Chapter 143B of the General Statutes is amended by  
45 adding a new section to read:

46 **"§ 143B-468. Publication of information related to contracts not covered in Authority's**  
47 **published tariff.**

48 (a) In order to foster competition with other service providers, the North Carolina State  
49 Ports Authority shall publish, for any services not otherwise provided by the Authority's latest  
50 published tariff, requests for contracts with the Authority and contracts bid by the Authority,

1 including the name of the vendor requesting a contract or vendor for which the Authority is  
2 bidding, the cost of services requested or bid, and the date the parties are to enter into a  
3 contract.

4 (b) The requests and bids covered by this section shall be published upon the Web site  
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7 this section within a given year.

8 (c) This section shall not apply to bids received by the Authority."

9 **SECTION 8.** Part 10 of Chapter 143B of the General Statutes is amended by  
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11 **"§ 143B-468.1. Approval of certain service contracts.**

12 Any contract for services published in the Authority's tariff for which the price deviates  
13 more than twenty percent (20%) from the published price must be approved by the Council of  
14 State prior to the Authority entering into the contract. The Authority shall report quarterly to  
15 the Joint Legislative Commission on Governmental Operations on any contracts required to be  
16 approved by the Council of State under this section."

17 **SECTION 9.** Relocation of Power Lines Study. – The Legislative Research  
18 Commission shall study the cost and feasibility of burying or raising the power lines that  
19 currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear Plant  
20 toward Castle Hayne so as to allow ocean-going vessels to travel past the point that the power  
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26 increased shipping up the Cape Fear River. The costs of the study shall be paid by the North  
27 Carolina State Ports Authority.

28 **SECTION 10.** Sections 1 through 8 of this act become effective October 1, 2011.  
29 The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. C SNE-22 [v. 3]

H. B. No. 749

DATE June 3, 2011

S. B. No. \_\_\_\_\_

Amendment No. 1

COMMITTEE SUBSTITUTE ☒

(to be filled in by  
Principal Clerk)

Rep. ) McComas  
Sen. ) \_\_\_\_\_

1 moves to amend the bill on page 4, line 13

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "price" and substitute  
4 "tariff rate"

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

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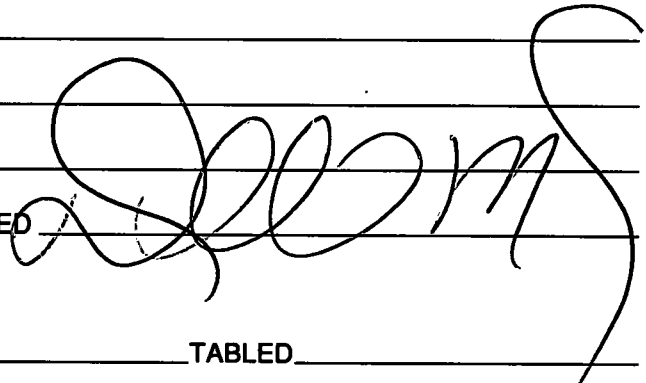
16 \_\_\_\_\_

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SIGNED



ADOPTED ☒

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 749  
PROPOSED COMMITTEE SUBSTITUTE H749-PCS50365-ME-22

Short Title:   Modify State Ports Authority.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE NORTH CAROLINA STATE PORTS AUTHORITY  
DEVELOPS BUSINESSES RATHER THAN COMPETING WITH BUSINESSES; AND  
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(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

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Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of ~~two years~~ two years, except for terms expiring on or after June 30, 2011, after which appointments shall be for terms of four years."

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- (1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.
- (2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.
- (3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.
- (4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.
- (5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.
- (6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.
- (7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

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18 (a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to  
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21 (b) All of the provisions of Chapter 143 of the General Statutes relating to public  
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23 those construction projects which may be funded, in whole or in part, by appropriations from  
24 the General Assembly.

25 (c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State  
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35 the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way  
36 the Authority anticipates the exemption will expedite the delivery of a port facility. The  
37 Executive Director shall report to the Authority's board at each meeting of the board on any  
38 contracts to which an exemption authorized by this section was applied since the last meeting  
39 of the Authority's board. The Authority shall report quarterly to the Joint Legislative  
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41 fifty thousand dollars (\$250,000) to which an exemption authorized by this subsection is  
42 applied."

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45 "**§ 143B-468. Publication of information related to contracts not covered in Authority's**  
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8 SECTION 8. Part 10 of Chapter 143B of the General Statutes is amended by  
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14 the Joint Legislative Commission on Governmental Operations on any contracts required to be  
15 approved by the Council of State under this section."

16 SECTION 9. Relocation of Power Lines Study. – The Legislative Research  
17 Commission shall study the cost and feasibility of burying or raising the power lines that  
18 currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear Plant  
19 toward Castle Hayne so as to allow ocean-going vessels to travel past the point that the power  
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21 Progress Energy move the power lines in a manner that maximizes the use of the Cape Fear  
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25 increased shipping up the Cape Fear River. The costs of the study shall be paid by the North  
26 Carolina State Ports Authority.

27 SECTION 10. Sections 1 through 8 of this act become effective October 1, 2011.  
28 The remainder of this act is effective when it becomes law.

**2011 PERMANENT SUBCOMMITTEE REPORT**  
**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 749** A BILL TO BE ENTITLED AN ACT TO ENSURE THAT THE NORTH CAROLINA STATE PORTS AUTHORITY DEVELOPS BUSINESSES RATHER THAN COMPETING WITH BUSINESSES; AND TO STUDY A PROJECT TO FACILITATE SHIPPING UP THE CAPE FEAR RIVER.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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

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

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.



## HOUSE BILL 903: Port Enhancement Zones

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 2, 2011
<b>Introduced by:</b>	Reps. Justice, McComas	<b>Prepared by:</b>	Karen Cochran-Brown
<b>Analysis of:</b>	First Edition		Committee Counsel

---

**SUMMARY:** *House Bill 903 authorizes the Secretary of Commerce to designate certain areas as Port Enhancement Zones and makes certain businesses located within these zones eligible to tier one tax treatment.*

### CURRENT LAW:

Article 3J of the Tax Law provides two types of tax credits to eligible taxpayers that undertake qualifying activities in North Carolina: credit for creating jobs and credit for investing in business property. It also creates a credit for investments in real property for establishments located in tier 1 counties. These credits may be combined to offset up to 50% of the taxpayer's State income and franchise tax liability, and as a general rule, unused credits may be carried forward for up to five years.<sup>1</sup>

A taxpayer's eligibility for a credit and the amount of the credit varies depending upon the county in which the jobs are created or the investments are made. The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each. The 40 most distress counties are designated as tier 1, the next 40 are tier 2, and the 20 least distressed are tier 3.

The law also authorizes the designation of certain areas as Urban Progress Zones (UP) and Agrarian Growth Zones (AG).

The enhanced credits available to an UP zone or an AG zone under Article 3J are:

- The threshold for new full-time jobs created to qualify for the tax credit for creating new jobs is 5 and the credit is increased by \$1,000 per job. The job threshold for a tier 1 county is 5; a tier 2 county is 10; and a tier 3 county is 15. The amount of the credit in a tier 1 county is \$12,500; a tier 2 county is \$5,000; and a tier 3 county is \$750. If the job is filled by a resident of the zone or a long-term unemployed worker, the credit is increased by an additional \$2,000 per job.
- There is no investment threshold requirement to qualify for the tax credit for investing in business property, and the amount of the credit is the same as for a tier 1 county: 7% of the cost of tangible personal property that is placed in service during the taxable year. The threshold for a tier 2 county is \$1 million and the credit is 5% of the cost of the property that exceeds the threshold. The threshold for a tier 3 county is \$2 million and the credit percentage is 3.5%.

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<sup>1</sup> 15-year carry-forwards apply to the credit for investing in real property and 20 carry-forwards exist for taxpayers that invest at least \$150 million over a two-year period.

# House Bill 903

Page 2

## **BILL ANALYSIS:**

A Port Enhancement Zone is defined as an area that meets the following conditions:

- Is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal census.
- All of the area is located within 15 miles of a state port and is capable of being used to enhance port operations.
- Every census tract and census block group in the area has at least 11% of households with incomes of \$15,000 or less and one of the 25 lowest average weekly wages in the State.

The bill provides that the area of the county that is included in one or more port enhancement zones must not exceed 5% of the total area of the county. Upon application of the county, the Secretary of Commerce is directed to make a written determination whether an area meets the conditions required for the designation. The Secretary is also directed to publish annually a list of all port enhancement zones.

The bill makes conforming changes to Article 3J to provide the same tax treatment for port enhancement zones as is currently provided for urban progress zones and agrarian growth zones.

**EFFECTIVE DATE:** This act becomes effective for taxable years beginning on or after January 1, 2011.

*Cindy Avrette, counsel to House Finance, substantially contributed to this summary.*

*H903-SMRO-31(e1) v2*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 903  
PROPOSED COMMITTEE SUBSTITUTE H903-PCS70232-RO-19

Short Title: Port Enhancement Zones.

(Public)

Sponsors:

Referred to:

May 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TIER ONE TREATMENT FOR PORT ENHANCEMENT ZONES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

**"§ 143B-437.012. Port enhancement zone designation.**

(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets all of the following conditions:

- (1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.
- (2) All of the area is located within 20 miles of a State port and is capable of being used to enhance port operations.
- (3) Every census tract and census block group that comprises the area has at least eleven percent (11%) of households with incomes of fifteen thousand dollars (\$15,000) or less and one of the 25 lowest average weekly wages in the State.

(b) Limitations and Designation. – The area of a county that is included in one or more port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all port enhancement zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
- (2) A detailed description of the boundaries of the area that would comprise the zone.
- (3) A certification regarding the size of the proposed zone.
- (4) Detailed census information on the county and the proposed zone.
- (5) A resolution of the board of county commissioners requesting the designation of the area as a port enhancement zone.
- (6) Any other material required by the Secretary of Commerce."



\* H 9 0 3 - P C S 7 0 2 3 2 - R O - 1 9 \*



SECTION 2. G.S. 105-129.81 is amended by adding a new subdivision to read:

"§ 105-129.81. (See notes) Definitions.

The following definitions apply in this Article:

...  
(20a) Port enhancement zone. – Defined in G.S. 143B-437.012.

...."

SECTION 3. G.S. 105-129.83 reads as rewritten:

"§ 105-129.83. Eligibility; forfeiture.

...  
(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

...  
(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress ~~zone~~zone, port enhancement zone, or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress ~~zone~~zone, port enhancement zone, or agrarian growth zone designations in effect at that time.

...."

SECTION 4. G.S. 105-129.87 reads as rewritten:

"§ 105-129.87. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone is filled by a

resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

Area Development Tier	Amount of Credit
Tier One	\$12,500
Tier Two	5,000
Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress ~~zone~~zone, a port enhancement ~~zone~~zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress ~~zone~~zone, a port enhancement ~~zone~~zone, or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, a port enhancement ~~zone~~zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

...

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress ~~zone~~zone, a port enhancement ~~zone~~zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress ~~zone~~zone, a port enhancement ~~zone~~zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

...."

#### SECTION 5. G.S. 105-129.88 reads as rewritten:

#### "§ 105-129.88. (See notes) Credit for investing in business property.

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business

property in service in an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or out of an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

SECTION 6. This act is effective for taxes imposed for taxable years beginning on or after January 1, 2011.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 903

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

H903-ARO-22 [v.1]

Page 1 of 1

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

Date \_\_\_\_\_, 2011

Representative \_\_\_\_\_

- 1 moves to amend the bill on page 1, line 11, by deleting the number "15", and substituting the  
2 number "20".  
3  
4

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



\* H 9 0 3 - A R O - 2 2 - V - 1 \*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

2

HOUSE BILL 903  
Committee Substitute Favorable 6/3/11

Short Title: Port Enhancement Zones.

(Public)

Sponsors:

Referred to:

May 5, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE TIER ONE TREATMENT FOR PORT ENHANCEMENT ZONES.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is  
5 amended by adding a new section to read:

6 "**§ 143B-437.012. Port enhancement zone designation.**

7 (a) **Port Enhancement Zone Defined.** – A port enhancement zone is an area that meets  
8 all of the following conditions:

9 (1) **It is comprised of one or more contiguous census tracts, census block**  
10 **groups, or both, in the most recent federal decennial census.**

11 (2) **All of the area is located within 20 miles of a State port and is capable of**  
12 **being used to enhance port operations.**

13 (3) **Every census tract and census block group that comprises the area has at**  
14 **least eleven percent (11%) of households with incomes of fifteen thousand**  
15 **dollars (\$15,000) or less and one of the 25 lowest average weekly wages in**  
16 **the State.**

17 (b) **Limitations and Designation.** – The area of a county that is included in one or more  
18 port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon  
19 application of a county, the Secretary of Commerce shall make a written determination whether  
20 an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section.  
21 The application shall include all of the information listed in this subsection. A determination  
22 under this section is effective until December 31 of the year following the year in which the  
23 determination is made. The Department of Commerce shall publish annually a list of all port  
24 enhancement zones with a description of their boundaries.

25 (1) **A map showing the census tracts and block groups that would comprise the**  
26 **zone.**

27 (2) **A detailed description of the boundaries of the area that would comprise the**  
28 **zone.**

29 (3) **A certification regarding the size of the proposed zone.**

30 (4) **Detailed census information on the county and the proposed zone.**

31 (5) **A resolution of the board of county commissioners requesting the**  
32 **designation of the area as a port enhancement zone.**

33 (6) **Any other material required by the Secretary of Commerce."**

34 SECTION 2. G.S. 105-129.81 is amended by adding a new subdivision to read:

35 "**§ 105-129.81. (See notes) Definitions.**

36 The following definitions apply in this Article:



...  
(20a) Port enhancement zone. – Defined in G.S. 143B-437.012.

...."

SECTION 3. G.S. 105-129.83 reads as rewritten:

"§ 105-129.83. Eligibility; forfeiture.

...  
(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

...  
(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress ~~zone~~zone, port enhancement zone, or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress ~~zone~~zone, port enhancement zone, or agrarian growth zone designations in effect at that time.

...."

SECTION 4. G.S. 105-129.87 reads as rewritten:

"§ 105-129.87. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

Area Development Tier	Amount of Credit
Tier One	\$12,500

1	Tier Two	5,000
2	Tier Three	750

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress ~~zone~~zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress ~~zone~~zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

15	<b>Area Development Tier</b>	<b>Threshold</b>
16	Tier One	5
17	Tier Two	10
18	Tier Three	15

(c) Calculation. – A job is located in a county, an urban progress zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

...  
(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress ~~zone~~zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress ~~zone~~zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

...."

SECTION 5. G.S. 105-129.88 reads as rewritten:

"§ 105-129.88. (See notes) Credit for investing in business property.

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress ~~zone~~zone, a ~~port enhancement zone~~port enhancement zone, or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal

installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or out of an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress ~~zone-zone~~, a port enhancement zone, or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

SECTION 6. This act is effective for taxes imposed for taxable years beginning on or after January 1, 2011.



**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 903** A BILL TO BE ENTITLED AN ACT TO PROVIDE TIER ONE TREATMENT FOR PORT ENHANCEMENT ZONES.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ \_\_\_\_\_

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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

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

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.



## HOUSE BILL 832: Allow Nonattorney Ownership of PC Law Firms

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 3, 2011
<b>Introduced by:</b>	Reps. Brubaker, McComas	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 832 would allow non-attorney ownership of professional corporation law firms subject to certain requirements.*

[As introduced, this bill was identical to S254, as introduced by Sen. Hartsell, which is currently in Rules and Operations of the Senate.]

**CURRENT LAW:** Chapter 55B of the General Statutes is the Professional Corporation Act. A professional corporation is a corporation which is engaged in rendering the professional services pursuant to a certificate of registration issued by the Licensing Board regulating the profession or practice, and which has as its shareholders only those individuals permitted by G.S. 55B-6. In a professional corporation, all stock shares must be held by a licensee except as permitted in 55B-6.

G.S. 55B-6 provides that a professional corporation may issue shares of its stock only to a licensee, and a shareholder may voluntarily transfer shares of stock to another licensee. Currently, the following nonlicensed employees can own up to 1/3 of the shares of a corporation: architects, landscape architects, engineers and land surveying professionals, geologists, and soil scientists. Any person may own up to 49% of the shares of an accounting firm if 51% of the shares are owned by licensees (accountants) and accountants comply with Chapter 93. Currently, the Professional Corporation Act does not allow non-lawyers to own stock in a law firms.

Chapter 84 of the General Statutes regulates attorneys. The North Carolina Rules of Professional Conduct for attorneys provide that a lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit if: (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration or (2) a nonlawyer has the right to direct or control the professional judgment of a lawyer (Rule 5.4).

**BILL ANALYSIS:** House Bill 832 would allow any person (including non-lawyers) to own up to 49% of the stock of a professional corporation providing legal services subject to the following criteria:

- Licensees (Attorneys) continue to own and control stock that represents at least 51% of the votes entitled to be cast in the election of directors.
- All licensees (Attorneys) who perform professional services on behalf of the corporation must comply with statutes governing attorneys and the rules adopted under those statutes.
- The stock certificates or other written evidence of ownership of any nonlicensee must bear a disclaimer indicating nonlicensees must not interfere with the professional judgment of attorneys representing clients. The disclaimer must also indicate that the duty to the Court prevails over all other duties and the duty to the client prevails over the duty to shareholders.
- Shareholders who hold or control less than 5% of the voting stock and who are not employees, directors, or officers of the professional corporation must not, solely as the result of stock

# House Bill 832

*Page 2*

ownership, be relevant for a determination of conflict of interest under the statutes regulating attorneys or the rules regulating the professional conduct of attorneys.

- A qualified retirement or employee stock ownership plan is deemed to be a licensee for purposes of this section if the majority of the trustees of the plan are licensees.

**EFFECTIVE DATE:** The act would become effective October 1, 2011.

*H832-SMRN-55(e1) v6*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 832

Short Title: Allow Nonattorney Ownership of PC Law Firms. (Public)

Sponsors: Representatives Brubaker and McComas (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW NONATTORNEY OWNERSHIP OF PROFESSIONAL  
CORPORATION LAW FIRMS, SUBJECT TO CERTAIN REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55B-6 reads as rewritten:

"§ 55B-6. **Capital stock; stock; general provisions; nonlicensee ownership; distribution.**

(a) General Provisions. – Except as provided in subsections ~~(a1)~~ (a1), (a2), and (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer shares of stock issued to the shareholder only to another licensee. No share or shares of any stock of a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, 89E, and 89F, for nonlicensed employees of the corporation to own not more than one-third of the total issued and outstanding shares of the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to the nonprofessional transferee. The issuance or transfer of any share of stock in violation of this section is void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any of the stock of a professional corporation.



1 (a1) Accounting Firms. – Any person may own up to forty-nine percent (49%) of the  
2 stock of a professional corporation rendering services under Chapter 93 of the General Statutes  
3 as long as: Statutes, subject to the following requirements:

4 (1) Licensees continue to own and control voting stock that represents at least  
5 fifty-one percent (51%) of the votes entitled to be cast in the election of  
6 directors of the professional corporation; and corporation.

7 (2) All licensees who perform professional services on behalf of the corporation  
8 comply with Chapter 93 of the General Statutes and the rules adopted  
9 thereunder.

10 (a2) Law Firms. – Any person may own up to forty-nine percent (49%) of the stock of a  
11 professional corporation rendering services under Chapter 84 of the General Statutes, subject to  
12 the following requirements:

13 (1) Licensees continue to own and control voting stock that represents at least  
14 fifty-one percent (51%) of the votes entitled to be cast in the election of  
15 directors of the professional corporation.

16 (2) All licensees who perform professional services on behalf of the corporation  
17 comply with Chapter 84 of the General Statutes and the rules adopted  
18 thereunder.

19 (3) The stock certificates or other written evidence of ownership of any  
20 nonlicensee shall bear the following language, in at least 12-point type:

21 'No nonlicensee shareholder shall interfere with the exercise of  
22 professional judgment by licensed attorneys in their representation of  
23 clients. If there is an inconsistency or conflict between the duties to  
24 the court, to clients, and to shareholders, then that conflict or  
25 inconsistency shall be resolved as follows:

26 1. The duty to the Court shall prevail over all other duties.

27 2. The duty to the client shall prevail over the duty to  
28 shareholders.'

29 (4) Shareholders who hold or control less than five percent (5%) of the voting  
30 stock and who are not employees, directors, or officers of the professional  
31 corporation shall not, solely as the result of stock ownership, be relevant for  
32 a determination of conflict of interest under Chapter 84 of the General  
33 Statutes or the rules adopted for the regulation of the professional conduct of  
34 licensees.

35 (5) A qualified retirement or employee stock ownership plan is deemed to be a  
36 licensee for purposes of this section if the majority of the trustees of the plan  
37 are licensees.

38 (b) Distribution. – A professional corporation formed pursuant to this Chapter may  
39 issue one hundred percent (100%) of its capital stock to another professional corporation in  
40 order for that corporation (the distributing corporation) to distribute in accordance with section  
41 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock  
42 of the controlled corporation to one or more shareholders of the distributing corporation  
43 authorized under this section to hold the shares. The distributing corporation shall distribute the  
44 stock of the controlled corporation within 30 days after the stock is issued to the distributing  
45 corporation. A share of stock of the controlled corporation that is not transferred in accordance  
46 with this subsection within 30 days after the share was issued to the distributing corporation is  
47 void."

48 **SECTION 2.** This act becomes effective October 1, 2011.



30 May 2011

Mr Bob Crumley  
Crumley Roberts LLP  
2400 Freeman Mill Road  
Greensboro NC 27406  
USA

By email: [bjcrumley@crumleycommercial.com](mailto:bjcrumley@crumleycommercial.com)

485 La Trobe Street  
Melbourne Vic 3000

Ph: (03) 9602 6888  
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Correspondence to:

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Kirsten Morrison

GPO Box 4864  
MELBOURNE VIC 3001

DX 229 MELBOURNE

Direct Ph: (03) 9602 6992  
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Email: [kmorrison@slatergordon.com.au](mailto:kmorrison@slatergordon.com.au)

Dear Mr Crumley

#### **Slater & Gordon Information**

---

You have expressed an interest in the experience of Slater & Gordon Ltd operating a legal practice through a publicly listed corporation. In particular you have asked about the company's experience in meeting the challenges of meeting legal professional and ethical obligations while operating in this business structure. Set out below is a summary of Slater & Gordon's experience in relation to these issues.

#### **Background**

Slater & Gordon Ltd is an Australian law practice with over 1000 employees and over 40 offices in all capital cities and regional locations throughout Australia. The law practice focuses on serving the legal needs of everyday Australians. The predominant work type is personal injury (for example, motor vehicle accidents and work accidents). The practice also offers services to consumers in wills estates, conveyancing and family law. The practice is also well known for its work on personal injury, financial services and shareholder class actions.

Slater & Gordon incorporated in 2001 and then listed on the Australian Securities Exchange (ASX) and issued an initial public offering in 2007. This capital raising opened the share register to institutional and retail investors in Australia and the legal practice has had shared ownership between legal practitioners and lay investors since that time. In 2006, Slater & Gordon also implemented an employee ownership plan which allowed for the issue of shares in the company to employees as part of their remuneration packages. Securities are issued under this plan to legal practitioner employees, but also non-legal practitioner employees.

#### **Ethical concerns**

When the regulatory framework in Australia was amended to allow legal practices to open up to non-legal ownership in 2004-2005, there were a number of issues raised concerning conflicts of interest, client confidentiality and that this business model would lead to a lowering of professional standards.

Prior to listing, Slater & Gordon consulted with Australian regulators (legal and corporate) around these issues. The regulatory framework in Australia has been designed to incorporate a number of protective mechanisms. Slater & Gordon has also adopted a number of governance measures to address these concerns.

In summary, the main protective measures in place are:

- the company is required to have at least one legal practitioner director at all times (Slater & Gordon currently has 2 legal practitioner directors on a board of 6 and the other 4 directors are independent directors and non-lawyers).

- the constitution of Slater & Gordon Ltd and all capital raising documentation clearly discloses to investors that the company, as an incorporated legal practice owes a hierarchy of duties to first, the courts, second, the clients and thirdly, shareholders. Further, to the extent there is ever any conflict between the board's obligation to act in the best interests of shareholders under federal corporations law and duties to the court or clients protected under state-based legal profession regulations, the latter will prevail;
- the legal practitioner directors are obliged at law to implement and maintain management systems to ensure compliance with legal professional and ethical obligations. These management systems must address issues such as: competent work practices to avoid negligence, effective client communication and confidentiality, and timely identification and resolution of conflicts of interest;
- the management systems are subject to a self-evaluation audit, which is submitted to a state-based regulator for review each year;
- legal practitioner directors must report to regulators if the conduct of another director would, or is likely to cause the legal practice to breach professional conduct rules;
- legal practitioner directors must also report to regulators any professional misconduct by employee solicitors and they must take all reasonable steps to address any professional misconduct by an employee solicitor;
- regulators have the right to remove a legal practitioner director where the person could be disqualified from acting as a company director under corporations law, they can also apply for declarations that certain persons may not participate in an entity providing legal services; and
- unfit persons must not be shareholders in an incorporated legal practice and Slater & Gordon Ltd has rights in its constitution to compulsorily acquire the shares of any shareholder who is at the time of acquiring the shares, or becomes subsequently, an unfit person (this includes where a person becomes bankrupt for example). Again, this was disclosed to investors clearly in public fund raisings.

You can see from the above description that in Australia, the maintenance of the ethical and professional structure of a legal practice is primarily ensured by the requirements that the company must have a legal practitioner director at all times and then the imposing of obligations on that legal practitioner director that they implement and safeguard the legal professional culture. There are serious consequences for non-compliance including that the practice can be forced into administration and the legal practitioner director can lose his or her practising certificate.

The issue of undue influence and conflicts of interest is dealt with directly by the hierarchy of obligations in the Constitution of Slater & Gordon. The ability of the regulator to disqualify unfit persons from acting as a legal practitioner director; the requirement that no unfit persons become a shareholder of an incorporated legal practice and the legal right of the company to protect its share register from unfit persons are also all important safeguards in this regard.

#### **Slater & Gordon's experience since 2007**

In arriving at the decision to list, the Board and senior management team formed the view that the best interests of shareholders in a legal corporation can only be served if the legal practice and each of the employee legal practitioners comply at all times with their ethical and professional duties to the courts and clients. In this way, the conflict of interest issues, although hypothetically problematic, largely fall away.

Since listing, we have not experienced anything to contradict this view. Were any issue to arise in the future, the Board and management team remain confident that they could be resolved effectively within the framework described above.

Further we believe that the process of incorporation has actually improved our compliance with professional and ethical legal standards. Slater & Gordon has taken extensive work in response to the regulatory requirement imposed on incorporated legal practices to implement and maintain management systems. This has included a process of documenting and improving our quality assurance standards and conducting annual internal audits of employee solicitors for compliance

against these standards. Audit results are published to the Board and senior managers and form the basis of continuous improvement programs.

We also believe that incorporation and in particular listing, has made the business side of legal practice clear and transparent to clients. The extensive and regular disclosure obligations required of listed companies through the rules of the ASX has meant that the ownership structure, the financial performance and governance structure is disclosed to all stakeholders, including clients, on a regular basis.

In summary, in our experience since 2007, the adoption of the structure of a publicly listed corporation has not in any way compromised Slater & Gordon's ability to fulfil its professional and ethical obligations to the administration of justice and to clients. Indeed, we believe that the governance requirements imposed on a listed incorporated legal practice in practice have actually complemented and supported our lawyers in the performance of their professional and ethical duties.

Yours sincerely



Kirsten Morrison  
General Counsel & Company Secretary  
**SLATER & GORDON LIMITED**





Personal attention. Verifiable results.

June 1, 2011

Subject: Opinion of Arthur M. Winstead, Jr., CPA

Subject Related to Opinion: Non-CPA Ownership of CPA Firms in North Carolina

The purpose of this document is for the expression of my thoughts and opinion concerning the consequences, if any, of non-CPA ownership within CPA firms in North Carolina. I have enclosed my resume as to my practice, leadership, and service roles to the CPA profession here in North Carolina and nationally in the United States.

As a point of emphasis, I would like to respectfully restate my service to the NC State Board of CPA Examiners (the Board). I served on the Board from September 2003 through September 2009. During the six years I served on the Board, I was a member and chairman of the following Board committees: "Applications, Licensing & Education" and the "Professional Standards Committee." As well, I served as Secretary-Treasurer, Vice-President, and two years as President of the Board. I believe those roles and my resume offer some evidence of my knowledge of a wide variety of regulatory issues concerning CPAs.

A few years before being appointed to the Board in 2003, the rules and laws here in North Carolina regarding non-CPA ownership in CPA firms were changed to permit non-CPAs to own up to forty-nine percent (49%) of a firm registered with the Board as a CPA firm.

During the eleven years, including the six years I served on the Board, since the rules and laws were changed to permit non-CPA ownership; I believe the following to be true based on fact and opinion:

1. Non-CPA ownership has not created any regulatory issues of significance to the practice of CPAs and CPA firms in the State of North Carolina. While there may certainly have been or have been since, I do not recall any specific case before the Board related to non-CPA ownership.
2. I do not believe there has been a negative consequence or increase to the fee structure CPAs and CPA firms charge the citizens and business community of North Carolina due to non-CPAs owning an interest in CPA firms. It would be my opinion that the consequence of non-CPAs owning an interest in CPA firms has, if anything, reduced fees or held them to less of an increase if non-CPAs had not been allowed to own an interest in CPA firms. I base that statement on my thought "that non-CPA ownership has permitted firms to offer a wider variety of services, thereby, minimizing fees charged by CPA firms to the public."
3. Lastly, my firm, Davenport, Marvin, Joyce & Co., LLP, has had a non-CPA owner for over ten years now. We and our clients have not encountered any problems or professional issues related to this non-CPA ownership in our firm.

I submit these thoughts, facts, and opinions respectfully and thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Arthur M. Winstead, Jr.".

Arthur M. Winstead, Jr.

**Davenport, Marvin, Joyce & Co., LLP**

703 Green Valley Road, Suite 201, Greensboro, NC 27408 • PO Box 9258, Greensboro, NC 27429-0258  
T 336-275-9886 • F 336-275-1129 • W dmj.com

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

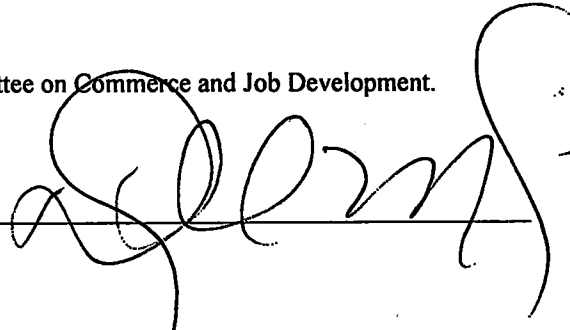
**HB 832** A BILL TO BE ENTITLED AN ACT TO ALLOW NONATTORNEY OWNERSHIP OF PROFESSIONAL CORPORATION LAW FIRMS, SUBJECT TO CERTAIN REQUIREMENTS.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE BUSINESS & LABOR

DATE: 6-3-11 Room: 643

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: RL CARTER

4. Name: WAYNE DAVIS

2. Name: LARRY ELLIOTT

5. Name: REGGIE SILLS

3. Name: DOUG HARRIS

6. Name: \_\_\_\_\_

## VISITOR REGISTRATION SHEET

Business and Labor  
Name of Committee

June 3, 2011  
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

SETH PETER	
DAN GAWFORD	NCLC
Alex Daniel	NCJC
Harry PAINE	NCJC
PAUL MEGGITT	NCBA
Kim bruch	NCBA
Kay Emanuel	Legislative Reporting Services
Alex Miller	KLG
David Miner	TRG INC

## VISITOR REGISTRATION SHEET

## Business and Labor

June 3, 2011

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Susan Deans

DCS

DOUL HERON

WILLIAM MULLEN

John McPherson

RF + S

David Johnson

NC State Bm

# VISITOR REGISTRATION SHEET

Business and Labor  
Name of Committee

June 3, 2011  
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Tate	
Laura Blair	NC State Ports
Bradford Snodden	Office of the Governor
Whitney Christensen	Jordan Price
Steve Woodson	NCFB
BERRY Jenkins	CAROLINAS AGC
DAVID BARNES	PS
W. Gardner Luper	DLC + Assoc
Allison Waller	Nelson Mullins
JOHN PETERSON	NCEOA
Christie Barber	CHPA

# MINUTES

## Business and Labor Subcommittee

Wednesday, June 8, 2011

10:00 a.m.

Room 643 LOB

The Business and Labor Subcommittee met on Wednesday, June 8, 2011 at 10:00 a.m. in Room 643 of the Legislative Office Building. Representative Darrell G. McCormick presided.

The following members were present:

- |                                   |  |
|-----------------------------------|--|
| 1. Representative Kelly Alexander | 10. Representative Tim Moffitt                       |
| 2. Representative Harold Brubaker | 11. Representative Rodney Moore                      |
| 3. Representative Becky Carney    | 12. Representative Garland Pierce                    |
| 4. Representative Jeff Collins    | 13. Representative Efton Sager                       |
| 5. Representative Nelson Dollar   | 14. Representative Mitchell Setzer                   |
| 6. Representative Elmer Floyd     | 15. Representative Phillip Shepard                   |
| 7. Representative Ken Goodman     | 16. Representative Mike Stone                        |
| 8. Representative Mike Hager      | 17. Representative Winkie Wilkins ( <i>excused</i> ) |
| 9. Representative Stephen LaRoque |  |

Meeting was called to Order at 10:00 a.m.

Introduction of Sergeant at Arms:

- |               |               |
|---------------|---------------|
| • Billy Jones | • Wayne Davis |
|---------------|---------------|

Introduction of Pages:

- Philip Pate – Duplin County – Sponsor: Representative Jimmy Dixon
- Dillon Ragusa – Wake County – Sponsor: Representative William Brisson

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
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HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
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**HB 721 was pulled from the agenda and not heard.**

Added SB 194 - Electric Vehicle Incentives to the agenda today:

HB 237	Economic Impact/Regulatory Legislation.	Representative Dollar
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Representative Rhyne, Jr.

Representative McElraft

Representative Folwell

Representative Nelson Dollar explained HB 237.

Representative Jeff Collins motioned for a favorable report. – Passed

**HB 237 – Received a favorable report.**

HB 24      Expand Duties of Economic Dev. Oversight  
Comm.

Representative Carney  
Representative Dollar  
Representative Brown  
Representative Wilkins, Jr.

Representative Becky Carney explained HB 24 – came out of Joint Legislative Study Commission – How to position North Carolina to grow international business.

Representative Mitchell Setzer motioned for a favorable report. – Passed

**HB 24 – Received a favorable report.**

SB 183      Selective Vegetation Removal/State Highways      Senator Brown  
Representative Mitchell Setzer moved to hear the proposed committee substitute (PCS).  
Representative Tim Moffitt proposed and explained an amendment to SB183.  
Representative Mitchell Setzer motioned to adopt the amendment. – Adopted  
Senator Harry Brown explained SB 183.

Public Speaker:

- Beau Memory, Legislative Liaison, NC Department of Transportation

Representative Stephen LaRoque motioned for a favorable report to the proposed House committee substitute, unfavorable to the original Senate bill. – Passed

**SB 183 – Received a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill.**

Representative Stephen LaRoque will be the bill sponsor in the House.

SB 438      Clarify Motor Vehicle Licensing Law.      Senator Apodaca

Senator Tom Apodaca explained SB 438.

Representative Mike Hager motioned for a favorable report – Passed

**SB 438 – Received a favorable report**

Representative Mike Hager will be the bill sponsor in the House.

SB 194      Electric Vehicle Incentives      Senator Apodaca  
Senator Meredith

Representative Becky Carney moved to hear to the proposed committee substitute (PCS).  
Representative Mike Hager explained SB 194.

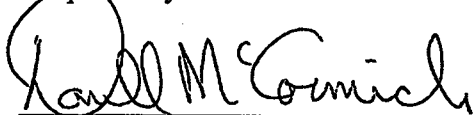
Representative Becky Carney motioned for a favorable report to the House committee substitute, unfavorable as to the Senate committee substitute bill.

**SB 194 – Received a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute Bill.**

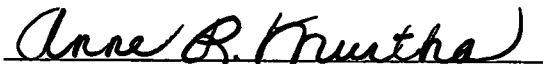
Representative Mike Hager will be the bill sponsor in the House.

**Adjournment** - Meeting adjourned at 10:28 am

Respectfully submitted



Representative Darrell McCormick  
Chairman



Anne Murtha  
Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, June 8, 2011

**TIME:** 10:00 am

**LOCATION:** 424 LOB

**COMMENTS:** Please reserve the allotted one hour for this meeting

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 237	Economic Impact/Regulatory Legislation.	Representative Dollar Representative Rhyne, Jr. Representative McElraft Representative Folwell
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
SB 183	Selective Vegetation Removal/State Highways .	Senator Brown
SB 194	Electric Vehicle Incentives.	Senator Apodaca Senator Meredith
SB 346	Exempt Cooking Schools from Food Regulations.	Senator Kinnaird

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **June 07, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)

## Corrected Notice

*\*Note: Room 643 LOB\**

### NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2011-2012 SESSION

You are hereby notified that the Committee on Commerce and Job Development Subcommittee on Business and Labor will meet as follows:

**DAY & DATE:** Wednesday, June 8, 2011

**TIME:** 10:00 am

**LOCATION:** \*643 LOB\*

**COMMENTS:** Removed SB 194 and SB 346 | Added HB 24 and SB 438  
We will complete the bills on the agenda

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 24	Expand Duties of Economic Dev. Oversight Comm.	Representative Carney Representative Dollar Representative Brown Representative Wilkins, Jr.
HB 237	Economic Impact/Regulatory Legislation.	Representative Dollar Representative Rhyne, Jr. Representative McElraft Representative Folwell
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
SB 183	Selective Vegetation Removal/State Highways .	Senator Brown
SB 438	Clarify Motor Vehicle Licensing Law.	Senator Apodaca

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6 PM o'clock on June 07, 2011.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

Anne Murtha (Committee Assistant)

# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 8, 2011**

**10:00 a.m.**

**Room 643 LOB**

**Chair: Representative Darrell G. McCormick**

---

Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 24	Expand Duties of Economic Dev. Oversight Comm.	Representative Carney Representative Dollar Representative Brown Representative Wilkins, Jr.
HB 237	Economic Impact/Regulatory Legislation.	Representative Dollar Representative Rhyne, Jr. Representative McElraft Representative Folwell
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick
SB 183	Selective Vegetation Removal/State Highways .	Senator Brown
SB 438	Clarify Motor Vehicle Licensing Law.	Senator Apodaca

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 721

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors: Representative McCormick (Primary Sponsor).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
EXTERMINATE BEDBUGS IN DWELLING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) reads as rewritten:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(9) Not offer for lease any premises that, at the time the landlord and tenant enter into a rental agreement, the landlord knows to be infested by the species cimex lectularius, also known as bedbugs. The landlord may, prior to leasing the premises, obtain a certificate from a licensed pest control company certifying that the premises are free of an infestation of bedbugs, and the certificate shall serve as conclusive evidence of the landlord's compliance with the provisions of this subdivision."

SECTION 2. G.S. 42-43(a) reads as rewritten:

"§ 42-43. Tenant to maintain dwelling unit.

(a) The tenant shall:

...

(8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation of the species cimex lectularius, also known as bedbugs."

SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

(a) A tenant shall notify his or her landlord, in writing, within five days of suspecting the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the landlord did not obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than 30 days before the written notification was given, then, within five days of receiving the notice from the tenant, the landlord shall contract with a licensed pest control company to exterminate any bedbugs in the premises. If the landlord did obtain a certificate from a licensed pest control company as provided in G.S. 42-42(a)(9), or if at least 30 days have passed since the tenant took initial possession of the premises, it shall be the tenant's responsibility to have the bedbugs in the premises exterminated.



1       (b) Where the tenant is responsible for the extermination of bedbugs, the landlord may  
2 provide the tenant with either the name, address, and telephone number of the licensed pest  
3 control company that certified the premises were free of an infestation of bedbugs or with the  
4 name, address, and telephone number of pest control companies that the landlord deems  
5 reputable. Within seven days of notifying the landlord of the suspected presence of bedbugs,  
6 the tenant shall do both of the following: (i) contract with one of the licensed pest control  
7 companies suggested by the landlord or, if no companies were suggested, with any licensed  
8 pest control company, and (ii) have the premises treated for bedbugs by the licensed pest  
9 control company. In all situations, the tenant shall allow the landlord and the licensed pest  
10 control company access to the premises and shall carefully follow all instructions provided by  
11 the landlord or licensed pest control company to facilitate the elimination of bedbugs. Where  
12 the tenant is responsible for the extermination of bedbugs, the tenant shall be solely responsible  
13 for any fees charged by the licensed pest control company and any damages associated with the  
14 presence and elimination of bedbugs from the premises and any attached units and spaces, and  
15 the tenant shall furnish to the landlord proof from the licensed pest control company of the  
16 services performed.

17       (c) After a licensed pest control company has treated the premises and deemed the  
18 premises free of an infestation of bedbugs, the tenant shall be responsible for all subsequent  
19 infestations. However, whenever a tenant notifies the landlord of the presence of bedbugs, if it  
20 is determined by a licensed pest control company that the source of the bedbugs is an adjacent  
21 unit, then the tenant in the source unit shall be responsible for the extermination of the bedbugs  
22 in accordance with the provisions of this section.

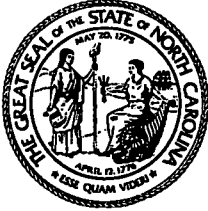
23       (d) The failure of any tenant to comply with the provisions of this section shall be a  
24 breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of  
25 the following: (i) contract with a licensed pest control company at the tenant's expense to  
26 exterminate the bedbugs; (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action  
27 against the tenant for damages."

28       **SECTION 4. G.S. 42-51 reads as rewritten:**

29       **"§ 42-51. Permitted uses of the deposit.**

30       Security deposits for residential dwelling units shall be permitted only for the tenant's  
31 possible nonpayment of rent and costs for water or sewer services provided pursuant to  
32 G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations  
33 under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien  
34 against the demised property due to the tenant's occupancy, costs of re-renting the premises  
35 after breach by the tenant, costs of removal and storage of tenant's property after a summary  
36 ejectment proceeding or court costs in connection with terminating a tenancy. The security  
37 deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one  
38 and one-half months' rent if a tenancy is month to month, and two months' rent for terms  
39 greater than month to month. These deposits must be fully accounted for by the landlord as set  
40 forth in G.S. 42-52."

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



## HOUSE BILL 237: Economic Impact/Regulatory Legislation

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 8, 2011
<b>Introduced by:</b>	Reps. Dollar, Rhyne, McElraft, Folwell	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 237 would require economic statements on all bills that propose regulatory changes, similar to the fiscal notes that agencies must prepare during rulemaking.*

**BILL ANALYSIS:** House Bill 327 would require any bill introduced in the General Assembly that (1) makes a change in law that is regulatory in nature and (2) could cause a **substantial economic impact** on the entities regulated by the proposed legislation to be accompanied by an economic impact statement prepared by the Fiscal Research Division. "Substantial economic impact" means an aggregate financial impact on (1) all persons affected of at least one million dollars (\$1,000,000) in a 12 month period or (2) any one person of at least one thousand dollars (\$1,000) in a 12 month period.

The bill also provides:

- The economic impact statement must identify and estimate all costs the legislation would have on entities regulated by it for the first 5 fiscal years the proposed change would be in effect.
- If the Fiscal Research Division determines that no dollar estimate is possible, the economic impact statement must contain a statement explaining why no dollar amount can be given.
- The economic impact statement must not offer comment or opinion on the merits of the bill, but may note technical or mechanical defects.
- The bill sponsor must present a copy of the bill with the request for an economic impact statement to the Fiscal Research Division. The Fiscal Research Division must prepare the economic impact statement and transmit it to the sponsor within 2 weeks after the request is made, unless the sponsor agrees to an extension of time.
- This economic impact statement must be attached to the original bill that is reported favorably by any committee of the General Assembly, but must be separate from the bill and must be clearly designated as an economic impact statement. An economic impact statement is not a part of the bill and is not an expression of legislative intent proposed by the bill.
- If a committee reports a proposed bill favorably with an amendment that could cause a substantial economic impact, then the chair of the committee must obtain and attach an economic impact statement to the bill.
- Upon the request of the Fiscal Research Division, certain entities must assist in preparing the economic impact statement (i.e. the Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, and the State department most directly concerned).
- Requires the Fiscal Research Division to furnish copies of economic impact statements to the sponsor of the bill.

# House Bill 237

*Page 2*

- Provides that any State department, institution, agency, or other authority which asks a legislator to introduce regulatory legislation that would have a substantial fiscal impact on entities regulated by the legislation, must furnish to the legislator and the Fiscal Research Division an economic impact statement estimating the effect of the measure for the ensuing 2 fiscal periods.

**EFFECTIVE DATE:** The act becomes effective January 1, 2012.

*H237-SMRN-63(e1) v2*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 237

Short Title: Economic Impact/Regulatory Legislation. (Public)

Sponsors: Representatives Dollar, Rhyne, McElraft, and Folwell (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

March 7, 2011

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE ECONOMIC IMPACT STATEMENTS ON ALL BILLS THAT  
PROPOSE REGULATORY CHANGES, SIMILAR TO THE FISCAL NOTES THAT  
AGENCIES MUST PREPARE DURING RULE MAKING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 120 of the General Statutes is amended by adding a new  
Article to read:

"Article 6E.

"Regulatory Legislation Economic Impact Statements.

**"§ 120-30.61. Regulatory legislation that has substantial economic impact must be  
accompanied by economic impact statement.**

(a) Every bill introduced in the General Assembly proposing any change in the law that  
is regulatory in nature that could cause a substantial economic impact on entities regulated by  
the legislation shall have attached to it at the time of its consideration by the General Assembly  
an economic impact statement prepared by the Fiscal Research Division. The economic impact  
statement shall identify and estimate, for the first five fiscal years the proposed change would  
be in effect, all costs of the proposed legislation on entities regulated by it. If, after careful  
investigation, the Fiscal Research Division determines that no dollar estimate is possible, the  
economic impact statement shall contain a statement to that effect, setting forth the reasons  
why no dollar amount can be given. No comment or opinion shall be included in the economic  
impact statement with regard to the merits of the measure for which the note is prepared, but  
technical and mechanical defects may be noted. As used in this Article, the term "substantial  
economic impact" means an aggregate financial impact on:

(1) All persons affected of at least one million dollars (\$1,000,000) in a  
12-month period; or

(2) Any one person of at least one thousand dollars (\$1,000) in a 12-month  
period.

(b) The sponsor of each bill to which this section applies shall present a copy of the bill  
with the request for an economic impact statement to the Fiscal Research Division. The Fiscal  
Research Division shall prepare the economic impact statement and transmit it to the sponsor  
within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This economic impact statement shall be attached to the original of each proposed  
bill that is reported favorably by any committee of the General Assembly, but shall be separate  
from the bill and shall be clearly designated as an economic impact statement. An economic





1 impact statement attached to a bill pursuant to this subsection is not a part of the bill and is not  
2 an expression of legislative intent proposed by the bill.

3 (d) If a committee of the General Assembly reports favorably a proposed bill with an  
4 amendment that proposes a change in the law that could cause a substantial economic impact to  
5 entities regulated by it, the chair of the committee shall obtain from the Fiscal Research  
6 Division and attach to the amended bill an economic impact statement as provided in this  
7 section.

8 (e) Upon the request of the Fiscal Research Division: (i) the Office of State Budget and  
9 Management, (ii) the Department of Revenue, (iii) the Department of the State Treasurer, (iv)  
10 the Department of the State Auditor, and (v) the State department most directly concerned shall  
11 assist the Fiscal Research Division in the preparation of the economic impact statement.

12 (f) Copies of economic impact statements prepared by the Fiscal Research Division  
13 shall be furnished to the sponsor of the bill.

14 **"§ 120-30.62. Legislation introduced by request.**

15 Any State department, institution, agency, or other authority requesting a member or  
16 members of the General Assembly to introduce regulatory legislation which if enacted would  
17 have a substantial fiscal impact on entities regulated by the legislation shall furnish to such  
18 member or members, and to the Fiscal Research Division, an economic impact statement  
19 containing a realistic estimate of the effect of the measure for the ensuing two fiscal periods."

20 **SECTION 2.** This act becomes effective January 1, 2012.

**2011 PERMANENT SUBCOMMITTEE REPORT**  
**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

**HB 237**      A BILL TO BE ENTITLED AN ACT TO REQUIRE ECONOMIC IMPACT STATEMENTS ON ALL BILLS THAT PROPOSE REGULATORY CHANGES, SIMILAR TO THE FISCAL NOTES THAT AGENCIES MUST PREPARE DURING RULE MAKING.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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



## HOUSE BILL 24: Expand Duties of Economic Dev. Oversight Comm

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 7, 2011
<b>Introduced by:</b>	Reps. Carney, Dollar, L. Brown, Wilkins	<b>Prepared by:</b>	Barbara Riley
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 24 expands the duties of the Joint Legislative Economic Development Oversight Committee.*

[As introduced, this bill was identical to S14, as introduced by Sens. Brunstetter, Stein, which is currently in Senate Finance.]

**CURRENT LAW:** Article 120 of Chapter 120 of the General Statutes creates the Joint Legislative Economic Development Oversight Committee. The purpose of the Committee is to examine, on a continuing basis, economic growth and development issues and strategies in North Carolina in order to make recommendations to the General Assembly on ways to promote economic development initiatives. In discharging its duties the Committee may study the budgets and programs of the Department of Commerce, analyze legislation from other states on economic development, and analyze proposals from the Economic Development Board.

**BILL ANALYSIS:** House Bill 24 would rename the Joint Legislative Economic Development Oversight Committee, the Joint Legislative Economic Development *and Global Engagement* Oversight Committee. The bill expands the purposes of the Committee to include making recommendations regarding promotion of economic growth and stimulating job creation in the global economy. The bill further adds that the Committee may:

- Analyze North Carolina's current international activity in the business, State government, and education sectors.
- Analyze barriers to international trade that may be addressed by legislation.
- Explore ways to increase coordination, synchronization, and intercommunication between State and local governmental entities.
- Collect and analyze data on global business trends.
- Study foreign representation opportunities for North Carolina that could solicit, target, educate, and recruit international businesses to North Carolina.
- Analyze incentives designed to encourage small businesses to export goods and service solutions.
- Study methods for positioning North Carolina as a portal to North America for international trade.
- Explore opportunities to increase foreign direct investment in North Carolina.

**EFFECTIVE DATE:** The act is effective when it becomes law.

**BACKGROUND:** House Bill 24 is a recommendation from the Joint Select Committee on Global Engagement.

H24-SMRF-94(e1) v1

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 24\*

Short Title:	Expand Duties of Economic Dev. Oversight Comm.	(Public)
Sponsors:	Representatives Carney, Dollar, L. Brown, and Wilkins (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY AND EXPAND THE DUTIES OF THE JOINT LEGISLATIVE  
3 ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 120 of Chapter 120 of the General Statutes reads as  
6 rewritten:

7 "Article 120.

8 "Joint Legislative Economic Development and Global Engagement Oversight Committee.

9 "§ 120-70.130. **Creation and membership of Joint Legislative Economic Development and**  
10 **Global Engagement Oversight Committee.**

11 The Joint Legislative Economic Development and Global Engagement Oversight  
12 Committee is established. The Committee consists of 12 members as follows:

- 13 (1) Six members of the Senate appointed by the President Pro Tempore of the  
14 Senate; and  
15 (2) Six members of the House of Representatives appointed by the Speaker of  
16 the House of Representatives.

17 Terms on the Committee are for two years and begin on the convening of the General  
18 Assembly in each odd-numbered year, except the terms of the initial members, which begin on  
19 appointment and end on the day of the convening of the 2007 General Assembly. Members  
20 may complete a term of service on the Committee even if they do not seek reelection or are not  
21 reelected to the General Assembly, but resignation or removal from service in the General  
22 Assembly constitutes resignation or removal from service on the Committee.

23 A member continues to serve until a successor is appointed. A vacancy shall be filled by the  
24 officer who made the original appointment.

25 "§ 120-70.131. **Purpose and powers of Committee.**

26 (a) The Joint Legislative Economic Development and Global Engagement Oversight  
27 Committee shall examine, on a continuing basis, economic ~~growth and development~~ and global  
28 engagement issues and strategies in North Carolina in order to make ongoing recommendations  
29 to the General Assembly on ways to promote cost-effective economic development  
30 ~~initiatives~~ initiatives, economic growth, and stimulating job creation in the global economy. In  
31 this examination, the Committee may:

- 32 (1) Study the budgets, programs, and policies of the Department of Commerce,  
33 the North Carolina Partnership for Economic Development, and other State,  
34 regional, and local entities involved in economic development.  
35 (2) Analyze legislation from other states regarding economic development.



\* H 2 4 - V - 1 \*

- (3) Analyze proposals produced by the Economic Development Board.
- (4) Analyze North Carolina's current international activity in the business, State government, and education sectors.
- (5) Analyze barriers to international trade that may be addressed by legislation.
- (6) Explore ways to increase coordination, synchronization, and intercommunication between State and local governmental entities.
- (7) Collect and analyze data on global business trends.
- (8) Study foreign representation opportunities for North Carolina that could solicit, target, educate, and recruit international businesses to North Carolina.
- (9) Analyze incentives designed to encourage small businesses to export goods and service solutions.
- (10) Study methods for positioning North Carolina as a portal to North America for international trade.
- (11) Explore opportunities to increase foreign direct investment in North Carolina.
- (12) Study any other matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

**"§ 120-70.132. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Economic Development and Global Engagement Oversight Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

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

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

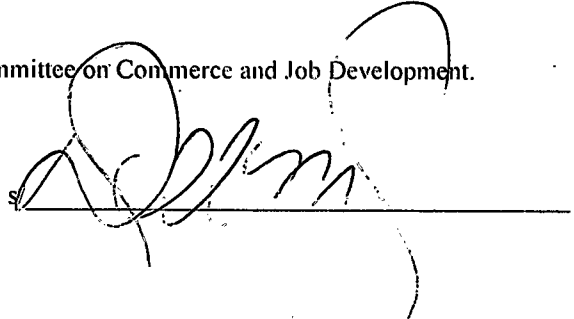
☐ Committee Substitute for

**HB 24** A BILL TO BE ENTITLED AN ACT TO MODIFY AND EXPAND THE DUTIES OF THE JOINT LEGISLATIVE ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.



☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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



## SENATE BILL 183: Selective Vegetation Removal/State Highways

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 7, 2011
<b>Introduced by:</b>	Sen. Brown	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	PCS to Fourth Edition S183-CSRO-21		Committee Counsel

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**SUMMARY:** *Senate Bill 183 would amend the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the rights-of-way of the State highway system, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing a process for appeals of selective vegetation removal permit decisions. The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.*

**The PCS deletes all of the provisions relating to fees from the bill and makes some changes to the provisions related to removal of vegetation pursuant to a permit.**

**CURRENT LAW:** The Outdoor Advertising Control Act is set out in Article 11 of Chapter 136 of the General Statutes. The Act is intended to control the erection and maintenance of outdoor advertising devices in order to "preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices." G.S. 136-18 grants the Department of Transportation (DOT) the authority to "employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways". Pursuant to its rulemaking authority, the Department has established a Selective Vegetation Removal Policy that is set out in the North Carolina Administrative Code. The policy provides for selective thinning, pruning, replacement, relocation, or removal of vegetation within highway rights of way for the purpose of opening views to office, institutional, commercial and industrial facilities and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. When removal of vegetation is allowed, it must be performed by the permittee in compliance with the policy and at no cost to the Department of Transportation. Under G.S. 136-18.7, the fee for a selective vegetation removal permit is \$200.

**BILL ANALYSIS:** The PCS to Senate Bill 183 would establish statutory standards for selective vegetation removal within the rights-of-way of the State highway system. Many of the provisions in the bill are substantially similar to existing provisions of the North Carolina Administrative Code.

**Section 1** of the bill prohibits the removal of vegetation in or on any right of way of a State road or State highway without a written selective vegetation removal permit issued pursuant to provisions in the bill and in accordance with DOT rules. Requests for a permit would be made to the appropriate person in the Division of Highways office, on a form prescribed by DOT. Permits may be requested by the owner of an outdoor advertising sign or the owner of a business facility. If the permit application is for a site located within a municipality, the municipality would have 30 days to review and comment on the application provided it has advised DOT in writing of its desire to review such applications and has identified the name of the local official who should receive notice. Local governments would be prohibited from regulating the removal of vegetation as authorized by DOT.

# Senate PCS 183

Page 2

**Section 2** of the bill establishes a standard for determining the monetary value of trees removed from State rights-of-way. Values would be determined and published by DOT annually by December 15, for use in the following calendar year.

**Section 3** of the bill add a provision that no electrical utility permit may be denied to an outdoor advertising sign for which a permit has been issued by DOT, so long as the permit is valid and otherwise compliant with technical utility standards.

**Section 4** of the bill establishes standards for the cutting or removal of vegetation pursuant to a selective vegetation removal permit issued to the owner of an outdoor advertising sign. The bill prescribes a maximum cut or removal zone for each sign face; the maximum zone varies depending upon whether the site is within the corporal limits and territorial jurisdiction of a municipality and whether the highway is an interstate or other route with fully controlled access. The permit applicant must submit a site plan to DOT, and DOT may conduct an on-site investigation. The bill sets out a procedure for resolving disputes concerning the accuracy of information on the site plan. Trees existing at the time the outdoor advertising sign was erected may only be removed if the applicant reimburses DOT for the established value of the trees or if the applicant agrees to remove two nonconforming signs for each sign at which the removal of trees is requested. Under specified conditions, a selective vegetation removal permit is not required for activities conducted from the private property side of a controlled access fence and with the consent of the landowner. In certain instances, DOT would have the authority to revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within highway right-of-way.

**Section 5** of the bill establishes standards for the issuance or denial of a selected vegetation removal permit. DOT would be required to approve or deny a permit within 30 day of receipt of the application; if no decision is conveyed in writing within the 30 day period, the application is deemed to be approved. Denial must be made in writing, by registered or certified mail, and must include reason for the denial. The bill requires that an application be denied when certain conditions apply.

**Section 6** establishes a process for appeals of selective vegetation removal permit decisions. An applicant would have 30 days in which to submit a written appeal, by registered or certified mail to the Secretary of Transportation, setting forth the facts and arguments upon which the appeal is based. The agency would be required to render a final decision within 90 days of receiving the written appeal. The bill provides that the aggrieved party may seek judicial review of the final agency decision.

**Section 7** requires that vegetation cutting or removal be done in accordance with accepted International Society of Arboriculture (ISA) standards. Selective vegetation removal permits would be valid for a period of 1 year and cutting or removal may occur more than one time during that year. The permittee must give a 48-hour notice to DOT before entering the right-of-way. Other terms and conditions are established concerning impeding the flow of traffic, access to the work site, traffic control signage, adherence to safety standards, property damage, and debris removal. Willful failure to comply with requirements specified in the permit could result in a 5-year moratorium for vegetation removal at the site or a summary revocation of the outdoor advertising permit.

**Section 8** establishes a procedure and standards for denial of a permit for proposed outdoor advertising. A district engineer would be required to refuse to issue a permit for a proposed outdoor advertising structure that would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act. The applicant would be notified of the denial and the basis for the denial by registered or certified mail. In the case of a sign located at a site where the 5-year moratorium is in effect for the unlawful destruction or cutting of vegetation, before denying the permit DOT would be required to reveal some evidence that the unlawful acts would create, increase, or improve a view to an outdoor advertising sign.



# Senate PCS 183

Page 3

The bill would prohibit DOT from issuing permits for new outdoor advertising signs at a location where existing trees, if they were to reach mature height, would make the proposed sign faces not completely visible from the viewing zone. An outdoor advertising permit in an area zoned industrial or commercial under authority of State law could not be issued if the zoning was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or represents spot zoning for the purpose of permitting outdoor advertising signs in an area that would not normally permit such signs. Outdoor advertising permits would also not be issued for certain locations where new construction contracts may affect spacing or location requirements for an outdoor advertising structure. Priority in spacing would be granted to the first submitted application for a permit at the location. DOT would also deny permits for locations on a State or US scenic byway.

**Section 9** amends the declaration of policy to reflect the goal of securing the right of validly permitted outdoor advertising to be clearly viewed by the traveling public.

**Section 10** directs the Department of Transportation to adopt temporary rules to administer the act.

**EFFECTIVE DATE:** Sections 10 and 11 of the bill would become effective when it becomes law. The remainder of the bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

*Brenda J Carter, counsel to Senate Transportation, Heather Fennell, counsel to Senate Finance, substantially contributed to this summary.*

*S183-SMRO-36(CSRO-21) v1*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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4

SENATE BILL 183  
Transportation Committee Substitute Adopted 4/28/11  
Finance Committee Substitute Adopted 5/19/11  
Fourth Edition Engrossed 5/24/11

Short Title: Selective Vegetation Removal/State Highways.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE  
VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE  
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18.7 reads as rewritten:

"§ 136-18.7. Fees.

The fee for a selective vegetation removal permit issued pursuant to ~~G.S. 136-18(5), (7), and (9) is two hundred dollars (\$200.00).~~ G.S. 136-93, 136-133.1, and 136-133.4 is four hundred dollars (\$400.00) per permitted site and is nonrefundable. The fee may be used by the Department of Transportation for the costs of administering the permit process and for highway beautification planting."

SECTION 2. G.S. 136-93 reads as rewritten:

"§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any



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1 person making any opening in a State road or State highway, or placing any structure thereon,  
2 or changing or removing any structure thereon without obtaining a written permit as herein  
3 provided, or not in compliance with the terms of such permit, or otherwise violating the  
4 provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall  
5 not apply to railroad crossings. The railroads shall keep up said crossings as now provided by  
6 law.

7 (b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub,  
8 or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut,  
9 trimmed, pruned, or removed without a written selective vegetation removal permit issued  
10 pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a  
11 permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the  
12 owner of an outdoor advertising sign or the owner of a business facility to the appropriate  
13 person in the Division of Highways office on a form prescribed by the Department. For  
14 purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor  
15 advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4)  
16 or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premise  
17 signs.

18 (c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a  
19 maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions  
20 of G.S. 136-133.1.

21 (d) If the application for vegetation cutting, thinning, pruning, or removal is for a site  
22 located within the corporate limits of a municipality, the municipality shall be given 30 days to  
23 review and provide nonbinding comments on the application if the municipality has previously  
24 advised the Department in writing of the desire to review such applications and the name of the  
25 local official to whom notice of such application should be directed. Local governments are  
26 prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits  
27 of interstate or primary highway rights-of-way by any permittee or other person authorized by  
28 the Department, including anyone authorized under G.S. 136-133.1(g)."

29 **SECTION 3.** Article 7 of Chapter 136 of the General Statutes is amended by  
30 adding a new section to read:

31 **"§ 136-93.2. Monetary value of trees.**

32 The monetary value for existing trees removed and eligible for reimbursement to the  
33 Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be  
34 determined on an annual basis by the Department. In determining the value of existing trees  
35 removed, the average cost per caliper inch shall be based on the lower value of either the  
36 average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5  
37 multiplier for installation and warranty or the average cost per caliper inch for tree planting  
38 contracts let by the Department in the previous calendar year. The values shall be determined  
39 and published by the Department no later than December 15 of each year. The values  
40 established pursuant to this section shall be used in calculating the monetary value of trees  
41 removed from State rights-of-way beginning January 1 of each year. If the Department fails to  
42 publish changes in values by December 15, then the values existing on December 15 shall be  
43 applicable to existing trees removed and eligible for reimbursement for the following year."

44 **SECTION 4.** G.S. 136-133 reads as rewritten:

45 **"§ 136-133. Permits required.**

46 (a) No person shall erect or maintain any outdoor advertising within 660 feet of the  
47 nearest edge of the right-of-way of the interstate or primary highway system, except those  
48 allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the  
49 nearest edge of the right-of-way of the interstate or primary highway system, except those  
50 allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from  
51 the Department of Transportation or its agents pursuant to the procedures set out by rules

adopted by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules adopted by the Department of Transportation. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules adopted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a forty dollar (\$40.00) initial fee and a thirty dollar (\$30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~one hundred twenty dollar (\$120.00) initial fee~~ one hundred fifty dollar (\$150.00) initial fee and a sixty dollar (\$60.00) annual renewal fee.

(b) If outdoor advertising is under construction and the Department of Transportation determines that a permit has not been issued for the outdoor advertising, the Department may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate this section. The stopwork order shall be prominently posted on the outdoor advertising structure, and no further notice of the stopwork order is required. The failure of an owner of outdoor advertising to comply immediately with the stopwork order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stopwork order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed.

(c) No electrical permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which the Department has issued a permit which has not been revoked, and the electrical permit is otherwise compliant with technical utility standards."

SECTION 5. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

- (1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.
- (2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.
- (3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.
- (4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.
- (5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:

a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

(6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c), (d), and (e) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

(1) A tree survey.

(2) That the applicant amends the site plan.

(3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all of the disputed trees are deleted from the application. If the applicant selects a tree survey, the landscape architect or certified arborist will submit a report under seal that contains a tree inventory of existing trees in the removal zone for the outdoor advertising structure and include the age of any tree that existed at the time that the sign was erected. The report will categorize tree species and include a site map of sufficient detail and dimensions. A tree survey will not be required for subsequent applications to cut, thin, prune, or remove trees at the same site for trees that have been previously permitted. Any dispute relating to whether or not the tree existed at the time the outdoor advertising sign was erected shall be conclusively resolved by information in the report from the licensed landscape architect or certified arborist.

(d) Except as provided in subsection (e) of this section, trees existing at the time the outdoor advertising sign was erected may only be removed within the zone created in subsection (a) of this section if the applicant satisfies one of the following two options selected by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees that existed at the time of the erection of the sign may be removed if the applicant agrees to remove two nonconforming outdoor advertising signs for each sign at which removal of existing trees is requested. The surrendered nonconforming signs must be fully disassembled

1 before any removal of existing trees is permitted and shall not be eligible for future outdoor  
2 advertising permits in perpetuity.

3 (e) Complete removal of trees of any age, except for native dogwoods and native  
4 redbuds, and all other vegetation shall be permitted in the cut and removal zone established in  
5 subsection (a) of this section if the applicant for the selective vegetation removal permit agrees  
6 to submit to the Department a plan for beautification and replanting at the site for which the  
7 vegetation removal permit is made. The Department shall develop rules for compensatory  
8 replanting, and shall, in consultation with the applicant and local government representatives,  
9 determine which sites must be replanted, and the types of plants and trees to be replanted. The  
10 replanting shall be conducted by the applicant or his agents in accordance with the rules  
11 adopted by the Department. If the conditions detailed in this subsection are agreed to by the  
12 applicant and approved by the Department, there shall be no reimbursement to the Department  
13 under G.S. 136-93.2 for removal of trees that existed at the time the outdoor sign was erected,  
14 nor shall the applicant be required to remove two nonconforming outdoor advertising signs for  
15 removal of existing trees at the site. The fee for a selective vegetation permit imposed under  
16 G.S. 136-18.7 of four hundred dollars (\$400.00) per permitted site shall be non-recurring for  
17 those sites at which the applicant for a permit agrees to submit and implement a replanting and  
18 maintenance plan approved by the Department as detailed in this subsection.

19 (f) Tree branches within a highway right-of-way that encroach into the zone created by  
20 points A, C, and D may be cut or pruned. Except as provided in subsection (g) of this section,  
21 no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut,  
22 trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising  
23 and within the limits of the highway right-of-way for the purpose of enhancing the visibility of  
24 outdoor advertising unless permitted to do so by the Department in accordance with this  
25 section, G.S. 136-93(b), 136-133.2, and 136-133.4.

26 (g) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign  
27 defined by subsection (a) of this section or the owner's designees may, working only from the  
28 private property side of the fence, without charge and without obtaining a selective vegetation  
29 removal permit, cut, trim, prune, or remove any tree or other vegetation except for native  
30 dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the  
31 controlled access fence, (ii) located within 200 feet on either side of the existing sign location  
32 as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three  
33 feet from a controlled access fence within the limits of the highway right-of-way. The activities  
34 permitted by this subsection must be performed from the private property owner side of the  
35 controlled access fence and with the consent of the owner of the land that is used to access said  
36 fence.

37 (h) No additional funds from the Highway Trust Fund shall be used for the purpose of  
38 vegetation replacement under the provisions of this section.

39 (i) The Department may revoke an outdoor advertising permit for the unlawful  
40 destruction or illegal cutting of vegetation within the right-of-way of any State-owned or  
41 State-maintained highway only if both of the following conditions are met:

42 (1) The unlawful destruction or illegal cutting occurred within 500 feet of either  
43 side of the corresponding sign location measured along the edge of  
44 pavement of the main-travel way of the nearest controlled route and was  
45 willfully caused by one or more of the following:

46 a. The sign owner.

47 b. The permit holder.

48 c. The lessee or advertiser employing the sign.

49 d. Any employees, agents, or assigns of persons listed in  
50 sub-subdivisions a. through c. of this subdivision, including, but not  
51 limited to, independent contractors hired by any of the above

persons, or the owner of the property upon which the sign is located, if expressly authorized by the above persons to use or maintain the sign.

- (2) There is substantial, material evidence that the unlawful destruction or illegal cutting of vegetation would create, increase, or improve a view to the outdoor advertising sign for passing motorists from the main-traveled way of the nearest controlled route."

SECTION 6. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

(a) Except as provided in G.S. 136-133.1(g), permits to remove vegetation may be granted for outdoor advertising locations that have been permitted for at least two years prior to the date of application. The Department shall approve or deny an application submitted pursuant to this section, including the fee required by G.S. 136-18.7 and all required documentation, within 30 days of the receipt of an application for a selective vegetation removal permit. If written notice of approval or denial is not given to the applicant within the 30-day period, then the application shall be deemed approved. If the application is denied, the Department shall advise the applicant, in writing, by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for the denial.

(b) The application shall be denied by the Department if any of the following apply:

- (1) The application is for the opening of a view to an outdoor advertising sign which has been declared illegal, is currently the subject of litigation, or the outdoor advertising sign owner has received written notification of an investigation by the Department for impermissible activity.
- (2) The application is for the opening of a view to an outdoor advertising sign that was obscured from view at the time of erection of the sign.
- (3) Removal of vegetation will adversely affect the safety of the traveling public.
- (4) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in accordance with a local, State, or federal beautification or environmental project but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any beautification or environmental projects that were planted after the erection of the outdoor advertising sign, but before May 1, 2011, and that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- (5) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in conjunction with a designed noise barrier but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any plantings done in conjunction with a designed noise barrier that were planted after the erection of the outdoor advertising sign but before May 1, 2011, that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- (6) The applicant, or the applicant's designee, has not performed satisfactory work authorized by previous permits issued under the provisions of this section. The Department may not deny an application for a permit if the

work authorized by previous permits issued pursuant to this section was performed by a landscape architect or certified arborist.

(7) The selective vegetation removal, cutting, or pruning involves opening of a view to a junkyard.

(8) Unlawful destruction or illegal cutting of vegetation as defined in G.S. 136-133.1(i) has occurred within five years preceding the date of filing an application with the Department for a selective vegetation removal permit."

SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.4. Selective vegetation removal permits.**

(a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or removed by the permittee or the permittee's agent in accordance with accepted International Society of Arboriculture (ISA) standards.

(b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way.

(c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any highway -while performing vegetation removal authorized by a permit. Access to the work site on controlled access highways must be gained without using the main travel way of the highway. The Department shall determine the traffic control signage that may be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department. The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards while performing the work.

(d) Any damage to vegetation designated to remain at the site, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the permittee to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent. All trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas



1 provided by the permittee. No burning or burying of trimmings, laps, or debris shall be  
2 permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips  
3 may be neatly spread on a right-of-way at locations which the Department determines will not  
4 be harmful to the environment or affect traffic safety.

5 (e) Willful failure to substantially comply with all the requirements specified in the  
6 selective vegetation removal permit, unless otherwise mutually resolved by the Department and  
7 the permittee, shall result in a five-year moratorium for vegetation removal at the site, a  
8 summary revocation of the outdoor advertising permit if such willful failure meets the  
9 standards in G.S. 136-133.1(i), payment of Department investigative costs, and forfeiture of  
10 any applicable performance bond as determined by the Secretary. The moratorium shall begin  
11 upon execution of a settlement agreement or entry of a final disposition in the case."

12 **SECTION 9.** Article 11 of Chapter 136 of the General Statutes is amended by  
13 adding a new section to read:

14 **"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

15 (a) When a district engineer determines that a proposed outdoor advertising structure  
16 would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising  
17 Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor  
18 advertising structure.

19 (b) When a violation of the Outdoor Advertising Control Act has been discovered, the  
20 district engineer shall notify the permit applicant by registered or certified mail, return receipt  
21 requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the  
22 reason for the denial and the statutes or rules forming the basis for the denial and include a  
23 copy of the Act.

24 (c) The Department shall not issue permits for new outdoor advertising signs at a sign  
25 location for a period of five years where the unlawful destruction or illegal cutting of  
26 vegetation has occurred within 500 feet on either side of the proposed sign location and as  
27 measured along the edge of the pavement of the main travel way of the nearest controlled route.  
28 For the purposes of this section, unlawful destruction or illegal cutting is defined as the  
29 destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-  
30 maintained rights-of-way by anyone other than the Department or its authorized agents, or  
31 without written permission of the Department. Before a permit is denied pursuant to this  
32 subsection, the Department shall reveal substantial, material evidence that the unlawful  
33 destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor  
34 advertising sign from the main traveled way of the nearest controlled route and that the  
35 unlawful destruction or illegal cutting was related to the erection or maintenance of the sign.  
36 The five-year period shall begin on the date the Department executes a settlement agreement or  
37 final disposition of the case is entered. The five-year prohibition period for a new sign permit  
38 shall apply to all sign locations, including the following:

- 39 (1) Sign locations where the unlawful destruction or illegal cutting of vegetation  
40 occurs prior to the time the location becomes a conforming location.
- 41 (2) Sign locations where a revocation of an existing permit has been upheld and  
42 a sign has been removed.
- 43 (3) Sign locations where the unlawful destruction or illegal cutting occurs prior  
44 to receipt of an outdoor advertising permit.
- 45 (4) Sign locations where the unlawful destruction or illegal cutting occurs  
46 following receipt of an outdoor advertising permit application, but prior to  
47 the issuance of the permit by the Department.

48 (d) The Department shall not issue permits for new outdoor advertising signs at a sign  
49 location where existing trees, if they were to reach the average mature size for that species,  
50 would make the proposed sign faces, when erected, not completely visible from the viewing  
51 zone. "Existing trees" are those trees that at the time of the permit application are four inches or

greater in diameter as measured six inches from the ground. "Viewing zone" means the area which is 500 feet as measured along the edge of the main-traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.

(e) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be issued to a location if the zoning to commercial or industrial zones was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support any one of the commercial or industrial uses.

(f) Outdoor advertising permits shall not be issued to a location for a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed. The prohibition authorized by this subsection shall not extend for a period longer than 18 months. Priority in spacing shall be given by the Department to the first submitted application for an outdoor advertising permit at the location.

(g) Outdoor advertising permits shall not be issued for a location on a North Carolina or United States route designated as a scenic byway."

SECTION 10. G.S. 136-127 reads as rewritten:

"§ 136-127. Declaration of policy.

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and ~~devices~~. devices, and to secure the right of validly permitted outdoor advertising to be clearly viewed by the traveling public. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising."

SECTION 11. The department of shall adopt temporary rules to administer this act.

SECTION 12. Sections 11 and 12 are effective when it becomes law. The remainder of this act becomes October 1, 2011, and applies to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

SENATE BILL 183  
Transportation Committee Substitute Adopted 4/28/11  
Finance Committee Substitute Adopted 5/19/11  
Fourth Edition Engrossed 5/24/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S183-CSRO-21 [v.2]

6/7/2011 6:57:46 PM

Short Title: Selective Vegetation Removal/State Highways.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE  
VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE  
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-93 reads as rewritten:

"§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the



provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premise signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide nonbinding comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed. Local governments are prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits of interstate or primary highway rights-of-way by any permittee or other person authorized by the Department, including anyone authorized under G.S. 136-133.1(g)."

**SECTION 2.** Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-93.2. Monetary value of trees.**

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year."

**SECTION 3.** G.S. 136-133 is amended by adding a new subsection to read:

"(c) No electrical permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which the Department has issued a permit which has not been revoked, and the electrical permit is otherwise compliant with technical utility standards."

**SECTION 4.** Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's

designees. may cut, thin, prune, or remove vegetation in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

- (1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.
- (2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.
- (3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.
- (4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.
- (5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:
  - a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.
  - b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.
- (6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c), (d), and (e) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

- (1) A tree survey.
- (2) That the applicant amends the site plan.
- (3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all

1 of the disputed trees are deleted from the application. If the applicant selects a tree survey, the  
2 landscape architect or certified arborist will submit a report under seal that contains a tree  
3 inventory of existing trees in the removal zone for the outdoor advertising structure and include  
4 the age of any tree that existed at the time that the sign was erected. The report will categorize  
5 tree species and include a site map of sufficient detail and dimensions. A tree survey will not be  
6 required for subsequent applications to cut, thin, prune, or remove trees at the same site for  
7 trees that have been previously permitted. Any dispute relating to whether or not the tree  
8 existed at the time the outdoor advertising sign was erected shall be conclusively resolved by  
9 information in the report from the licensed landscape architect or certified arborist.

10 (d) Except as provided in subsection (c) of this section, trees existing at the time the  
11 outdoor advertising sign was erected may only be removed within the zone created in  
12 subsection (a) of this section if the applicant satisfies one of the following two options selected  
13 by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees  
14 that existed at the time of the erection of the sign may be removed if the applicant agrees to  
15 remove two nonconforming outdoor advertising signs for each sign at which removal of  
16 existing trees is requested. The surrendered nonconforming signs must be fully disassembled  
17 before any removal of existing trees is permitted and shall not be eligible for future outdoor  
18 advertising permits in perpetuity.

19 (e) Removal of trees and vegetation of any age, including complete removal, except for  
20 native dogwoods and native redbuds, shall be permitted within the cut or removal zone  
21 established in subsection (a) of this section if the applicant for the selective vegetation removal  
22 permit, in lieu of compliance with subsection (d) of this section, agrees to submit to the  
23 Department a plan for beautification and replanting related to the site for which the vegetation  
24 permit request is made. The Department shall develop rules for compensatory replanting,  
25 including the criteria for determining which sites qualify for replanting, and shall, in  
26 consultation with the applicant and local government representatives, determine which sites  
27 must be replanted, and the types of plants and trees to be replanted. The replanting and  
28 maintenance shall be conducted by the applicant or his agents in accordance with the rules  
29 adopted by the Department. If the conditions detailed in this subsection are agreed to by the  
30 applicant and approved by the Department, there shall be no reimbursement to the Department  
31 under G.S. 136-93.2 for removal of trees that existed at the time the outdoor sign was erected.  
32 nor shall the applicant be required to remove two nonconforming outdoor advertising signs for  
33 removal of existing trees at the site.

34 (f) Tree branches within a highway right-of-way that encroach into the zone created by  
35 points A, C, and D may be cut or pruned. Except as provided in subsection (g) of this section,  
36 no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut,  
37 trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising  
38 and within the limits of the highway right-of-way for the purpose of enhancing the visibility of  
39 outdoor advertising unless permitted to do so by the Department in accordance with this  
40 section, G.S. 136-93(b), 136-133.2, and 136-133.4.

41 (g) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign  
42 defined by subsection (a) of this section or the owner's designees may, working only from the  
43 private property side of the fence, without charge and without obtaining a selective vegetation  
44 removal permit, cut, trim, prune, or remove any tree or other vegetation except for native  
45 dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the  
46 controlled access fence, (ii) located within 200 feet on either side of the existing sign location  
47 as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three  
48 feet from a controlled access fence within the limits of the highway right-of-way. The activities  
49 permitted by this subsection must be performed from the private property owner side of the

1 controlled access fence and with the consent of the owner of the land that is used to access said  
2 fence.

3 (h) No additional funds from the Highway Trust Fund shall be used for the purpose of  
4 vegetation replacement under the provisions of this section.

5 (i) The Department may revoke an outdoor advertising permit for the unlawful  
6 destruction or illegal cutting of vegetation within the right-of-way of any State-owned or  
7 State-maintained highway only if both of the following conditions are met:

8 (1) The unlawful destruction or illegal cutting occurred within 500 feet of either  
9 side of the corresponding sign location measured along the edge of  
10 pavement of the main-travel way of the nearest controlled route and was  
11 willfully caused by one or more of the following:

12 a. The sign owner.

13 b. The permit holder.

14 c. The lessee or advertiser employing the sign.

15 d. Any employees, agents, or assigns of persons listed in  
16 sub-subdivisions a. through c. of this subdivision, including, but not  
17 limited to, independent contractors hired by any of the above  
18 persons, or the owner of the property upon which the sign is located,  
19 if expressly authorized by the above persons to use or maintain the  
20 sign.

21 (2) There is substantial, material evidence that the unlawful destruction or  
22 illegal cutting of vegetation would create, increase, or improve a view to the  
23 outdoor advertising sign for passing motorists from the main-traveled way of  
24 the nearest controlled route."

25 **SECTION 5.** Article 11 of Chapter 136 of the General Statutes is amended by  
26 adding a new section to read:

27 **"§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

28 (a) Except as provided in G.S. 136-133.1(g), permits to remove vegetation may be  
29 granted for outdoor advertising locations that have been permitted for at least two years prior to  
30 the date of application. The Department shall approve or deny an application submitted  
31 pursuant to this section, including the fee required by G.S. 136-18.7 and all required  
32 documentation, within 30 days of the receipt of an application for a selective vegetation  
33 removal permit. If written notice of approval or denial is not given to the applicant within the  
34 30-day period, then the application shall be deemed approved. If the application is denied, the  
35 Department shall advise the applicant, in writing, by registered or certified mail, return receipt  
36 requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for  
37 the denial.

38 (b) The application shall be denied by the Department if any of the following apply:

39 (1) The application is for the opening of a view to an outdoor advertising sign  
40 which has been declared illegal, is currently the subject of litigation, or the  
41 outdoor advertising sign owner has received written notification of an  
42 investigation by the Department for impermissible activity.

43 (2) The application is for the opening of a view to an outdoor advertising sign  
44 that was obscured from view at the time of erection of the sign.

45 (3) Removal of vegetation will adversely affect the safety of the traveling  
46 public.

47 (4) Trees, shrubs, or other vegetation of any sort that are requested to be cut,  
48 thinned, pruned, or removed were planted in accordance with a local, State,  
49 or federal beautification or environmental project but only to the extent that  
50 such planting was done prior to the erection of the outdoor advertising sign

- the visibility of which is sought to be enhanced. Any beautification or environmental projects that were planted after the erection of the outdoor advertising sign, but before May 1, 2011, and that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- (5) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in conjunction with a designed noise barrier but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any plantings done in conjunction with a designed noise barrier that were planted after the erection of the outdoor advertising sign but before May 1, 2011, that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- (6) The applicant, or the applicant's designee, has not performed satisfactory work authorized by previous permits issued under the provisions of this section. The Department may not deny an application for a permit if the work authorized by previous permits issued pursuant to this section was performed by a landscape architect or certified arborist.
- (7) The selective vegetation removal, cutting, or pruning involves opening of a view to a junkyard.
- (8) Unlawful destruction or illegal cutting of vegetation as defined in G.S. 136-133.1(i) has occurred within five years preceding the date of filing an application with the Department for a selective vegetation removal permit."

**SECTION 6.** Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

**SECTION 7.** Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:



1 **"§ 136-133.4. Selective vegetation removal permits.**

2 (a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or  
3 removed by the permittee or the permittee's agent in accordance with accepted International  
4 Society of Arboriculture (ISA) standards.

5 (b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or  
6 remove vegetation more than one time per year. A 48-hour notification shall be provided to the  
7 Department by the permittee before entering the right-of-way.

8 (c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any  
9 highway -while performing vegetation removal authorized by a permit. Access to the work site  
10 on controlled access highways must be gained without using the main travel way of the  
11 highway. The Department shall determine the traffic control signage that may be required. The  
12 permittee shall furnish, erect, and maintain the required signs as directed by the Department.  
13 The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards  
14 while performing the work.

15 (d) Any damage to vegetation designated to remain at the site, to highway fences, signs,  
16 paved areas, or other facilities shall be repaired or replaced by the permittee to the condition  
17 prior to the occurrence of the damage caused by the permittee or the permittee's agent. All  
18 trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas  
19 provided by the permittee. No burning or burying of trimmings, laps, or debris shall be  
20 permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips  
21 may be neatly spread on a right-of-way at locations which the Department determines will not  
22 be harmful to the environment or affect traffic safety.

23 (e) Willful failure to substantially comply with all the requirements specified in the  
24 selective vegetation removal permit, unless otherwise mutually resolved by the Department and  
25 the permittee, shall result in a five-year moratorium for vegetation removal at the site, a  
26 summary revocation of the outdoor advertising permit if such willful failure meets the  
27 standards in G.S. 136-133.1(i), payment of Department investigative costs, and forfeiture of  
28 any applicable performance bond as determined by the Secretary. The moratorium shall begin  
29 upon execution of a settlement agreement or entry of a final disposition in the case."

30 **SECTION 8.** Article 11 of Chapter 136 of the General Statutes is amended by  
31 adding a new section to read:

32 **"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

33 (a) When a district engineer determines that a proposed outdoor advertising structure  
34 would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising  
35 Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor  
36 advertising structure.

37 (b) When a violation of the Outdoor Advertising Control Act has been discovered, the  
38 district engineer shall notify the permit applicant by registered or certified mail, return receipt  
39 requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the  
40 reason for the denial and the statutes or rules forming the basis for the denial and include a  
41 copy of the Act.

42 (c) The Department shall not issue permits for new outdoor advertising signs at a sign  
43 location for a period of five years where the unlawful destruction or illegal cutting of  
44 vegetation has occurred within 500 feet on either side of the proposed sign location and as  
45 measured along the edge of the pavement of the main travel way of the nearest controlled route.  
46 For the purposes of this section, unlawful destruction or illegal cutting is defined as the  
47 destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-  
48 maintained rights-of-way by anyone other than the Department or its authorized agents, or  
49 without written permission of the Department. Before a permit is denied pursuant to this  
50 subsection, the Department shall reveal substantial, material evidence that the unlawful

1 destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor  
2 advertising sign from the main traveled way of the nearest controlled route and that the  
3 unlawful destruction or illegal cutting was related to the erection or maintenance of the sign.  
4 The five-year period shall begin on the date the Department executes a settlement agreement or  
5 final disposition of the case is entered. The five-year prohibition period for a new sign permit  
6 shall apply to all sign locations, including the following:

- 7 (1) Sign locations where the unlawful destruction or illegal cutting of vegetation  
8 occurs prior to the time the location becomes a conforming location.
- 9 (2) Sign locations where a revocation of an existing permit has been upheld and  
10 a sign has been removed.
- 11 (3) Sign locations where the unlawful destruction or illegal cutting occurs prior  
12 to receipt of an outdoor advertising permit.
- 13 (4) Sign locations where the unlawful destruction or illegal cutting occurs  
14 following receipt of an outdoor advertising permit application, but prior to  
15 the issuance of the permit by the Department.

16 (d) The Department shall not issue permits for new outdoor advertising signs at a sign  
17 location where existing trees, if they were to reach the average mature size for that species,  
18 would make the proposed sign faces, when erected, not completely visible from the viewing  
19 zone. "Existing trees" are those trees that at the time of the permit application are four inches or  
20 greater in diameter as measured six inches from the ground. "Viewing zone" means the area  
21 which is 500 feet as measured along the edge of the main-traveled way of the controlled route  
22 on each side of the proposed sign structure which will have a sign face.

23 (c) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be  
24 issued to a location if the zoning to commercial or industrial zones was adopted within one year  
25 prior to the filing of the permit application and is not part of comprehensive zoning or  
26 constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning  
27 designed primarily for the purpose of permitting outdoor advertising signs and in an area which  
28 would not normally permit outdoor advertising. Zoning shall not be considered "primarily for  
29 the purpose of permitting outdoor advertising signs" if the zoning would permit more than one  
30 principal commercial or industrial use, other than outdoor advertising, and the size of the land  
31 being zoned can practically support any one of the commercial or industrial uses.

32 (f) Outdoor advertising permits shall not be issued to a location for a period of 12  
33 months prior to the proposed letting of a new construction contract that may affect the spacing  
34 or location requirements for an outdoor advertising structure until the project is completed. The  
35 prohibition authorized by this subsection shall not extend for a period longer than 18 months.  
36 Priority in spacing shall be given by the Department to the first submitted application for an  
37 outdoor advertising permit at the location.

38 (g) Outdoor advertising permits shall not be issued for a location on a North Carolina or  
39 United States route designated as a scenic byway."

40 **SECTION 9. G.S. 136-127 reads as rewritten:**

41 **"§ 136-127. Declaration of policy.**

42 The General Assembly hereby finds and declares that outdoor advertising is a legitimate  
43 commercial use of private property adjacent to roads and highways but that the erection and  
44 maintenance of outdoor advertising signs and devices in areas in the vicinity of the  
45 right-of-way of the interstate and primary highway systems within the State should be  
46 controlled and regulated in order to promote the safety, health, welfare and convenience and  
47 enjoyment of travel on and protection of the public investment in highways within the State, to  
48 prevent unreasonable distraction of operators of motor vehicles and to prevent interference with  
49 the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists  
50 and promote the prosperity, economic well-being and general welfare of the State, and to

1 preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the  
2 State highways and to promote the reasonable, orderly and effective display of such signs,  
3 displays and ~~deviees~~ devices, and to secure the right of validly permitted outdoor advertising to  
4 be clearly viewed by the traveling public. It is the intention of the General Assembly to provide  
5 and declare herein a public policy and statutory basis for the regulation and control of outdoor  
6 advertising."

7 **SECTION 10.** The Department of Transportation shall adopt temporary rules to  
8 administer this act.

9 **SECTION 11.** Sections 10 and 11 are effective when it becomes law. The  
10 remainder of this act becomes October 1, 2011, and applies to permit applications or renewals  
11 submitted on or after that date and to offenses occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 183

Amendment No. \_\_\_\_\_

COMMITTEE SUBSTITUTE S183-CSRD-21

(to be filled in by  
Principal Clerk)

Rep.) Moffitt  
Sen.) \_\_\_\_\_

1 moves to amend the bill on page 7, line 50

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words

4 "substantial material" and substituting  
5 the word "some";

6 \_\_\_\_\_

7 and on page 8, lines 2-3, by rewriting  
8 the lines to read:

9 \_\_\_\_\_

10 "advertising signs from the main traveled  
11 way of the nearest controlled route."

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

SIGNED \_\_\_\_\_

ADOPTED ☒

FAILED ☐

TABLED ☐

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**S**

**D**

**SENATE BILL 183  
Transportation Committee Substitute Adopted 4/28/11  
Finance Committee Substitute Adopted 5/19/11  
Fourth Edition Engrossed 5/24/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S183-PCS75178-RO-21**

Short Title:    Selective Vegetation Removal/State Highways.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE  
VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE  
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 136-93 reads as rewritten:

**"§ 136-93. Openings, structures, pipes, trees, and issuance of permits.**

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the



provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premises signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide nonbinding comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed. Local governments are prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits of interstate or primary highway rights-of-way by any permittee or other person authorized by the Department, including anyone authorized under G.S. 136-133.1(g)."

SECTION 2. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-93.2. Monetary value of trees.**

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year."

SECTION 3. G.S. 136-133 is amended by adding a new subsection to read:

(c) No electrical permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which the Department has issued a permit which has not been revoked, and the electrical permit is otherwise compliant with technical utility standards."

SECTION 4. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation in accordance with this section,

G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

- (1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.
- (2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.
- (3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.
- (4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.
- (5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:
  - a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.
  - b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.
- (6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c), (d), and (e) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

- (1) A tree survey.
- (2) That the applicant amends the site plan.
- (3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all of the disputed trees are deleted from the application. If the applicant selects a tree survey, the landscape architect or certified arborist will submit a report under seal that contains a tree

1 inventory of existing trees in the removal zone for the outdoor advertising structure and include  
2 the age of any tree that existed at the time that the sign was erected. The report will categorize  
3 tree species and include a site map of sufficient detail and dimensions. A tree survey will not be  
4 required for subsequent applications to cut, thin, prune, or remove trees at the same site for  
5 trees that have been previously permitted. Any dispute relating to whether or not the tree  
6 existed at the time the outdoor advertising sign was erected shall be conclusively resolved by  
7 information in the report from the licensed landscape architect or certified arborist.

8 (d) Except as provided in subsection (e) of this section, trees existing at the time the  
9 outdoor advertising sign was erected may only be removed within the zone created in  
10 subsection (a) of this section if the applicant satisfies one of the following two options selected  
11 by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees  
12 that existed at the time of the erection of the sign may be removed if the applicant agrees to  
13 remove two nonconforming outdoor advertising signs for each sign at which removal of  
14 existing trees is requested. The surrendered nonconforming signs must be fully disassembled  
15 before any removal of existing trees is permitted and shall not be eligible for future outdoor  
16 advertising permits in perpetuity.

17 (e) Removal of trees and vegetation of any age, including complete removal, except for  
18 native dogwoods and native redbuds, shall be permitted within the cut or removal zone  
19 established in subsection (a) of this section if the applicant for the selective vegetation removal  
20 permit, in lieu of compliance with subsection (d) of this section, agrees to submit to the  
21 Department a plan for beautification and replanting related to the site for which the vegetation  
22 permit request is made. The Department shall develop rules for compensatory replanting,  
23 including the criteria for determining which sites qualify for replanting, and shall, in  
24 consultation with the applicant and local government representatives, determine which sites  
25 must be replanted, and the types of plants and trees to be replanted. The replanting and  
26 maintenance shall be conducted by the applicant or his or her agents in accordance with the  
27 rules adopted by the Department. If the conditions detailed in this subsection are agreed to by  
28 the applicant and approved by the Department, there shall be no reimbursement to the  
29 Department under G.S. 136-93.2 for removal of trees that existed at the time the outdoor sign  
30 was erected, nor shall the applicant be required to remove two nonconforming outdoor  
31 advertising signs for removal of existing trees at the site.

32 (f) Tree branches within a highway right-of-way that encroach into the zone created by  
33 points A, C, and D may be cut or pruned. Except as provided in subsection (g) of this section,  
34 no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut,  
35 trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising  
36 and within the limits of the highway right-of-way for the purpose of enhancing the visibility of  
37 outdoor advertising unless permitted to do so by the Department in accordance with this  
38 section, G.S. 136-93(b), 136-133.2, and 136-133.4.

39 (g) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign  
40 defined by subsection (a) of this section or the owner's designees may, working only from the  
41 private property side of the fence, without charge and without obtaining a selective vegetation  
42 removal permit, cut, trim, prune, or remove any tree or other vegetation except for native  
43 dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the  
44 controlled access fence, (ii) located within 200 feet on either side of the existing sign location  
45 as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three  
46 feet from a controlled access fence within the limits of the highway right-of-way. The activities  
47 permitted by this subsection must be performed from the private property owner side of the  
48 controlled access fence and with the consent of the owner of the land that is used to access said  
49 fence.

50 (h) No additional funds from the Highway Trust Fund shall be used for the purpose of  
51 vegetation replacement under the provisions of this section.



(i) The Department may revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within the right-of-way of any State-owned or State-maintained highway only if both of the following conditions are met:

(1) The unlawful destruction or illegal cutting occurred within 500 feet of either side of the corresponding sign location measured along the edge of pavement of the main travel way of the nearest controlled route and was willfully caused by one or more of the following:

a. The sign owner.

b. The permit holder.

c. The lessee or advertiser employing the sign.

d. Any employees, agents, or assigns of persons listed in sub-subdivisions a. through c. of this subdivision, including, but not limited to, independent contractors hired by any of the above persons, or the owner of the property upon which the sign is located, if expressly authorized by the above persons to use or maintain the sign.

(2) There is substantial, material evidence that the unlawful destruction or illegal cutting of vegetation would create, increase, or improve a view to the outdoor advertising sign for passing motorists from the main travel way of the nearest controlled route."

SECTION 5. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

(a) Except as provided in G.S. 136-133.1(g), permits to remove vegetation may be granted for outdoor advertising locations that have been permitted for at least two years prior to the date of application. The Department shall approve or deny an application submitted pursuant to this section, including the fee required by G.S. 136-18.7 and all required documentation, within 30 days of the receipt of an application for a selective vegetation removal permit. If written notice of approval or denial is not given to the applicant within the 30-day period, then the application shall be deemed approved. If the application is denied, the Department shall advise the applicant, in writing, by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for the denial.

(b) The application shall be denied by the Department if any of the following apply:

(1) The application is for the opening of a view to an outdoor advertising sign which has been declared illegal, is currently the subject of litigation, or the outdoor advertising sign owner has received written notification of an investigation by the Department for impermissible activity.

(2) The application is for the opening of a view to an outdoor advertising sign that was obscured from view at the time of erection of the sign.

(3) Removal of vegetation will adversely affect the safety of the traveling public.

(4) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in accordance with a local, State, or federal beautification or environmental project but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any beautification or environmental projects that were planted after the erection of the outdoor advertising sign, but before May 1, 2011, and that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.

- (5) Trees, shrubs, or other vegetation of any sort that are requested to be cut, thinned, pruned, or removed were planted in conjunction with a designed noise barrier but only to the extent that such planting was done prior to the erection of the outdoor advertising sign the visibility of which is sought to be enhanced. Any plantings done in conjunction with a designed noise barrier that were planted after the erection of the outdoor advertising sign but before May 1, 2011, that were planted beyond 250 feet as measured down the edge of the pavement of the travel way from point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- (6) The applicant, or the applicant's designee, has not performed satisfactory work authorized by previous permits issued under the provisions of this section. The Department may not deny an application for a permit if the work authorized by previous permits issued pursuant to this section was performed by a landscape architect or certified arborist.
- (7) The selective vegetation removal, cutting, or pruning involves opening of a view to a junkyard.
- (8) Unlawful destruction or illegal cutting of vegetation as defined in G.S. 136-133.1(i) has occurred within five years preceding the date of filing an application with the Department for a selective vegetation removal permit."

SECTION 6. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.4. Selective vegetation removal permits.**

(a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or removed by the permittee or the permittee's agent in accordance with accepted International Society of Arboriculture (ISA) standards.

(b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way.

(c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any highway while performing vegetation removal authorized by a permit. Access to the work site on controlled access highways must be gained without using the main travel way of the highway. The Department shall determine the traffic control signage that may be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department. The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards while performing the work.

(d) Any damage to vegetation designated to remain at the site, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the permittee to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent. All trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas provided by the permittee. No burning or burying of trimmings, laps, or debris shall be permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips may be neatly spread on a right-of-way at locations which the Department determines will not be harmful to the environment or affect traffic safety.

(e) Willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit, unless otherwise mutually resolved by the Department and the permittee, shall result in a five-year moratorium for vegetation removal at the site, a summary revocation of the outdoor advertising permit if such willful failure meets the standards in G.S. 136-133.1(i), payment of Department investigative costs, and forfeiture of any applicable performance bond as determined by the Secretary. The moratorium shall begin upon execution of a settlement agreement or entry of a final disposition in the case."

SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

(a) When a district engineer determines that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When a violation of the Outdoor Advertising Control Act has been discovered, the district engineer shall notify the permit applicant by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the reason for the denial and the statutes or rules forming the basis for the denial and include a copy of the Act.

(c) The Department shall not issue permits for new outdoor advertising signs at a sign location for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location and as measured along the edge of the pavement of the main travel way of the nearest controlled route. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department. Before a permit is denied pursuant to this subsection, the Department shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main travel way of the nearest controlled route. The five-year period shall begin on the date the Department executes a settlement agreement or final disposition of the case is entered. The five-year prohibition period for a new sign permit shall apply to all sign locations, including the following:

- (1) Sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location.
- (2) Sign locations where a revocation of an existing permit has been upheld and a sign has been removed.
- (3) Sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit.
- (4) Sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to the issuance of the permit by the Department.

(d) The Department shall not issue permits for new outdoor advertising signs at a sign location where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. "Existing trees" are those trees that at the time of the permit application are four inches or greater in diameter as measured six inches from the ground. "Viewing zone" means the area which is 500 feet as measured along the edge of the main travel way of the controlled route on each side of the proposed sign structure which will have a sign face.

(e) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be issued to a location if the zoning to commercial or industrial zones was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support any one of the commercial or industrial uses.

(f) Outdoor advertising permits shall not be issued to a location for a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed. The prohibition authorized by this subsection shall not extend for a period longer than 18 months. Priority in spacing shall be given by the Department to the first submitted application for an outdoor advertising permit at the location.

(g) Outdoor advertising permits shall not be issued for a location on a North Carolina or United States route designated as a scenic byway."

**SECTION 9. G.S. 136-127 reads as rewritten:**

**"§ 136-127. Declaration of policy.**

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and ~~devices~~ devices, and to secure the right of validly permitted outdoor advertising to be clearly viewed by the traveling public. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising."

1           **SECTION 10.** The Department of Transportation shall adopt temporary rules to  
2 administer this act.

3           **SECTION 11.** Sections 10 and 11 of this act are effective when this act becomes  
4 law. The remainder of this act becomes effective October 1, 2011, and applies to permit  
5 applications or renewals submitted on or after that date and to offenses occurring on or after  
6 that date.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

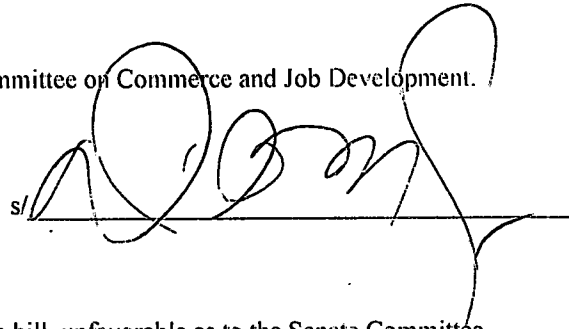
☒ Committee Substitute for

**SB 183** A BILL TO BE ENTITLED AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE HIGHWAY SYSTEM.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill. *2*

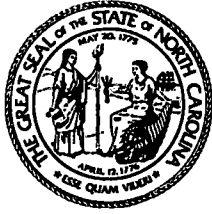
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**(FOR JOURNAL USE ONLY)**

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

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

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



## SENATE BILL 438: Clarify Motor Vehicle Licensing Law

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 7, 2011
<b>Introduced by:</b>	Sen. Apodaca	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	Third Edition		Committee Counsel

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**SUMMARY:** *Senate Bill 438 makes changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law.*

### **BILL ANALYSIS:**

**Section 1** of the bill amends the provision requiring a licensing course for those applying for a used motor vehicle dealer license. Current law does not require the course for applicants who are licensed as new motor vehicle dealers if certain conditions are met. This section eliminates the conditions and exempts the applicant from the course if he or she is licensed as a new motor vehicle dealer.

**Section 2** requires an applicant for a license under the dealers and manufacturers law to submit a certification that the applicant is familiar, and intends to comply, with the licensing law and other North Carolina laws governing the conduct and operation of the business for which the license is sought.

**Section 3** authorizes any party to a franchise agreement (dealer, manufacturer, factory branch, distributor, distributor branch) to file a petition before the Commissioner of Motor Vehicles for resolution of a dispute related to the franchise or franchise-related form agreement. This does not preclude any other form of recourse, and decisions are reviewable pursuant to Chapter 150B.

**Section 4** amends G.S. 20-301.1, which requires written notice to a dealer before the manufacturer charges the dealer's account for certain merchandise, tools, or equipment. This section requires notice for any charges totaling more than \$5,000. If the dealer disputes the charges, no payment would be required unless and until a final judgment is rendered.

**Section 5** amends G.S. 20-305(4), which provides for notice by a dealer of proposed transfer, sale, assignment, relocation, etc. of a dealership and opportunity for the manufacturer to object. This section specifies that the provision also applies to a dealer's proposed change in use of an existing facility to provide for the sales or service of additional line-makes of new motor vehicles.

**Section 6** amends a provision regarding payment of fair market value for a franchise upon termination, cancellation, or nonrenewal. Current law bases the amount on the value of the franchise on the day 12 months prior to the notice of termination. This section would change the "look back" date to the day 18 months prior to the notice of termination.

**Section 7** expands the current statutory provision requiring manufacturers to allocate vehicles to franchised dealers fairly and equitably. This section would require the manufacturer to consider each dealer's historical selling patterns, and would prohibit the willful or malicious use of a vehicle allocation process to force a dealer to close, sell, relocate, or renovate a franchise, or to cause the dealer financial distress.

**Section 8** amends a provision prohibiting a manufacturer from coercing a dealer to purchase or lease signs upon unreasonable or onerous conditions to also prohibit a manufacturer from coercing a dealer to erect or relocate signs.

# Senate Bill 438

Page 2

**Section 9** prohibits the manufacturer from requiring or coercing a dealer to change the principal operator, general manager, or any other manager or supervisor employed by the dealer.

**Section 10** amends existing law regarding compensation paid by manufacturers to dealers for parts, work, and service in connection with warranty service. This section provides for an optional rate calculation based on actual retail invoices submitted by the dealer. The section also prohibits a manufacturer from denying a dealer the right to return unsold parts and accessories if they were not specifically ordered by the dealer and have not been sold after 15 months.

**Section 11** strengthens existing provisions that protect customer data maintained by dealers. Manufacturers would be prohibited from requesting the data except under limited circumstances.

**Section 12** makes the act applicable to all current and future franchises and existing agreements between new motor vehicle dealers and manufacturers.

**Section 13** is a severability clause that provides that if any part of the act is found to be invalid, the remaining provisions are still in effect.

**EFFECTIVE DATE:** Section 6 of the act is effective January 1, 2014. The remainder of the act is effective when it becomes law.

*Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.*

*S438-SMRO-37(e3) v1*



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 438  
Commerce Committee Substitute Adopted 6/2/11  
Third Edition Engrossed 6/6/11**

Short Title: Clarify Motor Vehicle Licensing Law.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS  
LICENSING LAW.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-288(a1) reads as rewritten:

"(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

(1) The required fee.

(2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) ~~and operates from an established showroom one mile or less from the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision.~~

(3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.

(4) The application for a dealer license plate."

**SECTION 2.** G.S. 20-288 is amended by adding a new subsection to read:

"(b1) The Division shall require in such license application and each application for renewal of license a certification that the applicant is familiar with the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws governing the conduct and operation of the business for which the license or license renewal is sought and that the applicant shall comply with the provisions of these laws, with the



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provisions of Article 12 of Chapter 20 of the General Statutes, and with other lawful regulations of the Division."

SECTION 3. G.S. 20-301 is amended by adding a new subsection to read:

"(g) Notwithstanding any other statute, regulation, or rule or the existence of a pending legal or administrative proceeding in any other forum any franchised new motor vehicle dealer or any manufacturer, factory branch, distributor, or distributor branch may elect to file a petition before the Commissioner for resolution of any dispute that may arise with respect to any of the rights or obligations of the dealer or of the manufacturer, factory branch, distributor, or distributor branch related to a franchise or franchise-related form agreement. The Commissioner shall have the authority to apply principles of law, equity, and good faith in determining such matters. The filing of a petition by a dealer or a manufacturer, factory branch, distributor, or distributor branch pursuant to this section shall not preclude the party filing the petition from pursuing any other form of recourse it may have, either before the Commissioner or in another form, including any damages and injunctive relief. The Commissioner shall have the authority to receive and evaluate the facts in the matter of controversy and render a decision by entering an order which shall thereafter become binding and enforceable with respect to the parties, subject to the right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes."

SECTION 4. G.S. 20-301.1(a) reads as rewritten:

"(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, or other charges or amounts which total more than five thousand dollars (\$5,000), other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, ~~the prior written notice is required for~~ pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's account for the following ~~charges or debits:~~ advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the ~~dealer-dealer;~~ and any other charges or amounts which total more than five thousand dollars (\$5,000). If the franchised new motor vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's account, the dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court."

SECTION 5. G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in

1 writing by the dealer within 30 days after receipt of an objection to the  
2 proposed transfer, sale, assignment, relocation, or change, and after a  
3 hearing on the matter, that the failure to permit or honor the transfer, sale,  
4 assignment, relocation, or change is unreasonable under the circumstances.  
5 No franchise may be transferred, sold, assigned, relocated, or the executive  
6 management or principal operators changed, or the use of an existing facility  
7 changed, unless the franchisor has been given at least 30 days' prior written  
8 notice as to the proposed transferee's name and address, financial ability, and  
9 qualifications of the proposed transferee, a copy of the purchase agreement  
10 between the dealership and the proposed transferee, the identity and  
11 qualifications of the persons proposed to be involved in executive  
12 management or as principal operators, and the location and site plans of any  
13 proposed relocation or change in use of a dealership facility. The franchisor  
14 shall send the dealership and the proposed transferee notice of objection, by  
15 registered or certified mail, return receipt requested, to the proposed transfer,  
16 sale, assignment, relocation, or change within 30 days after receipt of notice  
17 from the dealer, as provided in this section. The notice of objection shall  
18 state in detail all factual and legal bases for the objection on the part of the  
19 franchisor to the proposed transfer, sale, assignment, relocation, or change  
20 that is specifically referenced in this subdivision. An objection to a proposed  
21 transfer, sale, assignment, relocation, or change in the executive  
22 management or principal operator of the ~~dealership~~ dealership or change in  
23 the use of the facility may only be premised upon the factual and legal bases  
24 specifically referenced in this ~~subdivision~~ subdivision or G.S. 20-305(11), as  
25 it relates to change in the use of a facility. A manufacturer's notice of  
26 objection which is based upon factual or legal issues that are not specifically  
27 referenced in this subdivision or G.S. 20-305(11) with respect to a change in  
28 the use of an existing facility as being issues upon which the Commissioner  
29 shall base his determination shall not be effective to preserve the franchisor's  
30 right to object to the proposed transfer sale, assignment, relocation, or  
31 change, provided the dealership or proposed transferee has submitted written  
32 notice, as required above, as to the proposed transferee's name and address,  
33 financial ability, and qualifications of the proposed transferee, a copy of the  
34 purchase agreement between the dealership and the proposed transferee, the  
35 identity and qualifications of the persons proposed to be involved in the  
36 executive management or as principal operators, and the location and site  
37 plans of any proposed ~~relocation~~ relocation or change in the use of an  
38 existing facility. Failure by the franchisor to send notice of objection within  
39 30 days shall constitute waiver by the franchisor of any right to object to the  
40 proposed transfer, sale, assignment, relocation, or change. If the franchisor  
41 requires additional information to complete its review, the franchisor shall  
42 notify the dealership within 15 days after receipt of the proposed transferee's  
43 name and address, financial ability, and qualifications, a copy of the  
44 purchase agreement between the dealership and the proposed transferee, the  
45 identity and qualifications of the persons proposed to be involved in  
46 executive management or as principal operators, and the location and site  
47 plans of any proposed relocation or change in use of the dealership facility.  
48 If the franchisor fails to request additional information from the dealer or  
49 proposed transferee within 15 days of receipt of this initial information, the  
50 30-day time period within which the franchisor may provide notice of  
51 objection shall be deemed to run from the initial receipt date. Otherwise, the

30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed change in use of a dealership facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, the sole issue for determination by the Commissioner is whether the new motor vehicle dealer has a reasonable line of credit for each make or line of motor vehicle and remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer or distributor. The reasonable facilities requirements of the manufacturer or distributor shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof

1 before the Commissioner under this subdivision. It is unlawful for a  
2 manufacturer to, in any way, condition its approval of a proposed transfer,  
3 sale, assignment, change in the dealer's executive management, principal  
4 operator, or appointment of a designated successor, on the existing or  
5 proposed dealer's willingness to construct a new facility, renovate the  
6 existing facility, acquire or refrain from acquiring one or more line-makes of  
7 vehicles, separate or divest one or more line-makes of vehicle, or establish or  
8 maintain exclusive facilities, personnel, or display space. It is unlawful for a  
9 manufacturer to, in any way, condition its approval of a proposed relocation  
10 on the existing or proposed dealer's willingness to acquire or refrain from  
11 acquiring one or more line-makes of vehicles, separate or divest one or more  
12 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,  
13 or display space. The opinion or determination of a franchisor that the  
14 continued existence of one of its franchised dealers situated in this State is  
15 not viable, or that the dealer holds or fails to hold licensing rights for the sale  
16 of other line-makes of vehicles in a manner consistent with the franchisor's  
17 existing or future distribution or marketing plans, shall not constitute a  
18 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed  
19 change in use of a dealership facility or relocation: provided, however, that  
20 nothing contained in this subdivision shall be deemed to prevent or prohibit  
21 a franchisor from failing to approve a dealer's proposed relocation on  
22 grounds that the specific site or facility proposed by the dealer is otherwise  
23 unreasonable under the circumstances. Approval of a relocation pursuant to  
24 this subdivision shall not in itself constitute the franchisor's representation or  
25 assurance of the dealer's viability at that location."

26 **SECTION 6.** G.S. 20-305(6)d.3. reads as rewritten:

27 "3. In addition to the other payments set forth in this section, if a  
28 termination, cancellation, or nonrenewal is premised upon  
29 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
30 the manufacturer or distributor shall be liable to the dealer for  
31 an amount at least equivalent to the fair market value of the  
32 franchise on (i) the date the franchisor announces the action  
33 which results in termination, cancellation, or nonrenewal; or  
34 (ii) the date the action which results in termination,  
35 cancellation, or nonrenewal first became general knowledge;  
36 or (iii) the day ~~12 months~~ 18 months prior to the date on  
37 which the notice of termination, cancellation, or nonrenewal  
38 is issued, whichever amount is higher. Payment is due not  
39 later than 90 days after the manufacturer or distributor has  
40 received notice in writing from, or on behalf of, the new  
41 motor vehicle dealer specifying the elements of compensation  
42 requested by the dealer. If the termination, cancellation, or  
43 nonrenewal is due to a manufacturer's change in distributors,  
44 the manufacturer may avoid paying fair market value to the  
45 dealer if the new distributor or the manufacturer offers the  
46 dealer a franchise agreement with terms acceptable to the  
47 dealer."

48 **SECTION 7.** G.S. 20-305(14) reads as rewritten:

49 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
50 accessories in reasonable quantities relative to the new motor vehicle dealer's  
51 facilities and sales potential in the new motor vehicle dealer's market area as

determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. ~~Except~~ Additionally, except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, each any sales objectives which a manufacturer, factory branch, distributor, or distributor branch shall establishes for any of its franchised dealers in this State must be reasonable, and every manufacturer, factory branch, distributor, or distributor branch must allocate its products within this State in a manner that provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its franchised dealers in this State. Additionally, each manufacturer shall make available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer advertises nationally as being available for purchase. A manufacturer shall not unfairly discriminate among its franchised dealers in this allocation process that does all of the following:

- a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.
- b. Allocates an adequate supply of vehicles to each dealer by series, product line, and model for the dealer to achieve the performance standards established by the manufacturer and distributor.
- c. Is fair and equitable to all of its franchised dealers in this State.
- d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.
- e. Does not unfairly discriminate among its franchised dealers in its allocation process.

This subsection is not violated, however, if such failure is caused solely by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, and other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply. The willful or malicious maintenance, creation, or alteration of a vehicle allocation process or formula by a

manufacturer, factory branch, distributor, or distributor branch that is in any part designed or intended to force or coerce a dealer in this State to close or sell the dealer's franchise, cause the dealer financial distress, or to relocate, update, or renovate the dealer's existing dealership facility shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

SECTION 8. G.S. 20-305(39) reads as rewritten:

"(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to ~~purchase or lease~~ purchase, lease, erect, or relocate one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 9. G.S. 20-305 is amended by adding a new subdivision to read:

**"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...  
(43) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to change the principal operator, general manager, or any other manager or supervisor employed by the dealer. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument that is inconsistent with this subdivision shall be deemed null and void and without force and effect."

SECTION 10. G.S. 20-305.1 reads as rewritten:

**"§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain

warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the dealer's market offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the dealer's rate for parts and labor with the practices of other franchised dealers who are selling competing line-makes of vehicles within the dealer's market. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of this subsection.

(a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation:

- (1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
- (2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs;
- (3) Engine assemblies and transmission assemblies;
- (4) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of repairs;
- (5) Nuts, bolts, fasteners, and similar items that do not have an individual part number;
- (6) Tires; and
- (7) Vehicle reconditioning.

(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

(a4) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

...



(h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised new motor vehicle dealer the right to return any part or accessory that the dealer has not sold after 15 months where the part or accessory was not obtained through a specific order initiated by the franchised new motor vehicle dealer but instead was specified for, sold to, and shipped to the dealer pursuant to an automated ordering system, provided that such part or accessory is in the condition required for return to the manufacturer, factory branch, distributor, or distributor branch and the dealer returns the part within 60 days of it becoming eligible under this subsection. For purposes of this subsection, an "automated ordering system" shall be a computerized system required by the manufacturer that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory being returned under this subsection."

SECTION 11. G.S. 20-305.7 reads as rewritten:

**"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

(a) Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data, or service files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data, or service files as a condition to the dealer's participation in any incentive program or contest for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services for which the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement, or which shall customarily be provided to dealers, shall be voidable at the option of the dealer, unless all of the following conditions are satisfied: (i) the customer information requested relates solely to the specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require that the dealer provide general customer information or other information related to the dealer; (ii) such requirement is lawful and would also not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to have direct access to the dealer's computer system, but the dealer is instead permitted to provide the same dealer, consumer, or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format such as comma delimited in accordance with subsection (h) of this section. Nothing contained in this section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

- (1) Satisfy any safety or recall notice obligations.
- (2) Complete the sale and delivery of a new motor vehicle to a customer.
- (3) Validate and pay customer or dealer incentives.
- (4) Submit to the manufacturer, factory branch, distributor, or distributor branch claims for any services supplied by the dealer for any claim for warranty parts or repairs.

At the request of a manufacturer or distributor or of a third party acting on behalf of a manufacturer or distributor, a dealer may only be required to provide customer information related solely to such manufacturer's or distributor's own vehicle makes for reasonable marketing purposes, market research, consumer surveys, market analysis, and dealership

performance analysis, but the dealer is only required to provide such customer information to the extent lawfully permissible; to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require the dealer to provide general customer information or other information related to the dealer; and to the extent the requested information can be provided without requiring that the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 6801, et seq.

No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may access or utilize customer or prospect information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State for purposes of soliciting any such customer or prospect on behalf of, or directing such customer or prospect to, any other dealer. The limitations in this subsection do not apply to:

- (1) A customer that requests a reference to another dealership;
- (2) A customer that moves more than 60 miles away from the dealer whose data was accessed;
- (3) Customer or prospect information that was provided to the dealer by the manufacturer, factory branch, distributor, or distributor branch; or
- (4) Customer or prospect information obtained by the manufacturer, factory branch, distributor, or distributor branch where the dealer agrees to allow the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor the right to access and utilize the customer or prospect information maintained in the dealer's dealer management computer system for purposes of soliciting any customer or prospect of the dealer on behalf of, or directing such customer or prospect to, any other dealer in a separate, stand-alone written instrument dedicated solely to such authorization.

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the

1 dealer's prior express written consent, revocable by the dealer upon five business days written  
2 notice, to provide such access. Prior to obtaining said consent and prior to entering into an  
3 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,  
4 factory branch, distributor, distributor branch, dealer management computer system vendor, or  
5 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,  
6 distributor branch, or dealer management computer system vendor shall provide to the dealer a  
7 written list of all specific third parties to whom any ~~North Carolina dealer management~~  
8 ~~computer system data~~ obtained from the dealer has actually been provided within the 12-month  
9 period ending November 1 of the prior year. The list shall further describe the scope and  
10 specific fields of the data provided. In addition to the initial list, a dealer management computer  
11 system vendor or any third party acting on behalf of, or through a dealer management computer  
12 system vendor shall provide to the dealer an annual list of third parties to whom said data is  
13 actually being provided on November 1 of each year and to whom said data has actually been  
14 provided in the preceding 12 months and describe the scope and specific fields of the data  
15 provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer  
16 management computer system vendor's contract that directly relates to the transfer or accessing  
17 of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER:  
18 THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF  
19 CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent  
20 does not change any such person's obligations to comply with the terms of this section and any  
21 additional State or federal laws (and any rules or regulations promulgated thereunder)  
22 applicable to them with respect to such access. In addition, no dealer management computer  
23 system vendor may refuse to provide a dealer management computer system to a motor vehicle  
24 dealer located in this State if the dealer refuses to provide any consent under this subsection,  
25 ~~except to the extent that consent is deemed by the parties to be reasonably necessary in order~~  
26 ~~for the vendor to provide the system to the dealer.~~subsection.

27 ...

28 (f) The following definitions apply to this section:

- 29 (1) "Dealer management computer system" – A computer hardware and  
30 software ~~system having dealer business process management modules that~~  
31 ~~provide real time system~~ that is owned or leased by the dealer, including a  
32 dealer's use of Web applications, software, or hardware, whether located at  
33 the dealership or provided at a remote location and that provides access to  
34 customer records and transactions by a motor vehicle dealer located in this  
35 State and that ~~allow~~ allows such motor vehicle dealer timely information in  
36 order to sell vehicles, parts or services through such motor vehicle  
37 dealership.
- 38 (2) "Dealer management computer system vendor" – A seller or reseller of  
39 dealer management computer systems (but only to the extent that such  
40 person is engaged in such activities).
- 41 (3) "Security breach" – An incident of unauthorized access to and acquisition of  
42 records or data containing dealership or dealership customer information  
43 where unauthorized use of the dealership or dealership customer information  
44 has occurred or is reasonably likely to occur or that creates a material risk of  
45 harm to a dealership or a dealership's customer. Any incident of  
46 unauthorized access to and acquisition of records or data containing  
47 dealership or dealership customer ~~information~~ information, or any incident of  
48 disclosure of dealership customer information to one or more third parties  
49 which shall not have been specifically authorized by the dealer or customer,  
50 shall constitute a security breach.

51 ...

(h) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and may not be required to consent to provide in any written agreement, such direct access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited; provided that, when a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party requesting the data for establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement which is inconsistent with any term or provision contained in this subsection shall be voidable at the option of the dealer.

(i) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such consumer or customer data or other information from all damages, costs, and expenses incurred by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by the access, storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or customer data or other information by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of or through such manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor."

**SECTION 12.** The terms and provisions of this act shall be applicable to all current and future franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act.

**SECTION 13.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**SECTION 14.** Section 6 of this act becomes effective January 1, 2014. The remainder of the act is effective when it becomes law.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

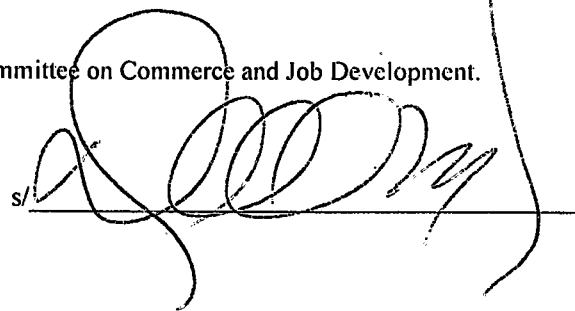
☐ Committee Substitute for

**SB 438** A BILL TO BE ENTITLED AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

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

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

# Daily Bulletin

## School of Government

### The University of North Carolina at Chapel Hill

Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601  
Phone 919.733.2484 ~ Fax 919.715.3464 ~ [www.dailybulletin.unc.edu](http://www.dailybulletin.unc.edu)

March 2, 2011

**S 194. ELECTRIC VEHICLE INCENTIVES.** Filed 3/2/11. *TO AUTHORIZE PLUG-IN ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES AND TO EXEMPT PLUG-IN ELECTRIC VEHICLES FROM THE EMISSIONS INSPECTION REQUIREMENT.*

Amends GS 20-146.2 to exempt plug-in electric vehicles from HOV lane restrictions. Makes technical corrections. Amends GS 20-183.2(b) to exempt plug-in electric vehicles from emissions inspections. Enacts GS 20-4.01(28a) to define a *plug-in electric vehicle* as a four wheeled vehicle that (1) is made primarily for use on public streets, roads, and highways; (2) has not been modified from its original manufacturer specifications; (3) is rated at no more than 8,500 pounds unloaded gross vehicle weight; (4) has a maximum speed of at least 65 mph; and (5) draws electricity from a battery with a capacity of no less than four kilowatt hours that can be recharged from an external electricity source, and that is acquired by the taxpayer on or after October 1, 2010.

Intro. by Apodaca, Meredith.

GS 20

Transportation

March 15, 2011

**S 194. ELECTRIC VEHICLE INCENTIVES.** Filed 3/2/11. Senate committee substitute makes the following changes to 1st edition.

Clarifies in proposed GS 20-4.01(28a)b. one of the requirements designating a *plug-in electric vehicle* to require that the four-wheeled motor vehicle must not be modified from original manufacturer specifications *with regard to power train or any manner of powering the vehicle.*

Transportation

June 8, 2011

**S 194. ALTERNATIVE FUEL VEHICLE INCENTIVES (NEW).** Filed 3/2/11. House committee substitute makes the following changes to 2nd edition.

Amends GS 20-4.01 to add definitions for *dedicated natural gas vehicle* and *fuel cell electric vehicle*. Deletes definition for *plug-in electric vehicle*. Defines *dedicated natural gas vehicle* as a four-wheeled vehicle that meets the following requirements: (1) is made by a manufacturer primarily for use on public streets, roads, and highways and meets specified federal standards; (2) has not been modified from original manufacturer specifications with regard to power train or any other manner of power; (3) is powered solely by natural gas; (4) is rated not more than 8,500 pounds unloaded gross vehicle weight; and (5) has a maximum speed capability of at least 65 miles per hour. Defines *fuel cell electric vehicle* with the same terms as *plug-in electric vehicle* in the previous edition except the vehicle must use hydrogen and a fuel cell to produce electricity on board to power the electric motor (was, must draw electricity from a battery). Makes conforming changes to GS 20-146.2(a). Amends GS 20-183.2(b) to exempt fuel cell electric vehicles (was, plug-in electric vehicles) from the emissions inspection requirement. Makes conforming changes to the bill title.

Transportation

June 30, 2011

**SL 2011-206 (S 194). Alternative Fuel Vehicle Incentives. AN ACT TO AUTHORIZE COMPRESSED NATURAL GAS VEHICLES AND FUEL CELL ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES AND TO EXEMPT FUEL CELL ELECTRIC VEHICLES FROM THE EMISSIONS INSPECTION REQUIREMENT.** Summarized in *Daily Bulletin* 3/2/11, 3/15/11, and 6/8/11. Enacted June 23, 2011. Effective June 23, 2011.

Transportation

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

2

SENATE BILL 194\*  
Commerce Committee Substitute Adopted 3/15/11

Short Title: Electric Vehicle Incentives.

(Public)

Sponsors:

Referred to:

March 3, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE PLUG-IN ELECTRIC VEHICLES TO OPERATE IN HIGH  
3 OCCUPANCY VEHICLE LANES AND TO EXEMPT PLUG-IN ELECTRIC VEHICLES  
4 FROM THE EMISSIONS INSPECTION REQUIREMENT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 20-4.01 reads as rewritten:

7 "§ 20-4.01. Definitions.

8 Unless the context requires otherwise, the following definitions apply throughout this  
9 Chapter to the defined words and phrases and their cognates:

10 ....  
11 (28a) Plug-in electric vehicle. – A four-wheeled motor vehicle that meets each of  
12 the following requirements:

- 13 a. Is made by a manufacturer primarily for use on public streets, roads,  
14 and highways.  
15 b. Has not been modified from original manufacturer specifications  
16 with regard to power train or any manner of powering the vehicle.  
17 c. Is rated at not more than 8,500 pounds unloaded gross vehicle  
18 weight.  
19 d. Has a maximum speed capability of at least 65 miles per hour.  
20 e. Draws electricity from a battery that has all of the following  
21 characteristics:  
22 1. A capacity of not less than four kilowatt hours.  
23 2. Capable of being recharged from an external source of  
24 electricity.  
25 3. Acquired by the taxpayer on or after October 1, 2010.

26 ...."

27 SECTION 2. G.S. 20-146.2(a) reads as rewritten:

28 "§ 20-146.2. Rush hour traffic lanes authorized.

29 (a) HOV Lanes. – The Department of Transportation may designate one or more travel  
30 lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway  
31 System and cities may designate one or more travel lanes as high occupancy vehicle (HOV)  
32 lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with  
33 a specified number of passengers as determined by the Department of Transportation or the city  
34 having jurisdiction over the street or highway. When HOV lanes have been designated, and  
35 have been appropriately marked with signs or other markers, they shall be reserved for  
36 privately or publicly operated buses, and automobiles or other vehicles containing the specified  
37 number of persons. Where access restrictions are applied on HOV lanes through designated



1 signing and pavement markings, vehicles shall only cross into or out of an HOV lane at  
2 designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor  
3 vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions  
4 shall not apply to any of the following:

5 (1) ~~motorcycles or Motorcycles.~~

6 (2) ~~vehicles~~ Vehicles designed to transport 15 or more passengers, regardless of  
7 the actual number of occupants.

8 (3) ~~HOV lane restrictions shall not apply to emergency~~ Emergency vehicles. As  
9 used in this subsection, subdivision, the term "emergency vehicle" means  
10 any law enforcement, fire, police, or other government vehicle, and any  
11 public and privately owned ambulance or emergency service vehicle, when  
12 responding to an emergency.

13 (4) Plug-in electric vehicles as defined in G.S. 20-4.01(28a), regardless of the  
14 number of passengers in the vehicle."

15 **SECTION 3.** G.S. 20-183.2(b) reads as rewritten:

16 "(b) Emissions. – A motor vehicle is subject to an emissions inspection in accordance  
17 with this Part if it meets all of the following requirements:

18 ...  
19 (9) It is not a plug-in electric vehicle as defined in G.S. 20-4.01(28a)."

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



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 194\*  
Commerce Committee Substitute Adopted 3/15/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S194-CSRO-23 [v.2]

6/8/2011 9:55:13 AM

Short Title: Alternative Fuel Vehicle Incentives.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE COMPRESSED NATURAL GAS VEHICLES AND FUEL CELL  
ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES  
AND TO EXEMPT FUEL CELL ELECTRIC VEHICLES FROM THE EMISSIONS  
INSPECTION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this  
Chapter to the defined words and phrases and their cognates:

...  
(28b) Dedicated natural gas vehicle. – A four-wheeled motor vehicle that meets  
each of the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads,  
and highways and meets National Highway Traffic Safety  
Administration standards included in 49 C.F.R. §571.
- b. Has not been modified from original manufacturer specifications  
with regard to power train or any manner of powering the vehicle.
- c. Is powered solely by natural gas.
- d. Is rated at not more than 8,500 pounds unloaded gross vehicle  
weight.
- e. Has a maximum speed capability of at least 65 miles per hour.

(28c) Fuel cell electric vehicle. – A four-wheeled motor vehicle that meets each of  
the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads  
and highways and meets National Highway Traffic Safety  
Administration standards included in 49 C.F.R. §571.
- b. Has not been modified from original manufacturer specifications  
with regard to power train or any manner of powering the vehicle.
- c. Uses hydrogen and a fuel cell to produce electricity on board to  
power an electric motor to propel the vehicle.



d. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.

e. Has a maximum speed capability of at least 65 miles per hour.

...."

SECTION 2. G.S. 20-146.2(a) is amended by adding two new subdivisions to read:

"(5) Dedicated natural gas vehicles as defined in G.S. 20-4.01(28b), regardless of the number of passengers in the vehicle. These vehicles must be able to travel at the posted speed limit while operating in the HOV lane.

(6) Fuel cell electric vehicles as defined in G.S. 29-4.01(28c), regardless of the number of passengers in the vehicle. These vehicles must be able to travel at the posted speed limit while operating in the HOV lane."

SECTION 3. G.S. 20-183.2(b) reads as rewritten:

"(b) Emissions. – A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

...

(10) It is not a fuel cell electric vehicle as defined in G.S. 20-4.01(28c)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 194\*  
Commerce Committee Substitute Adopted 3/15/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S194-PCS85217-RO-23

Short Title: Alternative Fuel Vehicle Incentives.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE COMPRESSED NATURAL GAS VEHICLES AND FUEL CELL  
ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES  
AND TO EXEMPT FUEL CELL ELECTRIC VEHICLES FROM THE EMISSIONS  
INSPECTION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this  
Chapter to the defined words and phrases and their cognates:

...  
(28b) Dedicated natural gas vehicle. – A four-wheeled motor vehicle that meets  
each of the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads,  
and highways and meets National Highway Traffic Safety  
Administration standards included in 49 C.F.R. § 571.
- b. Has not been modified from original manufacturer specifications  
with regard to power train or any manner of powering the vehicle.
- c. Is powered solely by natural gas.
- d. Is rated at not more than 8,500 pounds unloaded gross vehicle  
weight.
- e. Has a maximum speed capability of at least 65 miles per hour.

(28c) Fuel cell electric vehicle. – A four-wheeled motor vehicle that meets each of  
the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads,  
and highways and meets National Highway Traffic Safety  
Administration standards included in 49 C.F.R. § 571.
- b. Has not been modified from original manufacturer specifications  
with regard to power train or any manner of powering the vehicle.
- c. Uses hydrogen and a fuel cell to produce electricity on board to  
power an electric motor to propel the vehicle.



\* S 1 9 4 - P C S 8 5 2 1 7 - R O - 2 3 \*

- 1                   d.   Is rated at not more than 8,500 pounds unloaded gross vehicle  
2                   weight.  
3                   e.   Has a maximum speed capability of at least 65 miles per hour.  
4                   ...."

5                   **SECTION 2.** G.S. 20-146.2(a) is amended by adding two new subdivisions to  
6 read:

- 7                   "(5)   Dedicated natural gas vehicles as defined in G.S. 20-4.01(28b), regardless of  
8                   the number of passengers in the vehicle. These vehicles must be able to  
9                   travel at the posted speed limit while operating in the HOV lane.  
10                  (6)   Fuel cell electric vehicles as defined in G.S. 29-4.01(28c), regardless of the  
11                  number of passengers in the vehicle. These vehicles must be able to travel at  
12                  the posted speed limit while operating in the HOV lane."

13                  **SECTION 3.** G.S. 20-183.2(b) reads as rewritten:

14                  "(b)   Emissions. — A motor vehicle is subject to an emissions inspection in accordance  
15 with this Part if it meets all of the following requirements:

- 16                  ...  
17                  (10)   It is not a fuel cell electric vehicle as defined in G.S. 20-4.01(28c)."

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

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☒ Committee Substitute for

**SB 194** A BILL TO BE ENTITLED AN ACT TO AUTHORIZE PLUG-IN ELECTRIC VEHICLES TO OPERATE IN HIGH OCCUPANCY VEHICLE LANES AND TO EXEMPT PLUG-IN ELECTRIC VEHICLES FROM THE EMISSIONS INSPECTION REQUIREMENT.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/

*which changes the title*

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill.

**(FOR JOURNAL USE ONLY)**

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

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

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

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Business & Labor

DATE: 5-8-11 Room: 424

\*Name: Philip Pate

County: Duplin

Sponsor: Jimmy Dixon

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: Dillon Ragusa

County: Wake

Sponsor: William Brisson

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Billy Jones

4. Name: \_\_\_\_\_

2. Name: Wayne Davis

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

Business and Labor  
Name of Committee

June 8, 2011  
Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
Alissa Willett	NLACC
Brent Truxell	NCACC
Julie W	NLMML
George Everett	Duke Energy
BERRY Jenkins	CAROLINAS AGC
Betsy Bowley	PENC
Hugh Bailey	NCDOT - Transportation Section
Dea Mewer	NCDOT
Ebony Pittman	NCDOT / AGO (Transportation)
Holly Safi	DRNC
David Mcowan	NCAK

# VISITOR REGISTRATION SHEET

## Business and Labor

**Name of Committee**

June 8, 2011

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**

Brittany Teague

NC Housing Coalition  
118 St Marys St.

Jennie Renner-Yearmons

NC Housing Coalition

Barbara Goettsch

## NC Housing Coalition

Tom Miller

NC REC/AGO

Loi An Huan

CAT A



# VISITOR REGISTRATION SHEET

Business and Labor

June 8, 2011

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

James MacHart

LAMAR ADVERTISING

Robert Moore

Riley Outdoor

Robert Sykes

CAPITAL OUTDOOR

DAN O'SHEA

FAIRWAY Outdoor.

Tony Adams

NCOAA

Paul Hickman

Fairway Outdoor Advertising

Baile Morlidge

Adams Outdoor Adv

Aaron Guyton

Fairway Outdoor Advertising

Daniel Raimi

DENR

Ray Emanuel

Legislative Reporting Services

Nathan Knuffman

OSBM

## VISITOR REGISTRATION SHEET

## Business and Labor

June 8, 2011

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**[illegible]

# MINUTES

## Business and Labor Subcommittee

Thursday, June 9, 2011

10:15 a.m.

Room 1327 / 1228 LB

The Business and Labor Subcommittee met on Thursday, June 9, 2011 at 10:15 a.m. in Room 1327/1228 of the Legislative Building. Representative Darrell G. McCormick presided.

The following members were present:

1. Representative Harold Brubaker
2. Representative Jeff Collins
3. Representative Dewey Hill
4. Representative Stephen LaRoque
5. Representative Danny McComas, *Chair Commerce and Job Development*
6. Representative Tim Moffitt
7. Representative Efton Sager
8. Representative Phillip Shepard

Meeting was called to Order at 10:18 a.m.

Introduction of Sergeant at Arms:

- Billy Jones
- Champ Claris
- Bill McRae

Introduction of Pages: No Pages for this meeting.

Bills:

BILL NO.	SHORT TITLE	SPONSOR
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick

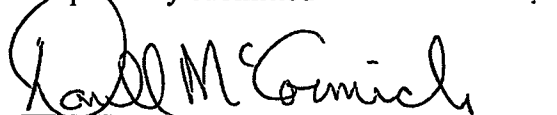
Representative Tim Moffitt carried HB 721. Darrell McCormick told the committee there will be no outside discussion on this bill today.

Representative Harold Brubaker motioned for a favorable report to the committee substitute, unfavorable to the original bill.


**HB 721 – Received a favorable report as to the committee substitute bill, unfavorable as to the original bill.**

Adjournment - Meeting adjourned at 10:19 am

Respectfully submitted



Representative Darrell McCormick  
Chairman



Anne Murtha  
Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Thursday, June 9, 2011

**TIME:** 10:15 am

**LOCATION:** 1327 / 1228 LB

**COMMENTS:** This meeting will be very brief – We will begin promptly at 10:15 a.m.

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 721	Landlord/Tenant/Bed Bug Liability.	Representative McCormick

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**9 AM** o'clock on **June 09, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)



## HOUSE BILL 721: Landlord/Tenant/Bedbug Liability

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 1, 2011
<b>Introduced by:</b>	Rep. McCormick	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H721-CSRN-18		Committee Counsel

---

**SUMMARY:** *The Proposed Committee Substitute (PCS) for House Bill 721 would require landlords and tenants to take certain actions to exterminate bed bugs in dwelling units. The PCS does all of the following: (1) clarifies that a landlord may obtain an inspection (was a certificate) certifying that the premises are free of bedbugs and that the inspection may be done by a licensee qualified for structural pest control, (2) provides that if the landlord did not obtain an inspection and the tenant took possession within 60 days (was 30 days) before written notification was given, then the landlord must contract to exterminate bedbugs within 5 days of receiving notice from the tenant, (3) gives the tenant 60 days (was 30 days) to exterminate bedbugs if the landlord previously obtained an inspection, (4) provides that counties and municipalities may not enact ordinances to create additional duties or remedies related to bedbugs, and (5) changes the effective date to October 1, 2011 (was effective when it becomes law).*

**CURRENT LAW:** Article 5 of Chapter 42 of the General Statutes governs residential rental agreements. Landlords must provide fit premises. This includes (1) complying with building codes, (2) making repairs to keep the premises in a fit and habitable condition, (3) keeping common areas in working order, repairing electrical, plumbing, heating, and air conditioning, (4) providing operable smoke detectors and carbon monoxide detectors, and (5) repairing imminently dangerous conditions within a reasonable period of time (though the landlord may recover costs of the repairs that are the fault of the tenant).

Tenants must maintain dwelling units. This includes (1) keeping the premises clean and safe and causing no unsafe conditions in common areas, (2) disposing of waste in a safe manner, (3) keeping plumbing fixtures clean, (4) not negligently damaging the premises and not rendering smoke and carbon monoxide detectors inoperable, (5) complying with building codes, (6) being responsible for damages unless the damages were due to ordinary wear and tear, acts of the landlord, defective products or repairs of the landlord, acts of third parties who were not invitees, or natural forces, and (7) notifying the landlord of the need to replace or repair smoke detectors or carbon monoxide detectors.

**BILL ANALYSIS:** The PCS for House Bill 721 would provide all of the following:

- Landlords may not offer for lease any premises that the landlord knows to be infested by bedbugs (at the time the landlord and tenant enter into a rental agreement).
- Permits the landlord to obtain an inspection from a licensee qualified for structural pest control. If no evidence is found, this serves as evidence of the landlord's compliance.
- Provides that tenants must notify the landlord, in writing, within 5 days of suspecting the presence of bedbugs.
  - If the landlord did not obtain an inspection and the tenant took possession within 60 days before written notification was given, then the landlord must contract to exterminate bedbugs within 5 days of receiving notice from the tenant.

# House PCS 721

Page 2

- If the landlord did obtain an inspection or if at least 60 days have passed since the tenant took possession of the premises, then the tenant must have the bedbugs exterminated.
- Provides that if the tenant is responsible for extermination, then the landlord may provide the contact information of the licensee that inspected the premises or the contact information of other licensees that are reputable.
- Provides that within 7 days of notifying the landlord of the presence of bedbugs, the tenant must do both of the following:
  - Contract with one of the licensees suggested by the landlord or, if no companies were suggested, with any licensee.
  - Have the premises treated for bedbugs. (The tenant must pay to remove the bedbugs and for damages caused by them.)
- Provide that once the premises have been treated, the tenant is responsible for all subsequent infestations. However, if a tenant notifies the landlord and a licensee determines that an adjacent unit is the source of the bedbugs, then the tenant in the source unit must exterminate the bedbugs.
- If a tenant fails to comply with these provisions, then the landlord may (1) arrange to have the bedbugs removed at the tenant's expense, (2) terminate the tenant's tenancy, or (3) seek damages from the tenant in court.
- Provides that counties and municipalities may not enact or enforce laws or ordinances creating additional duties or remedies for landlords or tenants relating to an infestation of bedbugs.
- Permits a landlord to use a security deposit for damages due to a violation of the tenant's obligations to deal with bedbug infestations.

**EFFECTIVE DATE:** The act would become effective October 1, 2011.

H721-SMRN-54(CSRN-18) v5

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 721

Short Title: Landlord/Tenant/Bedbug Liability. (Public)

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Sponsors: Representative McCormick (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

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Referred to: Commerce and Job Development.

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April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
3 EXTERMINATE BEDBUGS IN DWELLING UNITS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 42-42(a) reads as rewritten:

6 "§ 42-42. Landlord to provide fit premises.

7 (a) The landlord shall:

8 ...  
9 (9) Not offer for lease any premises that, at the time the landlord and tenant  
10 enter into a rental agreement, the landlord knows to be infested by the  
11 species cimex lectularius, also known as bedbugs. The landlord may, prior to  
12 leasing the premises, obtain a certificate from a licensed pest control  
13 company certifying that the premises are free of an infestation of bedbugs,  
14 and the certificate shall serve as conclusive evidence of the landlord's  
15 compliance with the provisions of this subdivision."

16 SECTION 2. G.S. 42-43(a) reads as rewritten:

17 "§ 42-43. Tenant to maintain dwelling unit.

18 (a) The tenant shall:

19 ...  
20 (8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation  
21 of the species cimex lectularius, also known as bedbugs."

22 SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding  
23 a new section to read as follows:

24 "§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

25 (a) A tenant shall notify his or her landlord, in writing, within five days of suspecting  
26 the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the  
27 landlord did not obtain a certificate from a licensed pest control company as provided in  
28 G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than 30 days before  
29 the written notification was given, then, within five days of receiving the notice from the  
30 tenant, the landlord shall contract with a licensed pest control company to exterminate any  
31 bedbugs in the premises. If the landlord did obtain a certificate from a licensed pest control  
32 company as provided in G.S. 42-42(a)(9), or if at least 30 days have passed since the tenant  
33 took initial possession of the premises, it shall be the tenant's responsibility to have the bedbugs  
34 in the premises exterminated.



(b) Where the tenant is responsible for the extermination of bedbugs, the landlord may provide the tenant with either the name, address, and telephone number of the licensed pest control company that certified the premises were free of an infestation of bedbugs or with the name, address, and telephone number of pest control companies that the landlord deems reputable. Within seven days of notifying the landlord of the suspected presence of bedbugs, the tenant shall do both of the following: (i) contract with one of the licensed pest control companies suggested by the landlord or, if no companies were suggested, with any licensed pest control company, and (ii) have the premises treated for bedbugs by the licensed pest control company. In all situations, the tenant shall allow the landlord and the licensed pest control company access to the premises and shall carefully follow all instructions provided by the landlord or licensed pest control company to facilitate the elimination of bedbugs. Where the tenant is responsible for the extermination of bedbugs, the tenant shall be solely responsible for any fees charged by the licensed pest control company and any damages associated with the presence and elimination of bedbugs from the premises and any attached units and spaces, and the tenant shall furnish to the landlord proof from the licensed pest control company of the services performed.

(c) After a licensed pest control company has treated the premises and deemed the premises free of an infestation of bedbugs, the tenant shall be responsible for all subsequent infestations. However, whenever a tenant notifies the landlord of the presence of bedbugs, if it is determined by a licensed pest control company that the source of the bedbugs is an adjacent unit, then the tenant in the source unit shall be responsible for the extermination of the bedbugs in accordance with the provisions of this section.

(d) The failure of any tenant to comply with the provisions of this section shall be a breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of the following: (i) contract with a licensed pest control company at the tenant's expense to exterminate the bedbugs; (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for damages."

**SECTION 4.** G.S. 42-51 reads as rewritten:

**"§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

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



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 721  
PROPOSED COMMITTEE SUBSTITUTE H721-PCS70244-RN-25

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
EXTERMINATE BEDBUGS IN DWELLING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) reads as rewritten:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(9) Not offer for lease any premises that, at the time the landlord and tenant enter into a rental agreement, the landlord knows to be infested by the species cimex lectularius, also known as bedbugs. The landlord may, prior to leasing the premises, obtain an inspection from a licensee under G.S. 106-65.24(15). If no evidence is found, the written report of the inspection shall serve as evidence of the landlord's compliance with the provisions of this subdivision. G.S. 42-43.1 and this subdivision shall comprise the sole and exclusive duties of a landlord relating to an infestation of cimex lectularius, also known as bedbugs; no other subsection of this section shall be construed to impose any duties or obligations upon a landlord relating to an infestation of bedbugs."

SECTION 2. G.S. 42-43(a) reads as rewritten:

"§ 42-43. Tenant to maintain dwelling unit.

(a) The tenant shall:

...

(8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation of the species cimex lectularius, also known as bedbugs."

SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

(a) Landlord's General Obligations. – If the landlord did not obtain an inspection from a licensee under G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than 60 days before the written notification was given, then, within five days of receiving the notice from the tenant, the landlord shall contract with a licensee to exterminate any bedbugs in the premises.



\* H 7 2 1 - P C S 7 0 2 4 4 - R N - 2 5 \*

(b) Landlord's Obligation to Inspect and Treat Neighboring Units. – Upon receipt of notice of the presence of any infestation of bedbugs in the premises, the landlord shall obtain an inspection from all neighboring units to discern whether there is evidence of a bedbug infestation in any neighboring units. If no such evidence is found, the written report of the inspection shall serve as evidence of the landlord's compliance with the provisions of this subsection. If such evidence of a bedbug infestation is found in a neighboring unit, then notwithstanding the provisions of subsection (a) and subsection (d) of this section, the landlord shall be responsible to contract with a licensee to exterminate any bedbugs in the premises and the neighboring units.

(c) Landlord's Provision of Educational Materials to Tenant. – The landlord shall provide educational materials regarding cimex lectularius, also known as bedbugs, to new tenants.

(d) Tenant's General Obligations. – A tenant shall not knowingly or recklessly introduce onto the premises any person or thing infested with bedbugs. A tenant shall notify his or her landlord, in writing, within five days of suspecting the presence of any infestation of the species cimex lectularius, also known as bedbugs. If the landlord did obtain an inspection from a licensee, or if at least 60 days have passed since the tenant took initial possession of the premises, it shall be the tenant's responsibility to have the bedbugs in the premises exterminated. Within seven days of notifying the landlord of the suspected presence of bedbugs, the tenant shall do both of the following: (i) contract with one of the licensees suggested by the landlord or, if no licensees were suggested, with any licensee, and (ii) have the premises treated for bedbugs by the licensee. The tenant shall be solely responsible for any fees charged by the licensee and any damages associated with the presence and elimination of bedbugs from the premises and any attached units and spaces. The tenant shall furnish to the landlord proof from the licensee of the services performed. The landlord may provide the tenant with either the name, address, and telephone number of the licensee that inspected the premises or with the name, address, and telephone number of the licensee that the landlord deems reputable. In all situations, the tenant shall allow the landlord and the licensee access to the premises for the purposes of inspection for, and treatment of, bedbugs and shall carefully follow all instructions provided by the landlord or licensee to facilitate the elimination of bedbugs. The failure of any tenant to comply with the provisions of this section shall be a breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of the following: (i) contract with a licensee at the tenant's expense to exterminate the bedbugs; (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for damages.

(e) G.S. 42-42(a)(9), G.S. 42-43(a)(8), and this section shall form the sole and exclusive duties and responsibilities of landlords and tenants in North Carolina relating to an infestation of cimex lectularius, also known as bedbugs. Counties and municipalities shall not enact or enforce any ordinance or law that creates any additional duty or remedy for landlords or tenants relating to an infestation of bedbugs except as provided herein.

(f) For purposes of this section, the term "licensee" shall have the same meaning as in G.S. 106-65.24(15), and the term "neighboring units" shall mean immediately adjoining rental units that share a common wall or floor or ceiling with the premises."

#### SECTION 4. G.S. 42-51 reads as rewritten:

##### "§ 42-51. Permitted uses of the deposit.

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary

1 ejectment proceeding or court costs in connection with terminating a tenancy. The security  
2 deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one  
3 and one-half months' rent if a tenancy is month to month, and two months' rent for terms  
4 greater than month to month. These deposits must be fully accounted for by the landlord as set  
5 forth in G.S. 42-52."

6 **SECTION 5.** This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

2

HOUSE BILL 721  
Committee Substitute Favorable 6/9/11

Short Title: Landlord/Tenant/Bedbug Liability.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO  
3 EXTERMINATE BEDBUGS IN DWELLING UNITS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 42-42(a) reads as rewritten:

6 "§ 42-42. Landlord to provide fit premises.

7 (a) The landlord shall:

8 ...  
9 (9) Not offer for lease any premises that, at the time the landlord and tenant  
10 enter into a rental agreement, the landlord knows to be infested by the  
11 species cimex lectularius, also known as bedbugs. The landlord may, prior to  
12 leasing the premises, obtain an inspection from a licensee under  
13 G.S. 106-65.24(15). If no evidence is found, the written report of the  
14 inspection shall serve as evidence of the landlord's compliance with the  
15 provisions of this subdivision. G.S. 42-43.1 and this subdivision shall  
16 comprise the sole and exclusive duties of a landlord relating to an infestation  
17 of cimex lectularius, also known as bedbugs; no other subsection of this  
18 section shall be construed to impose any duties or obligations upon a  
19 landlord relating to an infestation of bedbugs."

20 SECTION 2. G.S. 42-43(a) reads as rewritten:

21 "§ 42-43. Tenant to maintain dwelling unit.

22 (a) The tenant shall:

23 ...  
24 (8) Comply with the provisions of G.S. 42-43.1 in dealing with any infestation  
25 of the species cimex lectularius, also known as bedbugs."

26 SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding  
27 a new section to read as follows:

28 "§ 42-43.1. Bedbug infestation; landlord and tenant obligations.

29 (a) Landlord's General Obligations. – If the landlord did not obtain an inspection from a  
30 licensee under G.S. 42-42(a)(9), and the tenant took initial possession of the premises less than  
31 60 days before the written notification was given, then, within five days of receiving the notice  
32 from the tenant, the landlord shall contract with a licensee to exterminate any bedbugs in the  
33 premises.

34 (b) Landlord's Obligation to Inspect and Treat Neighboring Units. – Upon receipt of  
35 notice of the presence of any infestation of bedbugs in the premises, the landlord shall obtain an  
36 inspection from all neighboring units to discern whether there is evidence of a bedbug



1 infestation in any neighboring units. If no such evidence is found, the written report of the  
2 inspection shall serve as evidence of the landlord's compliance with the provisions of this  
3 subsection. If such evidence of a bedbug infestation is found in a neighboring unit, then  
4 notwithstanding the provisions of subsection (a) and subsection (d) of this section, the landlord  
5 shall be responsible to contract with a licensee to exterminate any bedbugs in the premises and  
6 the neighboring units.

7 (c) Landlord's Provision of Educational Materials to Tenant. – The landlord shall  
8 provide educational materials regarding cimex lectularius, also known as bedbugs, to new  
9 tenants.

10 (d) Tenant's General Obligations. – A tenant shall not knowingly or recklessly introduce  
11 onto the premises any person or thing infested with bedbugs. A tenant shall notify his or her  
12 landlord, in writing, within five days of suspecting the presence of any infestation of the  
13 species cimex lectularius, also known as bedbugs. If the landlord did obtain an inspection from  
14 a licensee, or if at least 60 days have passed since the tenant took initial possession of the  
15 premises, it shall be the tenant's responsibility to have the bedbugs in the premises  
16 exterminated. Within seven days of notifying the landlord of the suspected presence of  
17 bedbugs, the tenant shall do both of the following: (i) contract with one of the licensees  
18 suggested by the landlord or, if no licensees were suggested, with any licensee, and (ii) have  
19 the premises treated for bedbugs by the licensee. The tenant shall be solely responsible for any  
20 fees charged by the licensee and any damages associated with the presence and elimination of  
21 bedbugs from the premises and any attached units and spaces. The tenant shall furnish to the  
22 landlord proof from the licensee of the services performed. The landlord may provide the  
23 tenant with either the name, address, and telephone number of the licensee that inspected the  
24 premises or with the name, address, and telephone number of the licensee that the landlord  
25 deems reputable. In all situations, the tenant shall allow the landlord and the licensee access to  
26 the premises for the purposes of inspection for, and treatment of, bedbugs and shall carefully  
27 follow all instructions provided by the landlord or licensee to facilitate the elimination of  
28 bedbugs. The failure of any tenant to comply with the provisions of this section shall be a  
29 breach of the tenant's obligations under G.S. 42-43(a)(8), and the landlord may do any or all of  
30 the following: (i) contract with a licensee at the tenant's expense to exterminate the bedbugs;  
31 (ii) terminate the tenant's tenancy; or (iii) pursue a cause of action against the tenant for  
32 damages.

33 (e) G.S. 42-42(a)(9), G.S. 42-43(a)(8), and this section shall form the sole and exclusive  
34 duties and responsibilities of landlords and tenants in North Carolina relating to an infestation  
35 of cimex lectularius, also known as bedbugs. Counties and municipalities shall not enact or  
36 enforce any ordinance or law that creates any additional duty or remedy for landlords or tenants  
37 relating to an infestation of bedbugs except as provided herein.

38 (f) For purposes of this section, the term "licensee" shall have the same meaning as in  
39 G.S. 106-65.24(15), and the term "neighboring units" shall mean immediately adjoining rental  
40 units that share a common wall or floor or ceiling with the premises."

41 **SECTION 4. G.S. 42-51 reads as rewritten:**

42 **"§ 42-51. Permitted uses of the deposit.**

43 Security deposits for residential dwelling units shall be permitted only for the tenant's  
44 possible nonpayment of rent and costs for water or sewer services provided pursuant to  
45 G.S. 62-110(g), damage to the premises, damages due to a violation of the tenant's obligations  
46 under G.S. 42-43(a)(8), nonfulfillment of rental period, any unpaid bills that become a lien  
47 against the demised property due to the tenant's occupancy, costs of re-renting the premises  
48 after breach by the tenant, costs of removal and storage of tenant's property after a summary  
49 ejectment proceeding or court costs in connection with terminating a tenancy. The security  
50 deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one  
51 and one-half months' rent if a tenancy is month to month, and two months' rent for terms

1 greater than month to month. These deposits must be fully accounted for by the landlord as set  
2 forth in G.S. 42-52."

3 **SECTION 5.** This act becomes effective October 1, 2011.

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☒ Committee Substitute for

**HB 721** A BILL TO BE ENTITLED AN ACT REQUIRING LANDLORDS AND TENANTS TO TAKE CERTAIN ACTIONS TO EXTERMINATE BEDBUGS IN DWELLING UNITS.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.



s/

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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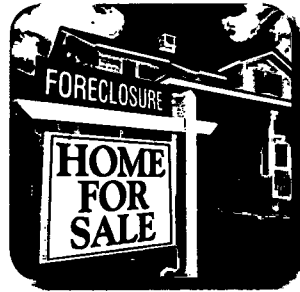
\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

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

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.

# The Future of North Carolina Apartment Living

**NC population trends favor the apartment industry over the next 2 decades**



## **The Housing Crisis Solution**

With a rash of N.C. mortgage foreclosures, coupled with declining single-family home values, it is possible that the homeownership rate in our state could decline over the next decade. Remember, only since the Baby Boomer generation of buyers has N.C. homeownership risen above 60 percent. Recent statistics on renters moving out to buy homes in late 2010 were down as much as 15 percentage points from their highs in 2004. Today, only 12 to 14 percent of N.C. renters are leaving to buy homes – a number that is expected to decline further in the short-term. Renting has become an economic and lifestyle choice.

## **Appealing to Young Adult North Carolinians**

According to the North Carolina Office of State Budget and Management, the number of young adult North Carolinians (age 25 to 34) is expected to increase by nearly half a million from 2010 to 2030. Currently 57 percent of those under the age of 34 rent. This generation prefers urban living to suburban living, are used to college-like living quarters and do not have enough savings or income to buy a home.



## **Fits Aging Population's Needs**

North Carolina's 65 to 74 population is forecasted to almost double between 2010 and 2030, from 678,836 to 1,280,402. The likelihood of renting increases as householders age. With increasing life expectancy, medical and wellness advances and more accessible healthcare services, the number of aging North Carolinians will increase, creating new demands for senior housing.



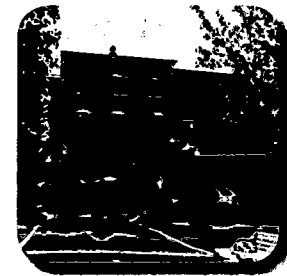
## **N.C. Latino Population Chooses Apartments**

North Carolina's Latino population has quadrupled since 1990, and today forms nearly 8% of the state's total population. Approximately 54 percent of Latinos rent. The availability of apartment style rental housing is an important factor steering their residential choices. Apartment communities in the state's urban areas are often the "housing of choice" for N.C. Latinos because of ease of entry, affordability, social networks, and the ability to overcome language and transportation barriers.



## **Apartments as "Sustainable" Development**

Cities and towns in North Carolina are increasingly concluding that apartment communities are important for sound and efficient land-use planning and municipal administration. Apartments have fewer infrastructure requirements than low-density suburbs; they result in shorter roads - which reduce carbon emissions; they generate large enough populations to support neighborhood retail and public transportation; and they create more open, public space.



Learn more at [www.aanconline.org](http://www.aanconline.org)



Apartment Association  
of North Carolina

## **Apartment Association of North Carolina**

2101 Rexford Road,  
Suite 330-E  
Charlotte, NC 28211  
Phone: 704.334.9511  
Fax: 704.333.4221  
[www.aanconline.org](http://www.aanconline.org)

## **AANC Officers**

President:  
**Susan Passmore**

Vice President  
**Tim Hose**

Treasurer:  
**Kellie Falk-Tillett**

Secretary:  
**Mindy McCorkle**

Lobbyist:  
**Colleen Kochanek**

Executive Director:  
**Ken Szymanski**

## **AANC Mission Statement**

The Apartment Association of North Carolina is a statewide organization comprised of local apartment associations to promote safe, affordable housing through participation in the legislative process, and through communication to and education of its members, public officials and the general public.

# The Apartment Association of North Carolina

**Representing the N.C. Multifamily Housing Industry**

## **North Carolina Apartment Industry Advocacy in the 2011 General Assembly**

**The AANC supports the following bills:**

**Senate Bill**

**683**

**Housing Conditions/  
Inspections**

**House Bill**

**771**

**Landlord/Tenant  
Electric/Gas Service**

**House Bill**

**493**

**Landlord/Tenant  
Law Changes**

**House Bill**

**721**

**Landlord/Tenant  
Bedbug Liability**

**ABOUT THE AANC:** Founded in 1987, the Apartment Association of North Carolina (AANC) is a statewide organization which exists to promote the interests of persons, firms, and corporations who develop, own, or manage multifamily residential housing. The AANC represents approximately 280,000 apartment units throughout the state.

**AANC OBJECTIVES:** Affordable housing, quality construction, and professional management are some of the objectives of the AANC. Because housing is a basic need, apartment production and operation are subject to ever-increasing demands for higher standards of safety, habitability, security, environmental controls, design, and management. The AANC is committed to protect the affordability of rental housing while maintaining the safety, livability, and security of its constituents' residents.



# Apartment Association of North Carolina: Bills of Interest - June 9th, 2011

## **Senate Bill 683** **Housing Conditions/Inspections**

North Carolina cities have historically been concerned about housing conditions in their jurisdictions, especially in older, poorer neighborhoods, and have appropriately adopted ordinances calling for minimum housing quality codes. The administration of these codes are an important tool in helping North Carolina municipalities fight neighborhood decline while ensuring to housing consumers that minimal health, safety, and sanitation conditions are maintained in residential structures.

Unfortunately, some N.C. municipalities have substantially broadened these programs aimed at stemming blighted conditions and now apply them to all housing, or at least all rental housing, as part of mandatory inspection approaches. Sometimes these programs are tied into required permits and fees as a condition of operating rental property. Programs designed to systematically inspect all rental housing for the purpose of improving housing quality are bad public policy and waste needed resources that could be used to combat problematic housing.

Inspection programs in these environments amount to a "housing tax" with no public benefit. The core of current NC law gives units of government the authority to respond to housing conditions that are unsafe, dangerous, and unfit for human habitation but does not authorize random inspections.

To correct the abuses, Senate Bill 683 provides the following:

- Requires units of government to have reasonable cause to believe that unsafe housing conditions exist in order to inspect private housing, via landlord history, reports, or actual knowledge by a unit of government. This provision allows resources to be used to focus on unsafe conditions, problem properties and irresponsible owners and landlords.
- Requires government housing inspection programs to be administered in a non-discriminatory way regarding housing type or ownership.
- Provides local governments the authority to make an exception to the reasonable cause test in order to conduct periodic inspections as part of a targeted effort to arrest blight within designated Community Development or similar zones.
- Prohibits local government rental registration programs, permits, fees, and Certificates of Occupancy as a condition of operating rental housing - all of which increase the costs of housing.

## **House Bill 771** **Landlord/Tenant Electric & Gas Service**

There is an emerging housing type in North Carolina that accommodates off-campus students, certain military personnel, and some transitional business residents. It is characterized by shared living space within a single dwelling, and introduces the concept of a "subset of a dwelling". In most cases, there is a single electricity meter installed for the entire apartment (regardless of the number of leasable bedrooms) and a single thermostat that controls the heating/cooling in the entire apartment. The heated/cooled space includes the respective bedrooms and the common areas of the apartment. Usually, each occupant is a separate lessee, although they reside in the same dwelling as other lessees. The lease governs the "bedroom space" and a shared portion of living and kitchen areas.

Current North Carolina Utility Law disfavors this approach, dating back to the late 1970s. The principle behind current N.C. Utility Law is that only via direct individual metering could electric and gas accountability, responsibility, and conservation be instilled. But in this emerging housing type in 2011, individual utility metering to each lessee's space is not feasible, but utility conservation is still directly encouraged. Those lessees who are in a shared living space are provided a reasonable utility "allowance" as part of their rent that they collectively share and manage. When the allowance is exceeded, they then share in the responsibility of paying any "overage" in addition to their rent. This provision encourages conservation and allows there to be a direct connection to the tenant's usage of the utility. Most other states have embraced this emerging housing type and allow renters to choose an "all inclusive rent" which allows for one payment per month and is desired by the tenants. This would not be a requirement but a choice that appears to be prohibited by current NC law.

HB 771 also addresses some problems that occur when electric or gas utility accounts transition from Tenant to Landlord, by clarifying responsibilities and duties of the parties so as to minimize unauthorized utility use. HB771 would:

- Make it clear that such a Landlord who operates these shared living spaces that permit utility allowances and charges of utility overages is not a Public Utility or a Reseller of Utilities;
- Allow tenants to have the living arrangements that they want while still encouraging conservation.
- Clarify that when a Tenant has failed to obtain, in his or her own name, electric and/or gas service, the landlord may arrange for the immediate disconnection of electric and natural gas service to the dwelling unit without notice, and the landlord shall in no way be liable to the tenant for any claims arising out of the disconnection of services; and
- Clarify that a Landlord may, pursuant to a written rental agreement, charge the Tenant a monthly fee relating to the Tenant's unauthorized disconnection of, or the Tenant's failure to obtain, electric service and/or natural gas service in the Tenant's own name during the term of the lease.

## **House Bill 493** **Landlord/Tenant Law Changes**

Landlord-Tenant relationships in North Carolina are governed by Chapter 42 of the N.C. General Statutes. At the core of Chapter 42 are defined, reasonable relationships and duties for both housing providers and housing consumers, as set forth by the N.C. General Assembly down through the years. The laws that govern these relationships are necessarily the General Assembly's best effort at balancing the interests of housing providers and housing consumers. A number of Landlord-Tenant Law challenges have materialized in the field in recent years and changes are needed to the law. Below we illustrate the problems and the changes that will help to refine current North Carolina law:

**Section 1 Problem:** *Loophole during appeals process allows tenant not to pay their agreed-upon rent.*

**SOLUTION:** Modifies the Eviction Appeal Statute so that the appealing party has a duty to make timely rental payments during the appeal.

**Section 2 Problem:** *Eviction process can take 30-40 days and the longer the process, the longer it takes for the landlord to re-rent the unit. The costs of these delays are rarely recovered from the tenant and contribute to the high cost of rental housing. Tenants have 10 days after the Sheriff serves the writ of eviction to collect their belongings. Normally they are gone after the hearing but leave trash or unwanted items. Under the current law, the landlord must not remove (or store if removed) those items for 10 days unless they are worth less than \$100.*

**SOLUTION:** Increases the value of the property that may be donated to a non-profit to \$750 and property considered abandoned up to \$500 to allow landlords access to the rental unit when property has been abandoned by the tenant.

**Section 3 Problem:** *When landlords accept partial payments for rent or subsidies, they are not able to proceed with the eviction, even when the tenant has not paid the contractual amount in full.*

**SOLUTION:** Makes it clear that partial (less than full) payment of rent may still be the basis for proceeding with an Eviction.

**Section 4 Problem:** *Permitted uses of a tenant security deposit are limited by law and are not clear.*

**SOLUTION:** Allows the N.C. Security Deposit Law to be modified to allow unpaid Late Fees, damage to smoke and carbon monoxide alarms, and costs of re-renting the premises to be taken out of the security deposit.

**Sections 5-6 Problem:** *Currently landlords cannot charge separate cleaning fees for vacation rentals and the amount gets wrapped up in the rent.*

**SOLUTION:** Allow vacation rental landlords to separate their cleaning costs and provide clearly to the consumer what they are being charged.

**Section 7 Problem:** *When a resident/tenant dies, there is a long delay to get the family members in possession of the leased property and very little direction in allowing family members to receive the personal property.*

**SOLUTION:** Requires the General Statutes Commission to study and recommend legislation to provide for the orderly and expeditious removal by a landlord of the personal property of the deceased tenant.

## **House Bill 721** **Landlord/Tenant Bedbug Liability**

Bed Bugs (scientific name Cimicidae), are small parasitic insects that are creating a public health problem in much of North Carolina. The term usually refers to species that prefer to feed on human blood. A number of health effects may occur due to Bed Bugs including skin rashes, psychological effects, and allergic symptoms. Diagnosis involves both finding Bed Bugs and the occurrence of compatible symptoms.

Bed Bugs present a major challenge in a number of North Carolina property types, including hotels and apartments. The rise in infestations has been hard to track because Bed Bugs are not an easily identifiable problem. Most of the reports are collected from pest-control companies, local authorities, and hotel chains.

Managers of apartment buildings, and the pest control companies servicing them, have been seeing an increasing number of severe bed bug outbreaks in many of North Carolina's urban areas. Bed Bugs are often introduced by apartment residents and frequently can spread to adjacent apartments. Discerning "cause" and "effect" of bed bug infestation in multi-housing environments with fairly high resident turnover rates can be difficult. Bed bug infestations pose significant risks of health department involvement, lawsuits, and public relations issues. HB 721 attempts to clarify North Carolina public policy by articulating certain duties and "safe harbors" for the respective parties:

- Landlords shall not knowingly lease apartments with Bed Bug problems;
- Tenants have a duty to report any Bed Bug infestation within 5 days of suspecting it;
- Landlords may obtain an inspection from a licensed pest control company that a dwelling unit is Bed Bug-free; such inspection is conclusive evidence for Landlord compliance with the law;
- When inspection reports are issued to Landlords, subsequent infestation treatment is assumed to be the Tenant's responsibility;
- Tenants in so-called "source apartments" may be responsible for infestation treatment in adjacent apartments;
- Failure of Tenants to comply can result in a.) Landlord contracting for an infestation treatment and billing the Tenant; b.) termination of the tenancy; or c.) pursuit of damages

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Business and Labor

DATE: June 9, 2011 Room: 1228 LB

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

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\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Billy Jones

4. Name: \_\_\_\_\_

2. Name: Champ Clavis

5. Name: \_\_\_\_\_

3. Name: Bill MacRae

6. Name: \_\_\_\_\_

## VISITOR REGISTRATION SHEET

Business and Labor

Name of Committee

June 9, 2011

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Cady Thomas

NCAR

Colleen Kochanek

WPAWC

# VISITOR REGISTRATION SHEET

## Business and Labor

**Name of Committee**

June 9, 2011

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**

Denjaya — N.C. Red Mountain Pass

# MINUTES

## Business and Labor Subcommittee

Tuesday, June 14, 2011

10:00 a.m.

Room 544 LOB

The Business and Labor Subcommittee met on Tuesday, June 14, 2011 at 10:00 a.m. in Room 544 of the Legislative Office Building. Representative Darrell G. McCormick presided.

The following members were present:

- |   |   |
|---|---|
| 1. Representative Kelly Alexander                   | 9. Representative Danny McComas             |
| 2. Representative Harold Brubaker                   | <i>Chair – Commerce and Job Development</i> |
| 3. Representative Jeff Collins                      | 10. Representative Rodney Moore             |
| 4. Representative Elmer Floyd ( <i>excused</i> )    | 11. Representative Efton Sager              |
| 5. Representative Dale Folwell                      | 12. Representative Mitchell Setzer          |
| 6. Representative Ken Goodman ( <i>excused</i> )    | 13. Representative Mike Stone               |
| 7. Representative Charles Graham ( <i>excused</i> ) | 14. Representative William Wainwright       |
| 8. Representative Dewey Hill                        |   |

Meeting was called to Order at 10:05 a.m.

Introduction of Sergeant at Arms:

- |               |                  |               |
|---------------|------------------|---------------|
| • Bill MacRae | • Reginald Sills | • R.L. Carter |
|---------------|------------------|---------------|

Introduction of Pages:

- Marcel Boss – Mecklenburg County – Sponsor: Speaker Thom Tillis
- Meghan Brooks – Wake County – Sponsor: Representative Efton Sager
- Carter Skotthy – Davidson County – Sponsor: Representative Rayne Brown
- Benton Kribbs – Rowan County – Sponsor: Representative Harry Warren
- Jacob Keady – Union County – Sponsor: Representative Craig Horn

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
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SB 533	Individually Metered Units/Tenant Charged.	Senator Hunt
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Senator Neal Hunt explained SB 533.

Representative Mitchell Setzer motioned for a favorable report – Passed

**SB 533 – Received a favorable report.**

Representative Marilyn Avila will sponsor SB 683 in the House.

SB 683	Residential Building Inspections.	Senator Hunt
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Representative Mike Stone moved to hear the proposed committee substitute (PCS).

Senator Neal Hunt explained SB 683.

Public Speakers:

- Kelli H. Kukura, NC League of Municipalities, spoke in opposition
- Dana Fenton, Intergovernmental Relations Manager for the City of Charlotte, spoke in opposition
- Colleen Kochanek, Apartment Association of North Carolina, spoke in favor
- Lisa Martin, NC Home Builders Association, clarified information and spoke in favor

Representative Mike Stone motioned for a favorable report to the House committee substitute, unfavorable to the original Senate committee substitute #2. – Motion Failed Roll Call Vote (*attached*) – Tied: 5 – Yes | 5 – No – Motioned Failed and was displaced temporarily. Rep. McComas voted on the prevailing side.

Representative Danny McComas proposed the vote on SB 683 be reconsidered and properly proposed to be back before the committee.

Representative Howard Brubaker motioned for a favorable report to the House committee substitute, unfavorable to the original Senate committee substitute #2 – Passed

**SB 683 – Received a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill #2.**

Representative Tim Moore will sponsor SB 683 in the House.

SB 346 Exempt Cooking Schools from Food Regulations. Senator Kinnaird

Representative Verla Insko explained SB 346 – Senator Eleanor Kinnaird was present.

**SB 346 was withdrawn temporarily and not voted on during this meeting.**

SB 507 Clarify Exception/Real Estate Broker Laws Senator Hunt

SB 507 was added to the agenda. The committee was provided a copy of the bill.

Senator Neal Hunt explained SB507.

Representative Danny McComas motioned for a favorable report – Passed

**SB 507 – Received a favorable report.**

Representative Marilyn Avila will sponsor SB 507 in the House.

SB 781 Regulatory Reform Act of 2011..

Senator Rouzer

Senator Brown

Representative Jeff Collins moved to hear the proposed committee substitute (PCS).

Senator David Rouzer explained SB 781.

Representative Dale Fölwell motioned for a favorable report to the House committee substitute, unfavorable to the Senate committee substitute 1 – Passed

Public Speakers:

- Mary McLean Asbill, Southern Environmental Law Center, spoke in opposition
- Robin Smith, Assistant Secretary, Department of Environmental Resources – spoke about ALJ Decision

**SB 781 – Received a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill #1.**

Representative Pat McElraft and Representative Marilyn Avila will sponsor SB 781 in the House.

Business and Labor Subcommittee Tuesday, June 14, 2011 Meeting – continued (page 3)

**Adjournment**

Meeting adjourned at 10:55 am

Respectfully submitted

A handwritten signature in black ink, appearing to read "Darrell McCormick", written over a horizontal line.

Representative Darrell McCormick  
Chairman

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Anne Murtha  
Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Tuesday, June 14, 2011

**TIME:** 10:00 am

**LOCATION:** 544 LOB

**COMMENTS:**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 346	Exempt Cooking Schools from Food Regulations.	Senator Kinnaird
SB 533	Individually Metered Units/Tenant Charged.	Senator Hunt
SB 683	Residential Building Inspections.	Senator Hunt
SB 781	Regulatory Reform Act of 2011.	Senator Rouzer Senator Brown

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **June 14, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)



# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 14, 2011**

**10:00 a.m.**

**Room 544 LOB**

**Chair: Representative Darrell G. McCormick**

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Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 346	Exempt Cooking Schools from Food Regulations.	Senator Kinnaird
SB 533	Individually Metered Units/Tenant Charged.	Senator Hunt
SB 683	Residential Building Inspections.	Senator Hunt
SB 781	Regulatory Reform Act of 2011.	Senator Rouzer Senator Brown

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 533  
Commerce Committee Substitute Adopted 6/7/11

Short Title: Individually Metered Units/Tenant Charged.

(Public)

Sponsors:

Referred to:

April 12, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE UTILITIES COMMISSION TO ADOPT PROCEDURES THAT ALLOW A LESSOR OF A RESIDENTIAL BUILDING OR COMPLEX HAVING INDIVIDUALLY METERED UNITS FOR ELECTRIC SERVICE IN THE LESSOR'S NAME TO CHARGE FOR THE ACTUAL COSTS OF PROVIDING ELECTRIC SERVICE TO EACH TENANT WHEN THE LESSOR HAS A SEPARATE LEASE FOR EACH BEDROOM IN THE UNIT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-26(b) reads as rewritten:

"(b) An arrearage in costs owed by a tenant for water or sewer services pursuant to G.S. 62-110(g) or electric service pursuant to G.S. 62-110(g1) shall not be used as a basis for termination of a lease under this Chapter. Any payment to the landlord shall be applied first to the rent owed and then to charges for electric service, or water or sewer service, unless otherwise designated by the tenant."

**SECTION 2.** G.S. 42-42.1 reads as rewritten:

**"§ 42-42.1. Water Conservation and electricity conservation.**

(a) For the purpose of encouraging water and electricity conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to ~~G.S. 62-110(g)~~ G.S. 62-110(g) or electric service pursuant to G.S. 62-110(g1).

(b) The landlord may not disconnect or terminate the tenant's electric service or water or sewer services due to the tenant's nonpayment of the amount due for electric service or water or sewer services."

**SECTION 3.** G.S. 42-51 reads as rewritten:

**"§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to ~~G.S. 62-110(g)~~ G.S. 62-110(g) and electric service pursuant to G.S. 62-110(g1), damage to the premises, nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month



to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 4. G.S. 62-110 is amended by adding a new subsection to read as follows:

"§ 62-110. Certificate of convenience and necessity.

...

(g1) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a residential building or complex that has individually metered units for electric service in the lessor's name to charge for the actual costs of providing electric service to each tenant when the lessor has a separate lease for each bedroom in the unit. The following provisions shall apply to the charges authorized under this subsection:

- (1) The lessor shall equally divide the actual amount of the individual electric service bill for a unit among all the tenants in the unit and shall send one bill to each tenant. The amount charged shall be prorated when a tenant has not leased the unit for the same number of days as the other tenants in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of electricity from any other unit or common area in a tenant's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a tenant.
- (2) A lessor who charges for electric service under this subsection is solely responsible for the prompt payment of all bills rendered by the electric utility providing service to the residential building or complex and is the customer of the electric utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of electric service to retail customers of the utility.
- (3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each tenant's allocated costs were calculated for electric service. A tenant may inspect these records, including the actual per unit public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.
- (4) Bills for electric service sent by the lessor to the tenant shall contain all of the following information:
  - a. The bill charged by the electric supplier for the unit as a whole and the amount of charges allocated to the tenant during the billing period.
  - b. The name of the electric power supplier providing electric service to the unit.
  - c. Beginning and ending dates for the usage period and, if provided by the electric supplier, the date the meter was read for that usage period.
  - d. The past-due date, which shall not be less than 25 days after the bill is mailed to the tenant.
  - e. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.
  - f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.

- g. A statement of the tenant's right to address questions about the bill to the lessor and the tenant's right to file a complaint with, or otherwise seek recourse from, the Commission if the tenant cannot resolve an electric service billing dispute with the lessor.
- (5) The Commission shall develop an application that a lessor must submit for Commission approval to charge for electric service as provided in this section. The form shall include all of the following:
- a. A description of the lessor and the property to be served.
- b. A description of the proposed billing method and billing statements.
- c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.
- d. The name of and contact information for the lessor and the lessor's agents.
- e. The name of and contact information for the supplier of electric service to the lessor's rental property.
- f. A copy of the lease forms used by the lessor for tenants who are billed for electric service pursuant to this subsection.
- g. Any additional information that the Commission may require.
- (6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.
- (7) A lessor who charges for electric service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.
- (8) The Commission shall adopt rules to implement the provisions of this subsection."

SECTION 5. G.S. 143-151.42 reads as rewritten:

**"§ 143-151.42. Prohibition of master meters for electric and natural gas service.**

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said

1 design. This section shall apply to any dwelling unit normally rented or leased for a minimum  
2 period of one month or longer, including apartments, condominiums and townhouses, but shall  
3 not apply to hotels, motels, hotels or motels that have been converted into condominiums,  
4 dormitories, rooming houses or nursing homes, or homes for the elderly.

5 (b) The provisions of this section requiring that service and meters for each individual  
6 dwelling unit be in the name of the tenant or other occupant of the apartment or other dwelling  
7 unit shall not apply in cases where the Utilities Commission has approved an application under  
8 G.S. 62-110(g1)."

9 **SECTION 6.** This act becomes effective October 1, 2011, and applies to leases  
10 entered into on or after that date.

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

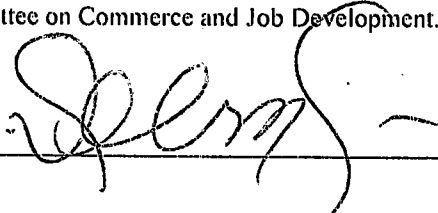
☒ Committee Substitute for

**SB 533** A BILL TO BE ENTITLED AN ACT AUTHORIZING THE UTILITIES COMMISSION TO ADOPT PROCEDURES THAT ALLOW A LESSOR OF A RESIDENTIAL BUILDING OR COMPLEX HAVING INDIVIDUALLY METERED UNITS FOR ELECTRIC SERVICE IN THE LESSOR'S NAME TO CHARGE FOR THE ACTUAL COSTS OF PROVIDING ELECTRIC SERVICE TO EACH TENANT WHEN THE LESSOR HAS A SEPARATE LEASE FOR EACH BEDROOM IN THE UNIT, AND TO MAKE OTHER CONFORMING CHANGES.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 683  
Commerce Committee Substitute Adopted 6/8/11  
Finance Committee Substitute Adopted 6/9/11

Short Title: Residential Building Inspections.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE  
BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a county do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the county to lease or rent residential real property, except for those properties



that have more than three verified violations in a 12-month period; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

(d) A county may levy a fee for residential rental property registration under subsection (c) of this section for those properties which have been found with more than two verified violations of local ordinances within the previous 12 months. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Counties using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:

- (1) For properties with 20 or more residential rental units, the fee shall be no more than fifty dollars (\$50.00) per year.
- (2) For properties with fewer than 20 but more than three residential rental units, the fee shall be no more than twenty-five dollars (\$25.00) per year.
- (3) For properties with three or fewer residential rental units, the fee shall be no more than fifteen dollars (\$15.00) per year."

SECTION 2. G.S. 160A-424 reads as rewritten:

**"§ 160A-424. Periodic inspections.**

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property, except for those properties that have more than three verified violations in a 12-month period; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this



1 section, levy a special fee or tax on residential rental property that is not also levied against  
2 other commercial and residential properties.

3 (d) A city may levy a fee for residential rental property registration under subsection (c)  
4 of this section for those properties which have been found with more than two verified  
5 violations of local ordinances within the previous 12 months. The fee shall be an amount that  
6 covers the cost of operating a residential registration program and shall not be used to supplant  
7 revenue in other areas. Cities using registration programs that charge registration fees for all  
8 residential rental properties as of June 1, 2011, may continue levying a fee on all residential  
9 rental properties as follows:

10 (1) For properties with 20 or more residential rental units, the fee shall be no  
11 more than fifty dollars (\$50.00) per year.

12 (2) For properties with fewer than 20 but more than three residential rental units,  
13 the fee shall be no more than twenty-five dollars (\$25.00) per year.

14 (3) For properties with three or fewer residential rental units, the fee shall be no  
15 more than fifteen dollars (\$15.00) per year."

16 **SECTION 3. G.S. 153A-360 reads as rewritten:**

17 **"§ 153A-360. Inspections of work in progress.**

18 (a) As the work pursuant to a permit progresses, local inspectors shall make as many  
19 inspections of the work as may be necessary to satisfy them that it is being done according to  
20 the provisions of the applicable State and local laws and local ordinances and regulations and  
21 of the terms of the permit. In exercising this power, each member of the inspection department  
22 has a right, upon presentation of proper credentials, to enter on any premises within the  
23 territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or  
24 other enforcement action.

25 (b) In no event may a county require inspections of residential buildings or structures  
26 that are additional to those required by the North Carolina Building Code Council without first  
27 obtaining approval from the Council. The Council shall review all applications for inspections  
28 greater than those required by the Council and shall, in a timely manner, approve or disapprove  
29 the additional inspections, except that the county may require any additional inspection where  
30 unforeseen or unique circumstances exist and require immediate action."

31 **SECTION 4. 160A-420 reads as rewritten:**

32 **"§ 160A-420. Inspections of work in progress.**

33 (a) As the work pursuant to a permit progresses, local inspectors shall make as many  
34 inspections thereof as may be necessary to satisfy them that the work is being done according  
35 to the provisions of any applicable State and local laws and of the terms of the permit. In  
36 exercising this power, members of the inspection department shall have a right to enter on any  
37 premises within the jurisdiction of the department at all reasonable hours for the purposes of  
38 inspection or other enforcement action, upon presentation of proper credentials.

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41 obtaining approval from the Council. The Council shall review all applications for inspections  
42 greater than those required by the Council and shall, in a timely manner, approve or disapprove  
43 the additional inspections, except that the city may require any additional inspection where  
44 unforeseen or unique circumstances exist and require immediate action."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 683  
Commerce Committee Substitute Adopted 6/8/11  
Finance Committee Substitute Adopted 6/9/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S683-CSRN-29 [v.1]

6/14/2011 9:32:40 AM

Short Title: Residential Building Inspections.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED  
AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE  
BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.

(a) The inspection department ~~shall~~ may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing



\* S 6 8 3 - C S R N - 2 9 - V - 1 \*

1 regarding the plan; and (iii) establish a plan to address the ability of low-income residential  
2 property owners to comply with minimum housing code standards.

3 (c) In no event may a county do any of the following: (i) adopt or enforce any  
4 ordinance that would require any owner or manager of rental property to obtain any permit or  
5 permission from the county to lease or rent residential real property, except for those rental  
6 units that have more than three verified violations of housing ordinances or codes in a  
7 12-month period; (ii) require that an owner or manager of residential rental property enroll or  
8 participate in any governmental program as a condition of obtaining a certificate of occupancy;  
9 or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on  
10 residential rental property that is not also levied against other commercial and residential  
11 properties.

12 (d) A county may levy a fee for residential rental property registration under subsection  
13 (c) of this section for those rental units which have been found with more than two verified  
14 violations of housing ordinances or codes within the previous 12 months. The fee shall be an  
15 amount that covers the cost of operating a residential registration program and shall not be used  
16 to supplant revenue in other areas. Counties using registration programs that charge registration  
17 fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all  
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44 presentation of proper credentials. Nothing in this section shall be construed to prohibit  
45 periodic inspections in accordance with State fire prevention code or as otherwise required by  
46 State law.

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48 geographic area that has been designated by the city council. The municipality shall not  
49 discriminate in its selection or areas or properties to be targeted and shall (i) provide notice to  
50 all owners and residents of properties in the affected area about the periodic inspections plan

1 and information regarding a public hearing regarding the plan; (ii) hold a public hearing  
2 regarding the plan; and (iii) establish a plan to address the ability of low-income residential  
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11 other commercial and residential properties.

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24 more than fifteen dollars (\$15.00) per year."

25 **SECTION 3. G.S. 153A-360 reads as rewritten:**

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27 (a) As the work pursuant to a permit progresses, local inspectors shall make as many  
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2 additional inspections, except that the city may require any additional inspection where  
3 unforeseen or unique circumstances exist and require immediate action."

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

## ROLL CALL VOTE

5      5      = 10 (TOTAL)  
YES      NO

HB# \_\_\_\_\_  
SB# 683

**HOUSE STANDING COMMITTEE ON** - *Commerce and Job Development*

**House Subcommittee on -- Business and Labor – June 14, 2011**

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<u>✓</u>	___	ALEXANDER, Kelly	<u>✓</u>	___	McCORMICK, Darrell - Chair
___	___	BRUBAKER, Bru	___	<u>✓</u>	McCOMAS, Danny – Comm Chair
___	___	CARNEY, Becky			
<u>✓</u>	___	COLLINS, Jeff			
___	___	DOCKHAM, Jerry			
___	___	DOLLAR, Nelson			
___	___	FLOYD, Elmer			
___	___	FOLWELL, Dale			
___	___	GOODMAN, Ken			
___	___	GRAHAM, Charles			
___	___	HAGER, Mike			
___	<u>✓</u>	HILL, Dewey			
___	___	HOLLOWAY, Bryan			
___	___	LAROQUE, Stephen			
___	___	MOFFITT, Tim			
___	<u>✓</u>	MOORE, Rodney			
___	___	OWENS, Bill			
___	___	PIERCE, Garland			
<u>✓</u>	___	SAGER, Efton			
___	<u>✓</u>	SETZER, Mitchell			
___	___	SHEPARD, Phillip			
<u>✓</u>	___	STONE, Mike			
___	<u>✓</u>	WAINWRIGHT, William			
___	___	WILKINS, Winkie			

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

SENATE BILL 683

Commerce Committee Substitute Adopted 6/8/11

Finance Committee Substitute Adopted 6/9/11

PROPOSED HOUSE COMMITTEE SUBSTITUTE S683-PCS75186-RN-29

Short Title: Residential Building Inspections.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE  
BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

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(a) The inspection department ~~shall~~ may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing



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1 regarding the plan; and (iii) establish a plan to address the ability of low-income residential  
2 property owners to comply with minimum housing code standards.

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4 ordinance that would require any owner or manager of rental property to obtain any permit or  
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24 more than fifteen dollars (\$15.00) per year."

25 **SECTION 2. G.S. 160A-424 reads as rewritten:**

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50 than those required by the Code and shall, in a timely manner, approve or disapprove the

1 additional inspections, except that the city may require any additional inspection where  
2 unforeseen or unique circumstances exist and require immediate action."

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

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

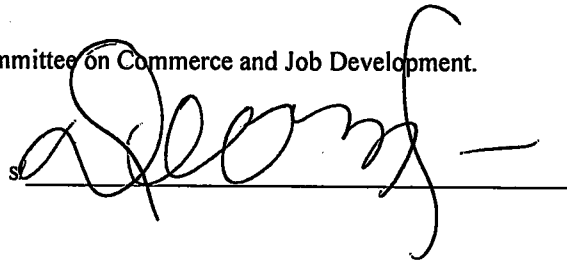
☒ Committee Substitute for

**SB 683** A BILL TO BE ENTITLED AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.



☒ With a favorable report as to the House committee substitute bill 1, unfavorable as to the Senate Committee Substitute Bill #2.

**(FOR JOURNAL USE ONLY)**

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

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

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

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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2

**SENATE BILL 346\*  
Second Edition Engrossed 3/31/11**

Short Title:   Exempt Cooking Schools From Food Regulations. (Public)

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Sponsors:     Senators Kinnaird; Graham and McKissick.

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Referred to:   Health Care.

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March 16, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BONA FIDE COOKING SCHOOLS FROM REGULATIONS  
GOVERNING THE SANITATION OF ESTABLISHMENTS THAT PREPARE OR  
SERVE FOOD OR DRINK TO THE PUBLIC.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 130A-250 is amended by adding a new subdivision to read:

"(13) Bona fide cooking schools, defined for the purpose of this subdivision as cooking schools that (i) primarily provide courses or instruction on food preparation techniques that participants can replicate in their homes, (ii) prepare or serve food for cooking school participants during instructional time only, and (iii) do not otherwise prepare or serve food to the public."

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



\* S 3 4 6 - V - 2 \*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 507  
Commerce Committee Substitute Adopted 6/8/11

Short Title: Clarify Exception/Real Estate Broker Laws.

(Public)

Sponsors:

Referred to:

April 5, 2011

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THAT OFFICERS AND EMPLOYEES OF A PERSON OR  
3 BUSINESS ENTITY WHO PERFORMS REAL ESTATE BROKER ACTS AS  
4 RELATED TO PROPERTY OWNED OR LEASED BY THE PERSON OR BUSINESS  
5 ENTITY ARE EXEMPT FROM THE REQUIREMENTS OF LICENSURE UNDER THE  
6 LAWS REGULATING REAL ESTATE BROKERS AND SALESPERSONS.  
7 The General Assembly of North Carolina enacts:  
8 **SECTION 1.** G.S. 93A-2(c)(1) reads as rewritten:  
9 "(c) The provisions of ~~this Chapter~~ G.S. 93A-1 and G.S. 93A-2 do not apply to and do  
10 not include:  
11 (1) Any person, partnership, corporation, limited liability company, association,  
12 or other business entity who, as owner or lessor, shall perform any of the  
13 acts aforesaid with reference to property owned or leased by them, where the  
14 acts are performed in the regular course of or as incident to the management  
15 of that property and the investment therein. The exemption from licensure  
16 under this subsection shall extend to officers and employees of an exempt  
17 corporation, the general partners of an exempt partnership, and the managers  
18 of an exempt limited liability company when said persons are engaged in  
19 acts or services for which the corporation, partnership, or limited liability  
20 company would be exempt hereunder."  
21 **SECTION 2.** This act is effective when it becomes law.



\* S 5 0 7 - V - 2 \*

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☒ Committee Substitute for

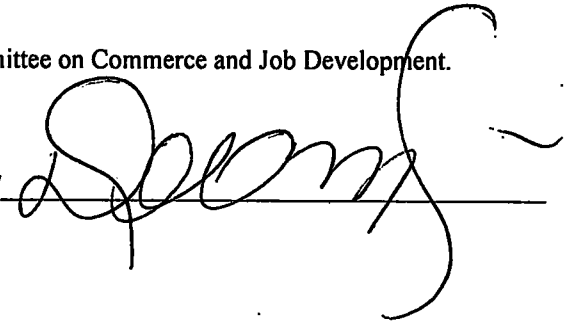
**SB 507** A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT OFFICERS AND EMPLOYEES OF A PERSON OR BUSINESS ENTITY WHO PERFORMS REAL ESTATE BROKER ACTS AS RELATED TO PROPERTY OWNED OR LEASED BY THE PERSON OR BUSINESS ENTITY ARE EXEMPT FROM THE REQUIREMENTS OF LICENSURE UNDER THE LAWS REGULATING REAL ESTATE BROKERS AND SALESPERSONS.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



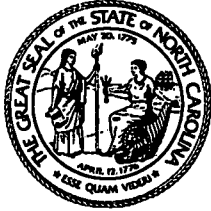
☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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

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



# SENATE BILL 781: Regulatory Reform Act of 2011

2011-2012 General Assembly

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<b>Committee:</b>	Senate Agriculture/Environment/Natural Resources	<b>Date:</b>	June 7, 2011
<b>Introduced by:</b>	Sens. Rouzer, Brown	<b>Prepared by:</b>	Karen Cochran-Brown
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *Senate Bill 781 is a recommendation of the Joint Legislative Regulatory Reform Committee. The bill makes numerous changes to the Administrative Procedure Act (APA) relating to the rulemaking process, the contested case process, and judicial review of agency decisions. The bill also makes a number other changes to the laws relating to certain environmental policies.*

## ***Part I: Rulemaking.***

**Section 1.** This section amends the law related to the scope and effect of rules to add a requirement that an agency shall not seek to enforce a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with the APA.

## **Section 2.**

This section adds 3 new sections to Article 2A of Chapter 150B.

The first new section, G.S. 150B-19.1, is a set of regulatory principles that agencies must follow when developing and adopting proposed rules. The principles include:

- An agency may only adopt rules that are clearly authorized by federal or State law and that are necessary to serve the public interest.
- An agency shall seek to reduce the burden upon those who must comply with the rule.
- Rules must be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- An agency must consider the cumulative effect of rules and shall not adopt a rule that is unnecessary or redundant.
- Rules should be based on sound scientific, technical, economic or other relevant information.
- Rules must be designed to achieve the regulatory objective in a cost-effective and timely manner.

Each year, agencies must conduct a review of existing rules and repeal any rules which it finds to be unnecessary, unduly burdensome, or inconsistent with the principles.

Agencies must post information about a proposed rule on its website when it submits the rule for publication in the NC Register.

Agencies must determine whether there is overlap in its policies and programs with another agency and coordinate their rulemaking activity.

Agencies must review details of fiscal note with the rulemaking body.

Agencies must consider at least 2 alternatives to the proposed rule if the rule has a substantial economic impact.

# Senate Bill 781

Page 2

Agencies must prepare federal certification if the rule is required by federal law and post the certification on the website.

The second new section, G.S. 150B-19.2, codifies the Rules Modification and Improvement Program from the Governor's Executive Order 70. This requires OSBM to coordinate and oversee an annual review of existing rules. The program directs OSBM to create a web portal dedicated to receiving public comments on rules and tracking agency progress on reforming rules.

The third new section, G.S. 150B-19.3, prohibits certain enumerated agencies authorized to implement and enforce environmental laws from adopting rules for the protection of the environment or natural resources that impose standards and limitations that are more restrictive than those imposed by an analogous federal law or rule, unless the rule responds to an emergency, a specific law, a change in budgetary policy, or a court order.

Section 3. Repeals a provision relating to federal certification that was moved to a new section.

Section 4. Clarifies a provision relating to temporary rulemaking.

Section 5. Makes conforming changes to the procedure for adopting a permanent rule and clarifies that fiscal notes are subject to public comment. The section also requires that agencies review any fiscal notes and the public comments related to them before adoption of a proposed rule.

Section 6. Amends the fiscal note section to (1) require OSBM to enforce the regulatory principles; (2) make failure to prepare a substantial economic impact fiscal note a basis to disapprove a rule; (3) define the steps in preparing a substantial economic impact fiscal note; and (4) add a requirement that the fiscal note identify the 2 alternative to the rule that were considered by the agency. This section also reduces the threshold for a substantial economic impact from \$3,000,000 to \$500,000.

Sections 7, 8 and 9. Remove obsolete references to reports to the Joint Legislative Administrative Procedure Oversight Committee.

Section 10. Deletes unused and obsolete references.

Section 11. Removes obsolete reference to a "loose leaf" format previously used for the Administrative Code.

Section 12. Clarifies that agencies which are exempt from rulemaking under the APA must submit rules inclusion in the Code.

Section 13. Deletes an unused and obsolete provision relating to a manual for notice of rulemaking proceeding and notice of text.

Section 14. Conforms reference to review by OSBM of rules that affect local government expenditures.

## ***Part II: Contested Cases.***

Sections 15 through 27 amend Articles 3 and 4 of the APA to eliminate the requirement that an ALJ's decision be returned to the agency for a final decision. The bill makes the ALJ's decision the final administrative decision in the contested case. The bill also amends the law to provide that certificate of need cases and local government personnel cases will be handled in the same manner as all other cases decided under Article 3.

Inasmuch as the bill eliminates the possibility of an agency reversal of an ALJ decision, the standard for judicial review is also modified. The bill provides that in reviewing a final decision the court will determine whether the decision is supported by substantial evidence in view of the entire record. If the



# Senate Bill 781

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court finds that the decision is not supported by substantial evidence, it may reverse the decision and remand the case to the ALJ in Article 3 cases, or to the agency in Article 3A cases.

Sections 28 through 55 of the bill contain conforming amendments to various provisions in the General Statutes that refer to final agency decisions.

## ***Part III: Miscellaneous Issues.***

**Section 56.** Amends the provision of the APA which directs an agency to issue a declaratory ruling upon the request of an aggrieved person. The amendment authorizes the agency to issue a declaratory ruling to resolve a conflict or inconsistency within the agency. The section also provides that failure to issue the ruling within 60 days constitutes a determination in favor of the aggrieved person.

**Section 57.** Directs every state agency with rulemaking power to compile a list of all of the agency's rules that fit the following criteria:

- Rules that are mandated by federal law or regulation.
- If not mandated by federal law or regulation, rules that have a federal regulation that is analogous.
- If there is an analogous law or regulation, whether the rule is more stringent than the federal law or regulation.

The list must be delivered to the Joint Regulatory Reform Committee by October 1, 2011.

**Section 58.** Directs the Joint Regulatory Reform Committee to study the requirements for administrative hearings conducted under Article 3A of the APA. The agencies subject to Article 3A are occupational licensing agencies, the State Banking Commission and the Commissioner of Banks, the Credit Union Division, the Department of Insurance, the State Chief Information Officer in certain cases, the State Building Code Council, and the State Board of Elections in cases involving regulation of campaign contributions and expenditures. The Committee must report to the 2012 Session of the 2011 General Assembly.

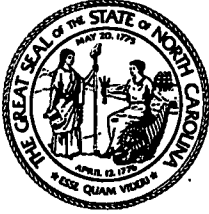
**Section 59.** Provides that major developments subject to permitting under the Coastal Area Management Act are exempt from the Environmental Policy Act.

**Section 60.** Provides that certain environmental regulatory permits issued on or after July 1, 2011 shall be valid for up to 10 years. Currently, most permits expire after five years or less.

**Section 61.** Directs the Secretary of the Department of Environment and Natural Resources to develop uniform policy for notification of deficiencies and violations with differing notifications based on the level of potential harm. The Secretary is directed to report to the Legislative Environmental Review Commission by October 1, 2011, and to implement the plan by February 1, 2012.

**Section 62.** Severability clause.

**EFFECTIVE DATE:** Sections 2 through 15 of the act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided, the remainder of the act becomes effective when it becomes law.



# SENATE BILL 781: Regulatory Reform Act of 2011

2011-2012 General Assembly

**Committee:** Senate Commerce  
**Introduced by:** Sens. Rouzer, Brown  
**Analysis of:** PCS to First Edition  
S781-CSRO-24

**Date:** June 8, 2011  
**Prepared by:** Karen Cochran-Brown  
Committee Counsel

**SUMMARY:** *The PCS makes the following changes to the bill:*

- **Section 1.** *Adds language to clarify that the new provision only applies to policies that fit the definition of a rule. (p. 1)*
- **Section 2.** *Deletes sentence giving authority to OSBM in G.S. 150B-19.2. Adds Pesticide Board to enumerated agencies under G.S.150B-19.3. (p. 3)*
- **Sections 22 and 25.** *Restores reference to persons aggrieved as having authority to seek judicial review. (pp. 11 & 12)*
- **Section 27.** *Amends G.S. 150B-51(c) to clarify the standard of judicial review of final decisions made by ALJs. (p. 13)*
- **Section 55.1.** *New section directing DHHS to seek a waiver for final decisions made by OAH. (p. 21)*
- **Section 56.** *Modifies the process to be used by an agency in response to a request for a declaratory ruling. (p. 22)*
- **Section 60.** *Extends term of permits to 8 years rather than 10. (pp. 23 – 25)*
- **Section 61.1.** *New section directing the OAH to evaluate the use of mediated settlement conferences, develop a plan to expand the use of such conferences, and report to Joint Regulatory Reform committee by February 1, 2012. (p. 25)*
- **Section 61.2.** *New section which repeals SB 22. (p. 25)*

S781-SMRO-39(CSRO-24) v1

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 781\*  
Commerce Committee Substitute Adopted 6/8/11

Short Title: Regulatory Reform Act of 2011.

(Public)

Sponsors:

Referred to:

June 6, 2011

A BILL TO BE ENTITLED  
AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB  
CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

**PART I. RULE MAKING**

**SECTION 1.** G.S. 150B-18 reads as rewritten:

**"§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article."

**SECTION 2.** Article 2A of Chapter 150B of the General Statutes is amended by adding three new sections to read:

**"§ 150B-19.1. Requirements for agencies in the rule-making process.**

**(a)** In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1)** An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2)** An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3)** Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4)** An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5)** When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6)** Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

**(b)** Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the



principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

#### **"§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must identify a specific rule or regulatory program and may include recommendations regarding modifying, expanding, or repealing existing rules or changing the rule review and publication process. The OSBM shall direct each agency to conduct an internal review of its rules as required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM

shall assemble and evaluate the public comments and forward any comments it deems to have merit to the appropriate agency for further review. Agencies shall review the public comments and prepare a report on whether any of the recommendations contained in the comments have potential merit and justify further action. Agencies shall submit a report of their findings to the OSBM by January 31 of each year. The OSBM shall publish an annual report by April 30 of each year summarizing all public comments and resulting actions taken or planned.

(b) The OSBM shall establish a single Web portal dedicated to receiving public comments and tracking agency progress on reforming rules.

**"§ 150B-19.3. Limitation on certain environmental rules.**

(a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining Commission created pursuant to G.S. 143B-290.

(9) The Pesticide Board created pursuant to G.S. 143-436."

**SECTION 3.** G.S. 150B-21(f) is repealed.

**SECTION 4.** G.S. 150B-21.1(a3) reads as rewritten:

"(a3) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

**SECTION 5.** G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule.
- (2) A short explanation of the reason for the proposed rule, rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule."

**SECTION 6.** G.S. 150B-21.4 reads as rewritten:

**"§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the ~~Director of the Budget~~ Office of State Budget and Management and obtain certification from the ~~Director~~ Office that the funds that would be required by the proposed rule change are available. The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The ~~Director of the Budget Office of State Budget and Management~~ Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the ~~Office of the Governor~~ State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the ~~Office of State Budget and Management~~, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or~~ shall prepare a fiscal note for the proposed rule change and have the note approved by that Office, the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~three million dollars (\$3,000,000)~~ five hundred thousand dollars (\$500,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) Determine and identify the appropriate time frame of the analysis.



- 1           (2)   Assess the baseline conditions against which the proposed rule is to be  
2               measured.
- 3           (3)   Describe the persons who would be subject to the proposed rule and the type  
4               of expenditures these persons would be required to make.
- 5           (4)   Estimate any additional costs that would be created by implementation of the  
6               proposed rule by measuring the incremental difference between the baseline  
7               and the future condition expected after implementation of the rule. The  
8               analysis should include direct costs as well as opportunity costs. Cost  
9               estimates must be monetized to the greatest extent possible. Where costs are  
10              not monetized, they must be listed and described.
- 11           (5)   For costs that occur in the future, the agency shall determine the net present  
12               value of the costs by using a discount factor of seven percent (7%).
- 13       (b2)   Content. – A fiscal note required by subsection (b1) of this section must contain the  
14   following:
- 15           (1)   A description of the persons who would be affected by the proposed rule  
16               change.
- 17           (2)   A description of the types of expenditures that persons affected by the  
18               proposed rule change would have to make to comply with the rule and an  
19               estimate of these expenditures.
- 20           (3)   A description of the purpose and benefits of the proposed rule change.
- 21           (4)   An explanation of how the estimate of expenditures was computed.
- 22           (5)   A description of at least two alternatives to the proposed rule that were  
23               considered by the agency and the reason the alternatives were rejected. The  
24               alternatives may have been identified by the agency or by members of the  
25               public.
- 26       (c)   Errors. – An erroneous fiscal note prepared in good faith does not affect the validity  
27   of a rule."

28       **SECTION 7.** G.S. 150B-21.11 reads as rewritten:

29       **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

30       When the Commission approves a permanent rule, it must notify the agency that adopted  
31   the rule of the Commission's approval, and deliver the approved rule to the Codifier of Rules,  
32   ~~and include the text of the approved rule and a summary of the rule in its next report to the~~  
33   ~~Joint Legislative Administrative Procedure Oversight Committee.~~ Rules.

34       If the approved rule will increase or decrease expenditures or revenues of a unit of local  
35   government, the Commission must also notify the Governor of the Commission's approval of  
36   the rule and deliver a copy of the approved rule to the Governor by the end of the month in  
37   which the Commission approved the rule."

38       **SECTION 8.** G.S. 150B-21.12(d) reads as rewritten:

39       "(d)   Return of Rule. – A rule to which the Commission has objected remains under  
40   review by the Commission until the agency that adopted the rule decides not to satisfy the  
41   Commission's objection and makes a written request to the Commission to return the rule to the  
42   agency. When the Commission returns a rule to which it has objected, it must notify the  
43   Codifier of Rules of its ~~action and must send a copy of the record of the Commission's review~~  
44   ~~of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next~~  
45   ~~report to that Committee.~~ action. If the rule that is returned would have increased or decreased  
46   expenditures or revenues of a unit of local government, the Commission must also notify the  
47   Governor of its action and must send a copy of the record of the Commission's review of the  
48   rule to the Governor. The record of review consists of the rule, the Commission's letter of  
49   objection to the rule, the agency's written response to the Commission's letter, and any other  
50   relevant documents before the Commission when it decided to object to the rule."

51       **SECTION 9.** G.S. 150B-21.16 is repealed.

**SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

- (1) Temporary rules entered in the North Carolina Administrative Code.
- (1a) The text of proposed rules and the text of permanent rules approved by the Commission.
- (1b) Emergency rules entered into the North Carolina Administrative Code.
- (2) ~~Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.~~
- (3) Executive orders of the Governor.
- (4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
- (5) ~~Orders of the Tax Review Board issued under G.S. 105-241.2.~~
- (6) Other information the Codifier determines to be helpful to the public."

**SECTION 11.** G.S. 150B-21.18 reads as rewritten:**"§ 150B-21.18. North Carolina Administrative Code.**

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means.~~ The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

**SECTION 12.** G.S. 150B-21.21(b) reads as rewritten:

~~"(b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.~~

Notwithstanding ~~G.S. 150B-1~~, any other provision of law, an agency ~~other than the Utilities Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule."

**SECTION 13.** G.S. 150B-21.23 is repealed.**SECTION 14.** G.S. 150B-21.26 reads as rewritten:

"Part 5. Rules Affecting Local Governments.

**"§ 150B-21.26. Governor Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~3060~~ days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~ Office of State Budget and Management for preliminary review:

- (1) The text of the proposed rule change.
- (2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

## PART II. CONTESTED CASES

SECTION 15. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

SECTION 16. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, ~~except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.~~ Article."

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

(12) ~~Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the~~

~~decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."~~

SECTION 18. G.S. 150B-34 reads as rewritten:

**"§ 150B-34. Decision of administrative law judge. Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(e), and subsection (e) of this section, in~~ In each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of law ~~and return the decision to the agency for a final decision in accordance with G.S. 150B-36 law.~~ The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(e).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(e) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) Except for the exemptions contained in G.S. 150B-1(e) and (e), and subsection (e) of this section, G.S. 150B-1, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

**"§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

**"§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) Repealed by Session Laws 1987, c. 878, s. 25.
- (6) The administrative law judge's ~~decision~~, final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the administrative law judge's~~ final decision to each party."

SECTION 22. G.S. 150B-43 reads as rewritten:

**"§ 150B-43. Right to judicial review.**

Any ~~person-party who is or~~ person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him-the party or person~~ aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person-party or person aggrieved~~ from invoking any judicial remedy available to ~~him-the party or person aggrieved~~ under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 23. G.S. 150B-44 reads as rewritten:

**"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section.~~

SECTION 24. G.S. 150B-47 reads as rewritten:

**"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

1 Within 30 days after receipt of the copy of the petition for review, or within such additional  
2 time as the court may allow, the agency that made the final decision in the contested  
3 ~~ease~~Office of Administrative Hearings shall transmit to the reviewing court the original or a  
4 certified copy of the official record in the contested case under review together with: (i) any  
5 ~~exeeptions, proposed findings of fact, or written arguments submitted to the agency in~~  
6 ~~accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the  
7 permission of the court, the record may be shortened by stipulation of all parties to the review  
8 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by  
9 the court for such additional costs as may be occasioned by the refusal. The court may require  
10 or permit subsequent corrections or additions to the record when deemed desirable."

11 SECTION 25. G.S. 150B-49 reads as rewritten:

12 "**§ 150B-49. New evidence.**

13 ~~An aggrieved person~~ A party or person aggrieved who files a petition in the superior court  
14 may apply to the court to present additional evidence. If the court is satisfied that the evidence  
15 is material to the issues, is not merely cumulative, and could not reasonably have been  
16 presented at the administrative hearing, the court may remand the case so that additional  
17 evidence can be taken. If an administrative law judge did not make a final decision in the case,  
18 the court shall remand the case to the agency that conducted the administrative ~~hearing~~hearing  
19 under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify  
20 its previous findings of fact and final decision. If an administrative law judge made a final  
21 decision in the case, the court shall remand the case to the administrative law judge. After  
22 hearing the evidence, the administrative law judge may affirm or modify his previous findings  
23 of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to~~  
24 ~~the agency that made the final decision, which in turn may affirm or modify its previous~~  
25 ~~findings of fact and final decision.~~ The additional evidence and any affirmation or modification  
26 of a final decision ~~of the administrative law judge or final decision~~ shall be made part of the  
27 official record."

28 SECTION 26. G.S. 150B-50 reads as rewritten:

29 "**§ 150B-50. Review by superior court without jury.**

30 The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall  
31 be conducted by the court without a jury."

32 SECTION 27. G.S. 150B-51 reads as rewritten:

33 "**§ 150B-51. Scope and standard of review.**

34 (a) ~~In reviewing a final decision in a contested case in which an administrative law~~  
35 ~~judge made a recommended decision and the State Personnel Commission made an advisory~~  
36 ~~decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations.~~  
37 ~~First, the court shall determine whether the applicable appointing authority heard new evidence~~  
38 ~~after receiving the recommended decision. If the court determines that the applicable~~  
39 ~~appointing authority heard new evidence, the court shall reverse the decision or remand the~~  
40 ~~case to the applicable appointing authority to enter a decision in accordance with the evidence~~  
41 ~~in the official record. Second, if the applicable appointing authority did not adopt the~~  
42 ~~recommended decision, the court shall determine whether the applicable appointing authority's~~  
43 ~~decision states the specific reasons why the applicable appointing authority did not adopt the~~  
44 ~~recommended decision. If the court determines that the applicable appointing authority did not~~  
45 ~~state specific reasons why it did not adopt a recommended decision, the court shall reverse the~~  
46 ~~decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

47 (a1) ~~In reviewing a final decision in a contested case in which an administrative law~~  
48 ~~judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the~~  
49 ~~administrative law judge's decision, the court shall determine whether the agency heard new~~  
50 ~~evidence after receiving the decision. If the court determines that the agency heard new~~  
51 ~~evidence, the court shall reverse the decision or remand the case to the agency to enter a~~

~~decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.~~

(b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision, the~~The court reviewing a final decision may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency; agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary, capricious, or an abuse of discretion.

(c) ~~In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.~~case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

(d) ~~In reviewing a final agency decision allowing judgment on the pleadings or summary judgment, or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just.~~

SECTION 28. G.S. 7A-759(e) reads as rewritten:

"(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~An order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules."

SECTION 29. G.S. 74-58(b) reads as rewritten:

"(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until ~~the Commission makes issuance of~~ a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief."

**SECTION 30.** G.S. 74-61 reads as rewritten:

**"§ 74-61. Administrative and judicial review of decisions.**

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

**SECTION 31.** G.S. 74-85 reads as rewritten:

**"§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

**SECTION 32.** G.S. 108A-70.9A(f) reads as rewritten:

"(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with ~~G.S. 108A-70.9B. G.S. 150B-37.~~ The Department shall ~~make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly~~ notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

**SECTION 33.** G.S. 108A-70.9B(g) reads as rewritten:

"(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~ The judge shall prepare a written decision and send it to the parties. parties in accordance with G.S. 150B-37. ~~The decision shall be sent together with the record to the agency within 20 days of the conclusion of the hearing.~~"

**SECTION 34.** G.S. 113-171(e) reads as rewritten:

"(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final ~~decision by the Secretary.~~ decision."

**SECTION 35.** G.S. 113-202 reads as rewritten:

**"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.**

...

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the



applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

...  
(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate a contested case, or the Secretary's final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

...."

**SECTION 36.** G.S. 113-229(f) reads as rewritten:

"(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit."

**SECTION 37.** G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and

- 1 (3) Has alleged facts or made legal arguments that demonstrate that the request  
2 for the hearing is not frivolous.

3 If the Commission determines a contested case is appropriate, the petition for a contested  
4 case shall be filed within 20 days after the Commission makes its determination. A  
5 determination that a person may not commence a contested case is a final agency decision and  
6 is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on  
7 judicial review, the court determines that the Commission erred in determining that a contested  
8 case would not be appropriate, the court shall remand the matter for a contested case hearing  
9 under G.S. 150B-23 and final Commission decision on the permit pursuant to G.S. 113A-122.  
10 Decisions in such cases shall be rendered pursuant to those rules, regulations, and other  
11 applicable laws in effect at the time of the commencement of the contested case."

12 **SECTION 38.** G.S. 113A-126(d) reads as rewritten:

- 13 "(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor  
14 development violation and ten thousand dollars (\$10,000) for a major  
15 development violation may be assessed by the Commission against any  
16 person who:

17 ...

- 18 (3) The Commission shall notify a person who is assessed a penalty or  
19 investigative costs by registered or certified mail. The notice shall state the  
20 reasons for the penalty. A person may contest the assessment of a penalty or  
21 investigative costs by filing a petition for a contested case under  
22 G.S. 150B-23 within 20 days after receiving the notice of assessment. If a  
23 person fails to pay any civil penalty or investigative cost assessed under this  
24 subsection, the Commission shall refer the matter to the Attorney General  
25 for collection. An action to collect a penalty must be filed within three years  
26 after the date the final agency decision was served on the violator.

27 ...."

28 **SECTION 39.** G.S. 122C-24.1(h) reads as rewritten:

29 "(h) The Secretary may bring a civil action in the superior court of the county wherein  
30 the violation occurred to recover the amount of the administrative penalty whenever a facility:

- 31 (1) Which has not requested an administrative hearing fails to pay the penalty  
32 within 60 days after being notified of the penalty, or  
33 (2) Which has requested an administrative hearing fails to pay the penalty  
34 within 60 days after receipt of a written copy of the decision as provided in  
35 ~~G.S. 150B-36.~~ G.S. 150B-37."

36 **SECTION 40.** G.S. 122C-151.4(f) reads as rewritten:

37 "(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel  
38 may commence a contested case under Article 3 of Chapter 150B of the General Statutes.  
39 Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency  
40 for purposes of the limited appeal authorized by this section. If the need to first appeal to the  
41 State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to  
42 the Office of Administrative Hearings after having exhausted the appeals process at the  
43 appropriate area authority or county program. ~~The Secretary shall make a final decision in the~~  
44 ~~contested case."~~

45 **SECTION 41.** G.S. 126-4.1 is repealed.

46 **SECTION 42.** G.S. 126-14.4(e) reads as rewritten:

47 "(e) Within 90 days after the filing of a contested case petition, the administrative law  
48 judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall  
49 include findings of fact and conclusions of law and, if the administrative law judge has found a  
50 violation of G.S. 126-14.2, an appropriate ~~recommended remedy.~~ remedy, which may include:

- (1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or  
(2) Requiring that the vacancy be posted pursuant to this Chapter."

SECTION 43. G.S. 126-14.4(f) is repealed.

SECTION 44. G.S. 126-37 reads as rewritten:

"§ 126-37. ~~Personnel Commission to review~~ Administrative Law Judge's recommended decision and make final decision.

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section.~~ The State Personnel Commission administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

~~(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.~~

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other appeals, ~~except that the decision of the State Personnel Commission shall be final.~~ appeals.

(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

SECTION 45. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

**SECTION 46.** G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.
- (5) ~~The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension."~~

**SECTION 47.** G.S. 131F-5(b) reads as rewritten:

"(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. ~~A recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during

1 the review period and disposal of such funds in the event the denial of the application is  
2 affirmed on appeal."

3 **SECTION 48.** G.S. 131F-15(e) reads as rewritten:

4 "(e) Departmental Review. – The Department shall examine each application or renewal  
5 filed by a fund-raising consultant and determine whether the requirements are satisfied. If the  
6 Department determines that the requirements are not satisfied, the Department shall notify the  
7 fund-raising consultant within 10 days after its receipt of the application or renewal. If the  
8 Department does not respond within 10 days, the license is deemed approved. Within seven  
9 days after receipt of a notification that the license requirements are not satisfied, the applicant  
10 may file a petition for a contested case. The State has the burden of proof in the contested case.  
11 The contested case hearing must be held within seven days after the petition is filed. A  
12 ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final~~  
13 ~~decision must be made within two days after the recommended decision.~~ The contested case  
14 hearing proceedings shall be conducted in accordance with Chapter 150B of the General  
15 Statutes, except that the time limits and provisions set forth in this section shall prevail to the  
16 extent of any conflict. The applicant shall be permitted to continue to operate or continue  
17 operations pending judicial review of the Department's denial of the application. The  
18 Department shall make rules regarding the custody and control of any funds collected during  
19 the review period and disposal of such funds in the event the denial of the application is  
20 affirmed on appeal."

21 **SECTION 49.** G.S. 135-44.7(c) is repealed.

22 **SECTION 50.** G.S. 143-215.22L(o) reads as rewritten:

23 "(o) Administrative and Judicial Review. – Administrative and judicial review of a final  
24 decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed  
25 by Chapter 150B of the General Statutes."

26 **SECTION 51.** G.S. 143-215.94E(e3) reads as rewritten:

27 "(e3) The Department shall not pay any third party or reimburse any owner or operator  
28 who has paid any third party pursuant to any settlement agreement or consent judgment relating  
29 to a claim by or on behalf of a third party for compensation for bodily injury or property  
30 damage unless the Department has approved the settlement agreement or consent judgment  
31 prior to entry into the settlement agreement or consent judgment by the parties or entry of a  
32 consent judgment by the court. The approval or disapproval by the Department of a proposed  
33 settlement agreement or consent judgment shall be subject to challenge only in a contested case  
34 filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency~~  
35 ~~decision in a contested case proceeding under this subsection."~~

36 **SECTION 52.** G.S. 143-215.94U(e) reads as rewritten:

37 "(e) The Department may revoke an operating permit only if the owner or operator fails  
38 to continuously meet the requirements set out in subsection (a) of this section. If the  
39 Department revokes an operating permit, the owner or operator of the facility for which the  
40 operating permit was issued shall immediately surrender the operating permit certificate to the  
41 Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator  
42 may challenge a decision by the Department to deny or revoke an operating permit by filing a  
43 contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall~~  
44 ~~make the final agency decision regarding the revocation of a permit under this section."~~

45 **SECTION 53.** G.S. 143-215.104P(d) reads as rewritten:

46 "(d) The Secretary shall notify any person assessed a civil penalty for the assessment and  
47 the specific reasons therefor by registered or certified mail or by any means authorized by  
48 G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30  
49 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision~~  
50 ~~regarding assessment of a civil penalty under this section."~~

51 **SECTION 54.** G.S. 143-215.104S reads as rewritten:

1 **"§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

2 Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F  
3 through G.S. 143-215.104O may commence a contested case by filing a petition under  
4 G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated  
5 within the allotted time period, the Commission's decision shall be final and not subject to  
6 review. ~~The Commission shall make the final agency decision in contested cases initiated~~  
7 ~~pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to  
8 compel remediation of dry-cleaning solvent contamination in excess of that required by a  
9 dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to  
10 recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency~~  
11 ~~decision pursuant to this section."~~

12 **SECTION 55. G.S. 153A-223 reads as rewritten:**

13 **"§ 153A-223. Enforcement of minimum standards.**

14 If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and  
15 supervisory and administrative personnel of a local confinement facility do not meet the entry  
16 level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local  
17 confinement facility does not meet the minimum standards published pursuant to  
18 G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility  
19 jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the  
20 Secretary may order corrective action or close the facility, as provided in this section:

- 21 (1) The Secretary shall give notice of his determination to the governing body  
22 and each other local official responsible for the facility. The Secretary shall  
23 also send a copy of this notice, along with a copy of the inspector's report, to  
24 the senior resident superior court judge of the superior court district or set of  
25 districts as defined in G.S. 7A-41.1 in which the facility is located. Upon  
26 receipt of the Secretary's notice, the governing body shall call a public  
27 hearing to consider the report. The hearing shall be held within 20 days after  
28 the day the Secretary's notice is received. The inspector shall appear at this  
29 hearing to advise and consult with the governing body concerning any  
30 corrective action necessary to bring the facility into conformity with the  
31 standards.
- 32 (2) The governing body shall, within 30 days after the day the Secretary's notice  
33 is received, request a contested case hearing, initiate appropriate corrective  
34 action or close the facility. The corrective action must be completed within a  
35 reasonable time.
- 36 (3) A contested case hearing, if requested, shall be conducted pursuant to  
37 G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the  
38 minimum standards; (ii) whether the conditions in the facility jeopardize the  
39 safe custody, safety, health, or welfare of persons confined therein; and (iii)  
40 the appropriate corrective action to be taken and a reasonable time to  
41 complete that action.
- 42 (4) If the governing body does not, within 30 days after the day the Secretary's  
43 notice is received, or within 30 days after service of the final agency  
44 decision if a contested case hearing is held, either initiate corrective action or  
45 close the facility, or does not complete the action within a reasonable time,  
46 the Secretary may order that the facility be closed.
- 47 (5) The governing body may appeal an order of the Secretary or a final decision  
48 to the senior resident superior court judge. The governing body shall initiate  
49 the appeal by giving by registered mail to the judge and to the Secretary  
50 notice of its intention to appeal. The notice must be given within 15 days

after the day the Secretary's order or the final decision is received. If notice is not given within the 15-day period, the right to appeal is terminated.

- (6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The ~~Secretary, Office of Administrative Hearings,~~ if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

**SECTION 55.1.** Pursuant to 31 U.S.C. § 6504, the Department of Health and Human Services shall request a waiver from the single State agency requirement contained in 42 § CFR 432.10(e)(3) with regard to final decisions in administrative hearings. The waiver application shall include the following:

- (1) The waiver request is made at the direction of the North Carolina General Assembly, which is responsible for the organizational structure of State government.
- (2) The single State agency requirement prevents the establishment of the most effective and efficient arrangement for providing administrative hearings to claimants because it requires that after a hearing and decision by an administrative law judge, the case must be returned to the agency for a final decision. The return to the agency is an unnecessary, time-consuming, and costly additional step.
- (3) The use of another State administrative hearings arrangement will not endanger the objectives of the law authorizing the Medicaid program because the administrative law judges will abide by the properly adopted policies, rules, and regulations of the State Medicaid agency in making final decisions.

### **PART III. MISCELLANEOUS ISSUES**

**SECTION 56.** G.S. 150B-4 reads as rewritten:

#### **"§ 150B-4. Declaratory rulings.**

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, ~~except when the agency for good cause finds issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

- (a1) An agency shall respond to a request for a declaratory ruling as follows:

- (1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.
- (2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.
- (3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.
- (4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits, and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved."

(b) Repealed by Session Laws 1997-34, s. 1."

**SECTION 57.** Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

- (1) Whether the rule is mandated by a federal law or regulation.
- (2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.
- (3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

**SECTION 58.** The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

**SECTION 59.(a)** G.S. 113A-12 reads as rewritten:

**"§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

- (1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.
- (2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).
- (3) A lease or easement granted by a State agency for:
- a. The use of an existing building or facility.
- b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
- c. A shellfish cultivation lease granted under G.S. 113-202.
- (4) The construction of a driveway connection to a public roadway.



(5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

(6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes."

**SECTION 59.(b)** This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

**SECTION 60.(a)** G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years."

**SECTION 60.(b)** G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other

1 person requesting notice. At least 30 days prior to the date of hearing, the  
2 Commission shall also cause a copy of the notice thereof to be published at  
3 least one time in a newspaper having general circulation in such county. In  
4 any county in which there is more than one newspaper having general  
5 circulation in that county, the Commission shall cause a copy of such notice  
6 to be published in as many newspapers having general circulation in the  
7 county as the Commission in its discretion determines may be necessary to  
8 assure that such notice is generally available throughout the county. The  
9 Commission shall prescribe the form and content of the notices.

10 The Commission shall prescribe the procedures to be followed in  
11 hearings. If the hearing is not conducted by the Commission, detailed  
12 minutes of the hearing shall be kept and shall be submitted, along with any  
13 other written comments, exhibits or documents presented at the hearing, to  
14 the Commission for its consideration prior to final action granting or  
15 denying the permit.

16 (4) Not later than 60 days following notice of intent or, if a public hearing is  
17 held, within 90 days following consideration of the matters and things  
18 presented at such hearing, the Commission shall grant or deny any  
19 application for issuance of a new permit or for renewal of an existing permit.  
20 All permits or renewals issued by the Commission and all decisions denying  
21 application for permit or renewal shall be in writing.

22 (5) ~~No permit issued pursuant to this subsection (e) shall be issued or renewed~~  
23 ~~for a term exceeding five years.~~

24 (6) The Commission shall not act upon an application for a new nonmunicipal  
25 domestic wastewater discharge facility until it has received a written  
26 statement from each city and county government having jurisdiction over  
27 any part of the lands on which the proposed facility and its appurtenances  
28 are to be located which states whether the city or county has in effect a  
29 zoning or subdivision ordinance and, if such an ordinance is in effect,  
30 whether the proposed facility is consistent with the ordinance. The  
31 Commission shall not approve a permit application for any facility which a  
32 city or county has determined to be inconsistent with its zoning or  
33 subdivision ordinance unless it determines that the approval of such  
34 application has statewide significance and is in the best interest of the State.  
35 An applicant for a permit shall request that each city and county government  
36 having jurisdiction issue the statement required by this subdivision by  
37 mailing by certified mail, return receipt requested, a written request for such  
38 statement and a copy of the draft permit application to the clerk of the city or  
39 county. If a local government fails to mail the statement required by this  
40 subdivision, as evidenced by a postmark, within 15 days after receiving and  
41 signing for the certified mail, the Commission may proceed to consider the  
42 permit application notwithstanding this subdivision."

43 **SECTION 60.(c)** G.S. 143-215.1 is amended by adding a new subsection to read:

44 "(d2) No permit issued pursuant to subsection (c) of this section shall be issued or  
45 renewed for a term exceeding five years. All other permits issued pursuant to this section for  
46 which an expiration date is specified shall be issued for a term of eight years."

47 **SECTION 60.(d)** The Department of Environment and Natural Resources shall  
48 review the types of permits issued by the Department and the rule-making agencies under the  
49 Department and recommend whether the duration of any of the types of permits should be  
50 extended beyond their duration under current law or rule. The Department shall report its

1 findings and recommendations to the Environmental Review Commission no later than  
2 February 1, 2012.

3 **SECTION 60.(e)** This section is effective when this act becomes law and applies  
4 to permits that are issued on or after July 1, 2011.

5 **SECTION 61.** The Secretary of Environment and Natural Resources shall develop  
6 a uniform policy for notification of deficiencies and violations for all of the regulatory  
7 programs within the Department of Environment and Natural Resources. In developing the  
8 notification policy, the Secretary shall establish different types of notification based on the  
9 potential or actual level of harm to public health, the environment, and the natural resources of  
10 the State. The Secretary shall also review the notification policies of the United States  
11 Environmental Protection Agency and the environmental regulatory programs of other states.  
12 The Secretary shall report on the development of the notification policy to the Environmental  
13 Review Commission and the Joint Select Regulatory Reform Committee no later than October  
14 1, 2011. The Secretary shall implement the uniform notification policy no later than February  
15 1, 2012.

16 **SECTION 61.1.** The Office of Administrative Hearings shall evaluate the use of  
17 mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the  
18 use of mediation in the contested case process. The Office of Administrative Hearings shall  
19 report its findings and recommendations to the Joint Legislative Regulatory Reform Committee  
20 by February 1, 2012.

21 **SECTION 61.2.** S.L. 2011-13 is repealed.

22 **SECTION 62.** If any provision of this act is held invalid by a court of competent  
23 jurisdiction, the invalidity does not affect other provisions of the act that can be given effect  
24 without the invalid provision.

25 **SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011,  
26 and apply to rules adopted on or after that date. Sections 15 through 55 of this act become  
27 effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless  
28 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes  
29 law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

SENATE BILL 781\*  
Commerce Committee Substitute Adopted 6/8/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S781-CSRO-26 [v.1]

6/14/2011 9:36:41 AM

Short Title: Regulatory Reform Act of 2011.

(Public)

Sponsors:

Referred to:

June 6, 2011

A BILL TO BE ENTITLED  
AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB  
CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

**PART I. RULE MAKING**

**SECTION 1.** G.S. 150B-18 reads as rewritten:

**"§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article."

**SECTION 2.** Article 2A of Chapter 150B of the General Statutes is amended by adding three new sections to read:

**"§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).



\* S 7 8 1 - C S R O - 2 6 - V - 1 \*

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

#### **"§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly

1 burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must  
2 identify a specific rule or regulatory program and may include recommendations regarding  
3 modifying, expanding, or repealing existing rules or changing the rule review and publication  
4 process. The OSBM shall direct each agency to conduct an internal review of its rules as  
5 required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM  
6 shall assemble and evaluate the public comments and forward any comments it deems to have  
7 merit to the appropriate agency for further review. Agencies shall review the public comments  
8 and prepare a report on whether any of the recommendations contained in the comments have  
9 potential merit and justify further action. Agencies shall submit a report of their findings to the  
10 OSBM by January 31 of each year. The OSBM shall publish an annual report by April 30 of  
11 each year summarizing all public comments and resulting actions taken or planned.

12 (b) The OSBM shall establish a single Web portal dedicated to receiving public  
13 comments and tracking agency progress on reforming rules.

14 **"§ 150B-19.3. Limitation on certain environmental rules.**

15 (a) An agency authorized to implement and enforce State and federal environmental  
16 laws may not adopt a rule for the protection of the environment or natural resources that  
17 imposes a more restrictive standard, limitation, or requirement than those imposed by federal  
18 law or rule, if a federal law or rule pertaining to the same subject matter has been adopted,  
19 unless adoption of the rule is required by one of the following:

- 20 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 21 (2) An act of the General Assembly or United States Congress that expressly  
22 requires the agency to adopt rules.
- 23 (3) A change in federal or State budgetary policy.
- 24 (4) A federal regulation required by an act of the United States Congress to be  
25 adopted or administered by the State.
- 26 (5) A court order.

27 (b) For purposes of this section, "an agency authorized to implement and enforce State  
28 and federal environmental laws" means any of the following:

- 29 (1) The Department of Environment and Natural Resources created pursuant to  
30 G.S. 143B-279.1.
- 31 (2) The Environmental Management Commission created pursuant to  
32 G.S. 143B-282.
- 33 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- 34 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- 35 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- 36 (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- 37 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- 38 (8) The Mining Commission created pursuant to G.S. 143B-290.
- 39 (9) The Pesticide Board created pursuant to G.S. 143-436."

40 **SECTION 3. G.S. 150B-21(f) is repealed.**

41 **SECTION 4. G.S. 150B-21.1(a3) reads as rewritten:**

42 "(a3) Unless otherwise provided by law, at least 30 business days prior to adopting a  
43 temporary rule, the agency shall:

- 44 (1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit  
45 the rule and a notice of public hearing to the Codifier of Rules, and the  
46 Codifier of Rules shall publish the proposed temporary rule and the notice of  
47 public hearing on the Internet to be posted within five business days.
- 48 (2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify  
49 persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and

any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

SECTION 5. G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed ~~rule~~ rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or

1 decides to hold a public hearing on a proposed rule when it is not required to do so, the agency  
2 must publish in the North Carolina Register a notice of the date, time, and place of the public  
3 hearing. The hearing date of a public hearing held after the agency publishes notice of the  
4 hearing in the North Carolina Register must be at least 15 days after the date the notice is  
5 published. If notice of a public hearing has been published in the North Carolina Register and  
6 that public hearing has been cancelled, the agency shall publish notice in the North Carolina  
7 Register at least 15 days prior to the date of any rescheduled hearing.

8 (f) Comments. – An agency must accept comments on the text of a proposed rule that is  
9 published in the North Carolina Register and any fiscal note that has been prepared in  
10 connection with the proposed rule for at least 60 days after the text is published or until the date  
11 of any public hearing held on the proposed rule, whichever is longer. An agency must consider  
12 fully all written and oral comments received.

13 (g) Adoption. – An agency shall not adopt a rule until the time for commenting on the  
14 proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have  
15 elapsed since the end of the time for commenting on the proposed text of the rule. Prior to  
16 adoption, an agency shall review any fiscal note that has been prepared for the proposed rule  
17 and consider any public comments received in connection with the proposed rule or the fiscal  
18 note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule  
19 published in the North Carolina Register unless the agency publishes the text of the proposed  
20 different rule in the North Carolina Register and accepts comments on the proposed different  
21 rule for the time set in subsection (f) of this section.

22 An adopted rule differs substantially from a proposed rule if it does one or more of the  
23 following:

- 24 (1) Affects the interests of persons who, based on the proposed text of the rule  
25 published in the North Carolina Register, could not reasonably have  
26 determined that the rule would affect their interests.
- 27 (2) Addresses a subject matter or an issue that is not addressed in the proposed  
28 text of the rule.
- 29 (3) Produces an effect that could not reasonably have been expected based on  
30 the proposed text of the rule.

31 When an agency adopts a rule, it shall not take subsequent action on the rule without following  
32 the procedures in this Part. An agency must submit an adopted rule to the Rules Review  
33 Commission within 30 days of the agency's adoption of the rule.

34 (h) Explanation. – An agency must issue a concise written statement explaining why the  
35 agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the  
36 agency to do so. The explanation must state the principal reasons for and against adopting the  
37 rule and must discuss why the agency rejected any arguments made or considerations urged  
38 against the adoption of the rule. The agency must issue the explanation within 15 days after  
39 receipt of the request for an explanation.

40 (i) Record. – An agency must keep a record of a rule-making proceeding. The record  
41 must include all written comments received, a transcript or recording of any public hearing held  
42 on the rule, any fiscal note that has been prepared for the rule, and any written explanation  
43 made by the agency for adopting the rule."

44 **SECTION 6.** G.S. 150B-21.4 reads as rewritten:

45 **"§ 150B-21.4. Fiscal notes on rules.**

46 (a) State Funds. – Before an agency publishes in the North Carolina Register the  
47 proposed text of a permanent rule change that would require the expenditure or distribution of  
48 funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the  
49 text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal  
50 note on the proposed rule change to the ~~Director of the Budget~~ Office of State Budget and



1 Management and obtain certification from the ~~Director~~ Office that the funds that would be  
2 required by the proposed rule change are available. The Office must also determine and certify  
3 that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state  
4 the amount of funds that would be expended or distributed as a result of the proposed rule  
5 change and explain how the amount was computed. ~~The Director of the Budget Office of State~~  
6 Budget and Management must certify a proposed rule change if funds are available to cover the  
7 expenditure or distribution required by the proposed rule change.

8 (a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section,  
9 any agency that adopts a rule affecting environmental permitting of Department of  
10 Transportation projects shall conduct an analysis to determine if the rule will result in an  
11 increased cost to the Department of Transportation. The analysis shall be conducted and  
12 submitted to the Board of Transportation before the agency publishes the proposed text of the  
13 rule change in the North Carolina Register. The agency shall consider any recommendations  
14 offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this  
15 subsection is adopted, the Board of Transportation may submit any objection to the rule it may  
16 have to the Rules Review Commission. If the Rules Review Commission receives an objection  
17 to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day  
18 the Commission approves the rule, then the rule shall only become effective as provided in  
19 G.S. 150B-21.3(b1).

20 (b) Local Funds. – Before an agency publishes in the North Carolina Register the  
21 proposed text of a permanent rule change that would affect the expenditures or revenues of a  
22 unit of local government, it must submit the text of the proposed rule change and a fiscal note  
23 on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as  
24 provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the~~  
25 ~~Office of State Budget and Management~~, the North Carolina Association of County  
26 Commissioners, and the North Carolina League of Municipalities. The fiscal note must state  
27 the amount by which the proposed rule change would increase or decrease expenditures or  
28 revenues of a unit of local government and must explain how the amount was computed.

29 (b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina  
30 Register the proposed text of a permanent rule change that would have a substantial economic  
31 impact and that is not identical to a federal regulation that the agency is required to adopt, the  
32 ~~agency must obtain a fiscal note for the proposed rule change from the Office of State Budget~~  
33 ~~and Management or shall~~ prepare a fiscal note for the proposed rule change and have the note  
34 approved by ~~that Office.~~ the Office of State Budget and Management. The agency may request  
35 the Office of State Budget and Management to prepare the fiscal note only after, working with  
36 the Office, it has exhausted all resources, internal and external, to otherwise prepare the  
37 required fiscal note. If an agency requests the Office of State Budget and Management to  
38 prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90  
39 days after receiving a written request for the note. If the Office of State Budget and  
40 Management fails to prepare a fiscal note within this time period, the agency proposing the rule  
41 change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not  
42 require approval of the Office of State Budget and Management.

43 If an agency prepares the required fiscal note, the agency must submit the note to the Office  
44 of State Budget and Management for review. The Office of State Budget and Management  
45 ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the  
46 note or inform the agency in writing of the reasons why it does not approve the fiscal note.  
47 After addressing these reasons, the agency may submit the revised fiscal note to that Office for  
48 its review. If an agency is not sure whether a proposed rule change would have a substantial  
49 economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to  
50 determine whether the proposed rule change has a substantial economic impact. Failure to

1 prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for  
2 objection to the rule under G.S. 150B-21.9(a)(4).

3 As used in this subsection, the term "substantial economic impact" means an aggregate  
4 financial impact on all persons affected of at least ~~three million dollars (\$3,000,000)~~ five  
5 hundred thousand dollars (\$500,000) in a 12-month period. In analyzing substantial economic  
6 impact, an agency shall do the following:

7 (1) Determine and identify the appropriate time frame of the analysis.

8 (2) Assess the baseline conditions against which the proposed rule is to be  
9 measured.

10 (3) Describe the persons who would be subject to the proposed rule and the type  
11 of expenditures these persons would be required to make.

12 (4) Estimate any additional costs that would be created by implementation of the  
13 proposed rule by measuring the incremental difference between the baseline  
14 and the future condition expected after implementation of the rule. The  
15 analysis should include direct costs as well as opportunity costs. Cost  
16 estimates must be monetized to the greatest extent possible. Where costs are  
17 not monetized, they must be listed and described.

18 (5) For costs that occur in the future, the agency shall determine the net present  
19 value of the costs by using a discount factor of seven percent (7%).

20 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the  
21 following:

22 (1) A description of the persons who would be affected by the proposed rule  
23 change.

24 (2) A description of the types of expenditures that persons affected by the  
25 proposed rule change would have to make to comply with the rule and an  
26 estimate of these expenditures.

27 (3) A description of the purpose and benefits of the proposed rule change.

28 (4) An explanation of how the estimate of expenditures was computed.

29 (5) A description of at least two alternatives to the proposed rule that were  
30 considered by the agency and the reason the alternatives were rejected. The  
31 alternatives may have been identified by the agency or by members of the  
32 public.

33 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity  
34 of a rule."

35 SECTION 7. G.S. 150B-21.11 reads as rewritten:

36 "§ 150B-21.11. Procedure when Commission approves permanent rule.

37 When the Commission approves a permanent rule, it must notify the agency that adopted  
38 the rule of the Commission's approval, and deliver the approved rule to the Codifier of Rules,  
39 ~~and include the text of the approved rule and a summary of the rule in its next report to the~~  
40 ~~Joint Legislative Administrative Procedure Oversight Committee.~~ Rules.

41 If the approved rule will increase or decrease expenditures or revenues of a unit of local  
42 government, the Commission must also notify the Governor of the Commission's approval of  
43 the rule and deliver a copy of the approved rule to the Governor by the end of the month in  
44 which the Commission approved the rule."

45 SECTION 8. G.S. 150B-21.12(d) reads as rewritten:

46 "(d) Return of Rule. – A rule to which the Commission has objected remains under  
47 review by the Commission until the agency that adopted the rule decides not to satisfy the  
48 Commission's objection and makes a written request to the Commission to return the rule to the  
49 agency. When the Commission returns a rule to which it has objected, it must notify the  
50 Codifier of Rules of its action ~~and must send a copy of the record of the Commission's review~~

1 of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next  
2 report to that Committee~~action~~. If the rule that is returned would have increased or decreased  
3 expenditures or revenues of a unit of local government, the Commission must also notify the  
4 Governor of its action and must send a copy of the record of the Commission's review of the  
5 rule to the Governor. The record of review consists of the rule, the Commission's letter of  
6 objection to the rule, the agency's written response to the Commission's letter, and any other  
7 relevant documents before the Commission when it decided to object to the rule."

8 **SECTION 9.** G.S. 150B-21.16 is repealed.

9 **SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

10 "(a) Content. – The Codifier of Rules must publish the North Carolina Register. The  
11 North Carolina Register must be published at least two times a month and must contain the  
12 following:

13 (1) Temporary rules entered in the North Carolina Administrative Code.

14 (1a) The text of proposed rules and the text of permanent rules approved by the  
15 Commission.

16 (1b) Emergency rules entered into the North Carolina Administrative Code.

17 (2) ~~Notices of receipt of a petition for municipal incorporation, as required by~~  
18 ~~G.S. 120-165.~~

19 (3) Executive orders of the Governor.

20 (4) Final decision letters from the United States Attorney General concerning  
21 changes in laws that affect voting in a jurisdiction subject to section 5 of the  
22 Voting Rights Act of 1965, as required by G.S. 120-30.9H.

23 (5) ~~Orders of the Tax Review Board issued under G.S. 105-241.2.~~

24 (6) Other information the Codifier determines to be helpful to the public."

25 **SECTION 11.** G.S. 150B-21.18 reads as rewritten:

26 "**§ 150B-21.18. North Carolina Administrative Code.**

27 The Codifier of Rules must compile all rules into a Code known as the North Carolina  
28 Administrative Code. The format and indexing of the Code must conform as nearly as practical  
29 to the format and indexing of the North Carolina General Statutes. The Codifier must publish  
30 printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep~~  
31 ~~the Code current by publishing the Code in a loose leaf format and periodically providing new~~  
32 ~~pages to be substituted for outdated pages, by publishing the Code in volumes and periodically~~  
33 ~~publishing cumulative supplements, or by another means.~~ The Codifier may authorize and  
34 license the private indexing, marketing, sales, reproduction, and distribution of the Code. The  
35 Codifier must keep superseded rules."

36 **SECTION 12.** G.S. 150B-21.21(b) reads as rewritten:

37 "(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities~~  
38 ~~Commission must submit to the Codifier of Rules those rules of the Utilities Commission that~~  
39 ~~are published from time to time in the publication titled "North Carolina Utilities Laws and~~  
40 ~~Regulations." The Utilities Commission must submit a rule required to be included in the Code~~  
41 ~~within 30 days after it is adopted.~~

42 Notwithstanding G.S. 150B-1, any other provision of law, an agency ~~other than the Utilities~~  
43 ~~Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute  
44 must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion  
45 in the North Carolina Administrative Code. These exempt agencies must submit a rule to the  
46 Codifier of Rules within 30 days after adopting the rule."

47 **SECTION 13.** G.S. 150B-21.23 is repealed.

48 **SECTION 14.** G.S. 150B-21.26 reads as rewritten:

49 "Part 5. Rules Affecting Local Governments.

**"§ 150B-21.26. ~~Governor~~ Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~30~~60 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~Office of State Budget and Management for preliminary review:

- (1) The text of the proposed rule change.
- (2) A short explanation of the reason for the proposed change.
- (3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The ~~Governor's~~preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

- (1) The agency's explanation of the reason for the proposed change.
- (2) Any unanticipated effects of the proposed change on local government budgets.
- (3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

**PART II. CONTESTED CASES**

**SECTION 15.** G.S. 150B-2(5) reads as rewritten:

- "(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

**SECTION 16.** G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, ~~except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the~~

~~General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority. Article."~~

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...  
(12) ~~Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."~~

SECTION 18. G.S. 150B-34 reads as rewritten:

**"§ 150B-34. Decision of administrative law judge. Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(e), and subsection (e) of this section, in~~ In each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of law ~~and return the decision to the agency for a final decision in accordance with G.S. 150B-36 law.~~ The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(e).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(e) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) ~~Except for the exemptions contained in G.S. 150B-1(e) and (e), and subsection (e) of this section, G.S. 150B-1,~~ the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

**"§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, neither—the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

**"§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) Repealed by Session Laws 1987, c. 878, s. 25.
- (6) The administrative law judge's ~~decision~~, final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the administrative law judge's final decision~~ to each party."

SECTION 22. G.S. 150B-43 reads as rewritten:

**"§ 150B-43. Right to judicial review.**

Any ~~person-party who is or person~~ aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him—the party or person aggrieved~~ by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person-party or person aggrieved~~ from invoking any judicial remedy available to ~~him—the party or person aggrieved~~ under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 23. G.S. 150B-44 reads as rewritten:

**"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time~~

limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section."

SECTION 24. G.S. 150B-47 reads as rewritten:

"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

SECTION 25. G.S. 150B-49 reads as rewritten:

"§ 150B-49. New evidence.

An aggrieved person A party or person aggrieved who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative hearing hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a final decision of the administrative law judge or final decision shall be made part of the official record."

SECTION 26. G.S. 150B-50 reads as rewritten:

"§ 150B-50. Review by superior court without jury.

The review by a superior court of agency administrative decisions under this Chapter shall be conducted by the court without a jury."

SECTION 27. G.S. 150B-51 reads as rewritten:

"§ 150B-51. Scope and standard of review.

(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations: First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence

1 in the official record. Second, if the applicable appointing authority did not adopt the  
2 recommended decision, the court shall determine whether the applicable appointing authority's  
3 decision states the specific reasons why the applicable appointing authority did not adopt the  
4 recommended decision. If the court determines that the applicable appointing authority did not  
5 state specific reasons why it did not adopt a recommended decision, the court shall reverse the  
6 decision or remand the case to the applicable appointing authority to enter the specific reasons.

7 (a1) In reviewing a final decision in a contested case in which an administrative law  
8 judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the  
9 administrative law judge's decision, the court shall determine whether the agency heard new  
10 evidence after receiving the decision. If the court determines that the agency heard new  
11 evidence, the court shall reverse the decision or remand the case to the agency to enter a  
12 decision in accordance with the evidence in the official record. The court shall also determine  
13 whether the agency specifically rejected findings of fact contained in the administrative law  
14 judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in  
15 accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the  
16 procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)  
17 of this section.

18 (b) Except as provided in subsection (c) of this section, in reviewing a final decision,  
19 the court reviewing a final decision may affirm the decision of the agency or remand the  
20 case to the agency or to the administrative law judge for further proceedings. It may also  
21 reverse or modify the agency's decision, or adopt the administrative law judge's decision if the  
22 substantial rights of the petitioners may have been prejudiced because the agency's findings,  
23 inferences, conclusions, or decisions are:

- 24 (1) In violation of constitutional provisions;
- 25 (2) In excess of the statutory authority or jurisdiction of the agency, agency or  
26 administrative law judge;
- 27 (3) Made upon unlawful procedure;
- 28 (4) Affected by other error of law;
- 29 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
30 150B-30, or 150B-31 in view of the entire record as submitted; or
- 31 (6) Arbitrary, capricious, or an abuse of discretion.

32 (c) In reviewing a final decision in a contested case in which an administrative law  
33 judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the  
34 administrative law judge's decision, the court shall review the official record, de novo, and shall  
35 make findings of fact and conclusions of law. In reviewing the case, the court shall not give  
36 deference to any prior decision made in the case and shall not be bound by the findings of fact  
37 or the conclusions of law contained in the agency's final decision. The court shall determine  
38 whether the petitioner is entitled to the relief sought in the petition, based upon its review of the  
39 official record. The court reviewing a final decision under this subsection may adopt the  
40 administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may  
41 remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),  
42 or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the  
43 explanations; and may take any other action allowed by law. case, the court shall determine  
44 whether the petitioner is entitled to the relief sought in the petition based upon its review of the  
45 final decision and the official record. With regard to asserted errors pursuant to subdivisions (1)  
46 through (4) of subsection (b) of this section, the court shall conduct its review of the final  
47 decision using the de novo standard of review. With regard to asserted errors pursuant to  
48 subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of  
49 the final decision using the whole record standard of review.



(d) In reviewing a final agency decision allowing judgment on the pleadings or summary judgment, ~~or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d),~~ the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just."

**SECTION 28.** G.S. 7A-759(e) reads as rewritten:

"(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36,~~ An order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules."

**SECTION 29.** G.S. 74-58(b) reads as rewritten:

"(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until ~~the Commission makes~~ issuance of a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief."

**SECTION 30.** G.S. 74-61 reads as rewritten:

**"§ 74-61. Administrative and judicial review of decisions.**

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

**SECTION 31.** G.S. 74-85 reads as rewritten:

**"§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

**SECTION 32.** G.S. 108A-70.9A(f) reads as rewritten:

"(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision ~~and record~~ to the Department in accordance with ~~G.S. 108A-70.9B. G.S. 150B-37.~~ The Department shall ~~make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly~~ notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

**SECTION 33.** G.S. 108A-70.9B(g) reads as rewritten:

"(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~GAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~ The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with

1 ~~G.S. 150B-37. The decision shall be sent together with the record to the agency within 20 days~~  
2 ~~of the conclusion of the hearing."~~

3 **SECTION 34.** G.S. 113-171(e) reads as rewritten:

4 "(e) A licensee served with a notice of suspension or revocation may obtain an  
5 administrative review of the suspension or revocation by filing a petition for a contested case  
6 under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing  
7 shall be whether the licensee was convicted of a criminal offense for which a license must be  
8 suspended or revoked. A license remains suspended or revoked pending the final decision by  
9 the Secretary. decision."

10 **SECTION 35.** G.S. 113-202 reads as rewritten:

11 "**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**  
12 **prior to January 1, 1966.**

13 ...

14 (g) After consideration of the public comment received and any additional  
15 investigations the Secretary orders to evaluate the comments, the Secretary shall notify the  
16 applicant in person or by certified or registered mail of the decision on the lease application.  
17 The Secretary shall also notify persons who submitted comments at the public hearing and  
18 requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's  
19 decision or another person aggrieved by the decision may commence a contested case by filing  
20 a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision.  
21 In the event the Secretary's decision is a modification to which the applicant agrees, the lease  
22 applicant must furnish an amended map or diagram before the lease can be issued by the  
23 Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

24 ...

25 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon  
26 which the notice of intention to terminate was based and the Secretary is satisfied that  
27 continuation of the lease is in the best interests of the shellfish culture of the State, the  
28 Secretary may discontinue termination procedures. Where there is no discontinuance of  
29 termination procedures, the leaseholder may initiate a contested case by filing a petition under  
30 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall~~  
31 ~~make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate  
32 a contested case, or the Secretary's final decision upholds termination, the Secretary must send  
33 a final letter of termination to the leaseholder. The final letter of termination may not be mailed  
34 sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to  
35 terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated  
36 effective at midnight on the day the final notice of termination is served on the leaseholder. The  
37 final notice of termination may not be issued pending hearing of a contested case initiated by  
38 the leaseholder.

39 Service of any notice required in this subsection may be accomplished by certified mail,  
40 return receipt requested; personal service by any law-enforcement officer; or upon the failure of  
41 these two methods, publication. Service by publication shall be accomplished by publishing  
42 such notices in a newspaper of general circulation within the county where the lease is located  
43 for at least once a week for three successive weeks. The format for notice by publication shall  
44 be approved by the Attorney General.

45 ...."

46 **SECTION 36.** G.S. 113-229(f) reads as rewritten:

47 "(f) A permit applicant who is dissatisfied with a decision on his application may file a  
48 petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is  
49 made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a  
50 petition for a contested case hearing only if the Coastal Resources Commission determines, in

1 accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from  
2 the time a person seeks administrative review of the decision concerning the permit until the  
3 Commission determines that the person seeking the review cannot commence a contested case  
4 or the ~~Commission makes issuance of~~ a final decision in a contested case, as appropriate, and  
5 no action may be taken during that time that would be unlawful in the absence of the permit."

6 **SECTION 37.** G.S. 113A-121.1(b) reads as rewritten:

7 "(b) A person other than a permit applicant or the Secretary who is dissatisfied with a  
8 decision to deny or grant a minor or major development permit may file a petition for a  
9 contested case hearing only if the Commission determines that a hearing is appropriate. A  
10 request for a determination of the appropriateness of a contested case hearing shall be made in  
11 writing and received by the Commission within 20 days after the disputed permit decision is  
12 made. A determination of the appropriateness of a contested case shall be made within 15 days  
13 after a request for a determination is received and shall be based on whether the person seeking  
14 to commence a contested case:

- 15 (1) Has alleged that the decision is contrary to a statute or rule;  
16 (2) Is directly affected by the decision; and  
17 (3) Has alleged facts or made legal arguments that demonstrate that the request  
18 for the hearing is not frivolous.

19 If the Commission determines a contested case is appropriate, the petition for a contested  
20 case shall be filed within 20 days after the Commission makes its determination. A  
21 determination that a person may not commence a contested case is a final agency decision and  
22 is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on  
23 judicial review, the court determines that the Commission erred in determining that a contested  
24 case would not be appropriate, the court shall remand the matter for a contested case hearing  
25 under G.S. 150B-23 and final ~~Commission~~ decision on the permit pursuant to G.S. 113A-122.  
26 Decisions in such cases shall be rendered pursuant to those rules, regulations, and other  
27 applicable laws in effect at the time of the commencement of the contested case."

28 **SECTION 38.** G.S. 113A-126(d) reads as rewritten:

29 "(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor  
30 development violation and ten thousand dollars (\$10,000) for a major  
31 development violation may be assessed by the Commission against any  
32 person who:

- 33 ...  
34 (3) The Commission shall notify a person who is assessed a penalty or  
35 investigative costs by registered or certified mail. The notice shall state the  
36 reasons for the penalty. A person may contest the assessment of a penalty or  
37 investigative costs by filing a petition for a contested case under  
38 G.S. 150B-23 within 20 days after receiving the notice of assessment. If a  
39 person fails to pay any civil penalty or investigative cost assessed under this  
40 subsection, the Commission shall refer the matter to the Attorney General  
41 for collection. An action to collect a penalty must be filed within three years  
42 after the date the final agency decision was served on the violator.

43 ...."

44 **SECTION 39.** G.S. 122C-24.1(h) reads as rewritten:

45 "(h) The Secretary may bring a civil action in the superior court of the county wherein  
46 the violation occurred to recover the amount of the administrative penalty whenever a facility:

- 47 (1) Which has not requested an administrative hearing fails to pay the penalty  
48 within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36, G.S. 150B-37."

**SECTION 40.** G.S. 122C-151.4(f) reads as rewritten:

"(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. ~~The Secretary shall make a final decision in the contested case.~~"

**SECTION 41.** G.S. 126-4.1 is repealed.

**SECTION 42.** G.S. 126-14.4(e) reads as rewritten:

"(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate ~~recommended remedy~~ remedy, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter."

**SECTION 43.** G.S. 126-14.4(f) is repealed.

**SECTION 44.** G.S. 126-37 reads as rewritten:

**"§ 126-37. Personnel Commission to review Administrative Law Judge's ~~recommended decision and make final decision.~~**

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section.~~ The State Personnel Commission administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

~~(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.~~

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other appeals, ~~except that the decision of the State Personnel Commission shall be final.~~ appeals.

(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

**SECTION 45.** G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

**SECTION 46.** G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.
- (5) ~~The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. The

1 ~~Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties~~  
2 ~~written notice of the extension."~~

3 **SECTION 47.** G.S. 131F-5(b) reads as rewritten:

4 "(b) Departmental Review. – The Department shall examine each application filed by a  
5 charitable organization or sponsor and shall determine whether the licensing requirements are  
6 satisfied. If the Department determines that the requirements are not satisfied, the Department  
7 shall notify the charitable organization or sponsor within 10 days after its receipt of the  
8 application. If the Department does not notify the charitable organization or sponsor within 10  
9 days, the application is deemed to be approved and the license shall be granted. Within seven  
10 days after receipt of a notification that the requirements are not satisfied, the charitable  
11 organization or sponsor may file a petition for a contested case. The State has the burden of  
12 proof in the contested case. The contested case hearing must be held within seven days after the  
13 petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the  
14 hearing. ~~A final decision must be made within two days after the recommended decision.~~ The  
15 contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the  
16 General Statutes except that the time limits and provisions set forth in this section shall prevail  
17 to the extent of any conflict. The applicant shall be permitted to continue to operate or continue  
18 operations pending judicial review of the Department's denial of the application. The  
19 Department shall make rules regarding the custody and control of any funds collected during  
20 the review period and disposal of such funds in the event the denial of the application is  
21 affirmed on appeal."

22 **SECTION 48.** G.S. 131F-15(e) reads as rewritten:

23 "(e) Departmental Review. – The Department shall examine each application or renewal  
24 filed by a fund-raising consultant and determine whether the requirements are satisfied. If the  
25 Department determines that the requirements are not satisfied, the Department shall notify the  
26 fund-raising consultant within 10 days after its receipt of the application or renewal. If the  
27 Department does not respond within 10 days, the license is deemed approved. Within seven  
28 days after receipt of a notification that the license requirements are not satisfied, the applicant  
29 may file a petition for a contested case. The State has the burden of proof in the contested case.  
30 The contested case hearing must be held within seven days after the petition is filed. A  
31 ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final~~  
32 ~~decision must be made within two days after the recommended decision.~~ The contested case  
33 hearing proceedings shall be conducted in accordance with Chapter 150B of the General  
34 Statutes, except that the time limits and provisions set forth in this section shall prevail to the  
35 extent of any conflict. The applicant shall be permitted to continue to operate or continue  
36 operations pending judicial review of the Department's denial of the application. The  
37 Department shall make rules regarding the custody and control of any funds collected during  
38 the review period and disposal of such funds in the event the denial of the application is  
39 affirmed on appeal."

40 **SECTION 49.** G.S. 135-44.7(c) is repealed.

41 **SECTION 50.** G.S. 143-215.22L(o) reads as rewritten:

42 "(o) Administrative and Judicial Review. – Administrative and judicial review of a final  
43 decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed  
44 by Chapter 150B of the General Statutes."

45 **SECTION 51.** G.S. 143-215.94E(e3) reads as rewritten:

46 "(e3) The Department shall not pay any third party or reimburse any owner or operator  
47 who has paid any third party pursuant to any settlement agreement or consent judgment relating  
48 to a claim by or on behalf of a third party for compensation for bodily injury or property  
49 damage unless the Department has approved the settlement agreement or consent judgment  
50 prior to entry into the settlement agreement or consent judgment by the parties or entry of a

consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision in a contested case proceeding under this subsection.~~"

**SECTION 52.** G.S. 143-215.94U(e) reads as rewritten:

"(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision regarding the revocation of a permit under this section.~~"

**SECTION 53.** G.S. 143-215.104P(d) reads as rewritten:

"(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision regarding assessment of a civil penalty under this section.~~"

**SECTION 54.** G.S. 143-215.104S reads as rewritten:

**"§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. ~~The Commission shall make the final agency decision in contested cases initiated pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency decision pursuant to this section.~~"

**SECTION 55.** G.S. 153A-223 reads as rewritten:

**"§ 153A-223. Enforcement of minimum standards.**

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

- (1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any

corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final agency decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary or a final decision to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order or the final decision is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The Secretary, Office of Administrative Hearings, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

**SECTION 55.1.** Pursuant to 31 U.S.C. § 6504, the Department of Health and Human Services shall request a waiver from the single State agency requirement contained in 42 § CFR 432.10(e)(3) with regard to final decisions in administrative hearings. The waiver application shall include the following:

(1) The waiver request is made at the direction of the North Carolina General Assembly, which is responsible for the organizational structure of State government.

(2) The single State agency requirement prevents the establishment of the most effective and efficient arrangement for providing administrative hearings to claimants because it requires that after a hearing and decision by an administrative law judge, the case must be returned to the agency for a final decision. The return to the agency is an unnecessary, time-consuming, and costly additional step.



- (3) The use of another State administrative hearings arrangement will not endanger the objectives of the law authorizing the Medicaid program because the administrative law judges will abide by the properly adopted policies, rules, and regulations of the State Medicaid agency in making final decisions.

### PART III. MISCELLANEOUS ISSUES

#### SECTION 56. G.S. 150B-4 reads as rewritten:

##### "§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, ~~except when the agency for good cause finds issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. ~~A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

(a1) An agency shall respond to a request for a declaratory ruling as follows:

- (1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.
- (2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.
- (3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.
- (4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits, and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved."

(b) Repealed by Session Laws 1997-34, s. 1."

SECTION 57. Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

- (1) Whether the rule is mandated by a federal law or regulation.
- (2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.

- (3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

**SECTION 58.** The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

**SECTION 59.(a)** G.S. 113A-12 reads as rewritten:

**"§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

- (1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.
- (2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).
- (3) A lease or easement granted by a State agency for:
  - a. The use of an existing building or facility.
  - b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
  - c. A shellfish cultivation lease granted under G.S. 113-202.
- (4) The construction of a driveway connection to a public roadway.
- (5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.
- (6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes.

**SECTION 59.(b)** This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

**SECTION 60.(a)** G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years."

**SECTION 60.(b)** G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

- (1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any

inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

- (2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

- (3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

- (4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

- ~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.~~

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

**SECTION 60.(c)** G.S. 143-215.1 is amended by adding a new subsection to read:

"(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term of eight years."

**SECTION 60.(d)** The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

**SECTION 60.(e)** This section is effective when this act becomes law and applies to permits that are issued on or after July 1, 2011.

**SECTION 61.** The Secretary of Environment and Natural Resources shall develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources. In developing the notification policy, the Secretary shall establish different types of notification based on the potential or actual level of harm to public health, the environment, and the natural resources of the State. The Secretary shall also review the notification policies of the United States Environmental Protection Agency and the environmental regulatory programs of other states. The Secretary shall report on the development of the notification policy to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011. The Secretary shall implement the uniform notification policy no later than February 1, 2012.

**SECTION 61.1.** The Office of Administrative Hearings shall evaluate the use of mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the use of mediation in the contested case process. The Office of Administrative Hearings shall report its findings and recommendations to the Joint Legislative Regulatory Reform Committee by February 1, 2012.

**SECTION 61.2.** S.L. 2011-13 is repealed.

**SECTION 61.3.** G.S. 66-58 is amended by adding a new subsection to read:

1       "(m) Any person, firm, or corporation who or which is injured or suffers damages as a  
2 result of a violation of this section may maintain an action in the Wake County Superior Court  
3 for injunctive relief against any unit, department or agency of the State government, or any  
4 division or subdivision of the unit, department or agency, or any individual employee or  
5 employees of the unit, department or agency, in his or her, or their capacity as employee or  
6 employees, who or which has committed a violation. In a proceeding under this subsection, the  
7 court shall determine whether a violation has been committed and enter any judgment or decree  
8 necessary to remove the effects of any violation it finds and to prevent continuation or renewal  
9 of the violation in the future. Upon a judicial finding that any contract or contractual obligation  
10 is in violation of this section, such contract or contractual obligation shall be null and void. Any  
11 person, firm, or corporation who or which believes that a proposed activity will be in violation  
12 of this section may request a declaratory judgment under G.S. 1-253 or injunctive relief or both,  
13 notwithstanding the fact that such activity has not been commenced. "

14       **SECTION 61.4.** If House Bill 200, 2011 Regular Session, becomes law, then G.S.  
15 95-14.2, G.S. 106-22.6, and G.S. 143B-279.16 as amended by Section 13.11B of that bill are  
16 repealed.

17       **SECTION 62.** If any provision of this act is held invalid by a court of competent  
18 jurisdiction, the invalidity does not affect other provisions of the act that can be given effect  
19 without the invalid provision.

20       **SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011,  
21 and apply to rules adopted on or after that date. Sections 15 through 55 of this act become  
22 effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless  
23 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes  
24 law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 781\*  
Commerce Committee Substitute Adopted 6/8/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S781-PCS55316-RO-26

Short Title: Regulatory Reform Act of 2011.

(Public)

Sponsors:

Referred to:

June 6, 2011

A BILL TO BE ENTITLED  
AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB  
CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

**PART I. RULE MAKING**

**SECTION 1.** G.S. 150B-18 reads as rewritten:

**"§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article."

**SECTION 2.** Article 2A of Chapter 150B of the General Statutes is amended by adding three new sections to read:

**"§ 150B-19.1. Requirements for agencies in the rule-making process.**

**(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:**

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.**
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.**
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.**
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.**
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).**



\* 5 7 8 1 - P C S 5 5 3 1 6 - R O - 2 6 \*

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.

(2) An explanation of the proposed rule and the reason for the proposed rule.

(3) The federal certification required by subsection (g) of this section.

(4) Instructions on how and where to submit oral or written comments on the proposed rule.

(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.

(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.

(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

#### **"§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must

1 identify a specific rule or regulatory program and may include recommendations regarding  
2 modifying, expanding, or repealing existing rules or changing the rule review and publication  
3 process. The OSBM shall direct each agency to conduct an internal review of its rules as  
4 required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM  
5 shall assemble and evaluate the public comments and forward any comments it deems to have  
6 merit to the appropriate agency for further review. Agencies shall review the public comments  
7 and prepare a report on whether any of the recommendations contained in the comments have  
8 potential merit and justify further action. Agencies shall submit a report of their findings to the  
9 OSBM by January 31 of each year. The OSBM shall publish an annual report by April 30 of  
10 each year summarizing all public comments and resulting actions taken or planned.

11 (b) The OSBM shall establish a single Web portal dedicated to receiving public  
12 comments and tracking agency progress on reforming rules.

13 **"§ 150B-19.3. Limitation on certain environmental rules.**

14 (a) An agency authorized to implement and enforce State and federal environmental  
15 laws may not adopt a rule for the protection of the environment or natural resources that  
16 imposes a more restrictive standard, limitation, or requirement than those imposed by federal  
17 law or rule, if a federal law or rule pertaining to the same subject matter has been adopted,  
18 unless adoption of the rule is required by one of the following:

- 19 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 20 (2) An act of the General Assembly or United States Congress that expressly  
21 requires the agency to adopt rules.
- 22 (3) A change in federal or State budgetary policy.
- 23 (4) A federal regulation required by an act of the United States Congress to be  
24 adopted or administered by the State.
- 25 (5) A court order.

26 (b) For purposes of this section, "an agency authorized to implement and enforce State  
27 and federal environmental laws" means any of the following:

- 28 (1) The Department of Environment and Natural Resources created pursuant to  
29 G.S. 143B-279.1.
- 30 (2) The Environmental Management Commission created pursuant to  
31 G.S. 143B-282.
- 32 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- 33 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- 34 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- 35 (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- 36 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- 37 (8) The Mining Commission created pursuant to G.S. 143B-290.
- 38 (9) The Pesticide Board created pursuant to G.S. 143-436."

39 **SECTION 3.** G.S. 150B-21(f) is repealed.

40 **SECTION 4.** G.S. 150B-21.1(a3) reads as rewritten:

41 "(a3) Unless otherwise provided by law, ~~at least 30 business days prior to adopting a~~  
42 ~~temporary rule,~~ the agency shall:

- 43 (1) ~~Submit-~~ At least 30 business days prior to adopting a temporary rule, submit  
44 the rule and a notice of public hearing to the Codifier of Rules, and the  
45 Codifier of Rules shall publish the proposed temporary rule and the notice of  
46 public hearing on the Internet to be posted within five business days.
- 47 (2) ~~Notify-~~ At least 30 business days prior to adopting a temporary rule, notify  
48 persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and  
49 any other interested parties of its intent to adopt a temporary rule and of the  
50 public hearing.



(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

SECTION 5. G.S. 150B-21.2 reads as rewritten:

**"§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed ~~rule~~ rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the

1 hearing in the North Carolina Register must be at least 15 days after the date the notice is  
2 published. If notice of a public hearing has been published in the North Carolina Register and  
3 that public hearing has been cancelled, the agency shall publish notice in the North Carolina  
4 Register at least 15 days prior to the date of any rescheduled hearing.

5 (f) Comments. – An agency must accept comments on the text of a proposed rule that is  
6 published in the North Carolina Register and any fiscal note that has been prepared in  
7 connection with the proposed rule for at least 60 days after the text is published or until the date  
8 of any public hearing held on the proposed rule, whichever is longer. An agency must consider  
9 fully all written and oral comments received.

10 (g) Adoption. – An agency shall not adopt a rule until the time for commenting on the  
11 proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have  
12 elapsed since the end of the time for commenting on the proposed text of the rule. Prior to  
13 adoption, an agency shall review any fiscal note that has been prepared for the proposed rule  
14 and consider any public comments received in connection with the proposed rule or the fiscal  
15 note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule  
16 published in the North Carolina Register unless the agency publishes the text of the proposed  
17 different rule in the North Carolina Register and accepts comments on the proposed different  
18 rule for the time set in subsection (f) of this section.

19 An adopted rule differs substantially from a proposed rule if it does one or more of the  
20 following:

- 21 (1) Affects the interests of persons who, based on the proposed text of the rule  
22 published in the North Carolina Register, could not reasonably have  
23 determined that the rule would affect their interests.
- 24 (2) Addresses a subject matter or an issue that is not addressed in the proposed  
25 text of the rule.
- 26 (3) Produces an effect that could not reasonably have been expected based on  
27 the proposed text of the rule.

28 When an agency adopts a rule, it shall not take subsequent action on the rule without following  
29 the procedures in this Part. An agency must submit an adopted rule to the Rules Review  
30 Commission within 30 days of the agency's adoption of the rule.

31 (h) Explanation. – An agency must issue a concise written statement explaining why the  
32 agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the  
33 agency to do so. The explanation must state the principal reasons for and against adopting the  
34 rule and must discuss why the agency rejected any arguments made or considerations urged  
35 against the adoption of the rule. The agency must issue the explanation within 15 days after  
36 receipt of the request for an explanation.

37 (i) Record. – An agency must keep a record of a rule-making proceeding. The record  
38 must include all written comments received, a transcript or recording of any public hearing held  
39 on the rule, any fiscal note that has been prepared for the rule, and any written explanation  
40 made by the agency for adopting the rule."

41 **SECTION 6.** G.S. 150B-21.4 reads as rewritten:

42 **"§ 150B-21.4. Fiscal notes on rules.**

43 (a) State Funds. – Before an agency publishes in the North Carolina Register the  
44 proposed text of a permanent rule change that would require the expenditure or distribution of  
45 funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the  
46 text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal  
47 note on the proposed rule change to the ~~Director of the Budget Office of State Budget and~~  
48 Management and obtain certification from the ~~Director~~ Office that the funds that would be  
49 required by the proposed rule change are available. The Office must also determine and certify  
50 that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state  
51 the amount of funds that would be expended or distributed as a result of the proposed rule

change and explain how the amount was computed. The ~~Director of the Budget~~ Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the Office of State Budget and Management~~, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or shall prepare a fiscal note for the proposed rule change and have the note approved by that Office.~~ the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~three million dollars (\$3,000,000)~~ five

1 hundred thousand dollars (\$500,000) in a 12-month period. In analyzing substantial economic  
2 impact, an agency shall do the following:

- 3 (1) Determine and identify the appropriate time frame of the analysis.
- 4 (2) Assess the baseline conditions against which the proposed rule is to be  
5 measured.
- 6 (3) Describe the persons who would be subject to the proposed rule and the type  
7 of expenditures these persons would be required to make.
- 8 (4) Estimate any additional costs that would be created by implementation of the  
9 proposed rule by measuring the incremental difference between the baseline  
10 and the future condition expected after implementation of the rule. The  
11 analysis should include direct costs as well as opportunity costs. Cost  
12 estimates must be monetized to the greatest extent possible. Where costs are  
13 not monetized, they must be listed and described.
- 14 (5) For costs that occur in the future, the agency shall determine the net present  
15 value of the costs by using a discount factor of seven percent (7%).

16 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the  
17 following:

- 18 (1) A description of the persons who would be affected by the proposed rule  
19 change.
- 20 (2) A description of the types of expenditures that persons affected by the  
21 proposed rule change would have to make to comply with the rule and an  
22 estimate of these expenditures.
- 23 (3) A description of the purpose and benefits of the proposed rule change.
- 24 (4) An explanation of how the estimate of expenditures was computed.
- 25 (5) A description of at least two alternatives to the proposed rule that were  
26 considered by the agency and the reason the alternatives were rejected. The  
27 alternatives may have been identified by the agency or by members of the  
28 public.

29 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity  
30 of a rule."

31 **SECTION 7.** G.S. 150B-21.11 reads as rewritten:

32 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

33 When the Commission approves a permanent rule, it must notify the agency that adopted  
34 the rule of the Commission's approval, and deliver the approved rule to the Codifier of Rules,  
35 and include the text of the approved rule and a summary of the rule in its next report to the  
36 Joint Legislative Administrative Procedure Oversight Committee.Rules.

37 If the approved rule will increase or decrease expenditures or revenues of a unit of local  
38 government, the Commission must also notify the Governor of the Commission's approval of  
39 the rule and deliver a copy of the approved rule to the Governor by the end of the month in  
40 which the Commission approved the rule."

41 **SECTION 8.** G.S. 150B-21.12(d) reads as rewritten:

42 "(d) Return of Rule. – A rule to which the Commission has objected remains under  
43 review by the Commission until the agency that adopted the rule decides not to satisfy the  
44 Commission's objection and makes a written request to the Commission to return the rule to the  
45 agency. When the Commission returns a rule to which it has objected, it must notify the  
46 Codifier of Rules of its action ~~and must send a copy of the record of the Commission's review~~  
47 ~~of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next~~  
48 ~~report to that Committee.~~action. If the rule that is returned would have increased or decreased  
49 expenditures or revenues of a unit of local government, the Commission must also notify the  
50 Governor of its action and must send a copy of the record of the Commission's review of the  
51 rule to the Governor. The record of review consists of the rule, the Commission's letter of

objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule."

**SECTION 9.** G.S. 150B-21.16 is repealed.

**SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.

(1a) The text of proposed rules and the text of permanent rules approved by the Commission.

(1b) Emergency rules entered into the North Carolina Administrative Code.

(2) ~~Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.~~

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

(5) ~~Orders of the Tax Review Board issued under G.S. 105-241.2.~~

(6) Other information the Codifier determines to be helpful to the public."

**SECTION 11.** G.S. 150B-21.18 reads as rewritten:

**"§ 150B-21.18. North Carolina Administrative Code.**

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep the Code current by publishing the Code in a loose leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means.~~ The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

**SECTION 12.** G.S. 150B-21.21(b) reads as rewritten:

"(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.~~

Notwithstanding G.S. 150B-1, any other provision of law, an agency ~~other than the Utilities Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule."

**SECTION 13.** G.S. 150B-21.23 is repealed.

**SECTION 14.** G.S. 150B-21.26 reads as rewritten:

"Part 5. Rules Affecting Local Governments.

**"§ 150B-21.26. Governor Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~30~~ 60 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~ Office of State Budget and Management for preliminary review:

(1) The text of the proposed rule change.

(2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

## PART II. CONTESTED CASES

**SECTION 15.** G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

**SECTION 16.** G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, ~~except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.~~ Article."

**SECTION 17.** G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

(12) ~~Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision."~~

SECTION 18. G.S. 150B-34 reads as rewritten:

**"§ 150B-34. Decision of administrative law judge. Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(e), and subsection (e) of this section, in~~ each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of law ~~and return the decision to the agency for a final decision in accordance with G.S. 150B-36 law.~~ The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(e).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(e) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) ~~Except for the exemptions contained in G.S. 150B-1(e) and (e), and subsection (e) of this section,~~ G.S. 150B-1, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

**"§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

**"§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) Repealed by Session Laws 1987, c. 878, s. 25.
- (6) The administrative law judge's ~~decision~~, final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the~~ administrative law judge's final decision to each party."

**SECTION 22.** G.S. 150B-43 reads as rewritten:

**"§ 150B-43. Right to judicial review.**

Any ~~person-party who is or~~ person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him-the party or person~~ aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person-party or person aggrieved~~ from invoking any judicial remedy available to ~~him-the party or person aggrieved~~ under the law to test the validity of any administrative action not made reviewable under this Article."

**SECTION 23.** G.S. 150B-44 reads as rewritten:

**"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision. Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section.~~

**SECTION 24.** G.S. 150B-47 reads as rewritten:



**"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: ~~(i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

**SECTION 25.** G.S. 150B-49 reads as rewritten:

**"§ 150B-49. New evidence.**

~~An aggrieved person. A party or person aggrieved~~ who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a final decision of the administrative law judge or final decision shall be made part of the official record."

**SECTION 26.** G.S. 150B-50 reads as rewritten:

**"§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency administrative~~ decisions under this Chapter shall be conducted by the court without a jury."

**SECTION 27.** G.S. 150B-51 reads as rewritten:

**"§ 150B-51. Scope and standard of review.**

(a) ~~In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

(a1) ~~In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new~~

1 evidence, the court shall reverse the decision or remand the case to the agency to enter a  
2 decision in accordance with the evidence in the official record. The court shall also determine  
3 whether the agency specifically rejected findings of fact contained in the administrative law  
4 judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in  
5 accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the  
6 procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)  
7 of this section.

8 (b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision,~~  
9 The court reviewing a final decision may affirm the decision of the agency or remand the  
10 case to the agency or to the administrative law judge for further proceedings. It may also  
11 reverse or modify the agency's decision, or adopt the administrative law judge's decision if the  
12 substantial rights of the petitioners may have been prejudiced because the agency's findings,  
13 inferences, conclusions, or decisions are:

- 14 (1) In violation of constitutional provisions;
- 15 (2) In excess of the statutory authority or jurisdiction of the agency; agency or  
16 administrative law judge;
- 17 (3) Made upon unlawful procedure;
- 18 (4) Affected by other error of law;
- 19 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
20 150B-30, or 150B-31 in view of the entire record as submitted; or
- 21 (6) Arbitrary, capricious, or an abuse of discretion.

22 (c) ~~In reviewing a final decision in a contested case in which an administrative law~~  
23 ~~judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the~~  
24 ~~administrative law judge's decision, the court shall review the official record, de novo, and shall~~  
25 ~~make findings of fact and conclusions of law. In reviewing the case, the court shall not give~~  
26 ~~deference to any prior decision made in the case and shall not be bound by the findings of fact~~  
27 ~~or the conclusions of law contained in the agency's final decision. The court shall determine~~  
28 ~~whether the petitioner is entitled to the relief sought in the petition, based upon its review of the~~  
29 ~~official record. The court reviewing a final decision under this subsection may adopt the~~  
30 ~~administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may~~  
31 ~~remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),~~  
32 ~~or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the~~  
33 ~~explanations; and may take any other action allowed by law.~~ case, the court shall determine  
34 whether the petitioner is entitled to the relief sought in the petition based upon its review of the  
35 final decision and the official record. With regard to asserted errors pursuant to subdivisions (1)  
36 through (4) of subsection (b) of this section, the court shall conduct its review of the final  
37 decision using the de novo standard of review. With regard to asserted errors pursuant to  
38 subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of  
39 the final decision using the whole record standard of review.

40 (d) ~~In reviewing a final agency decision allowing judgment on the pleadings or~~  
41 ~~summary judgment, or in reviewing an agency decision that does not adopt an administrative~~  
42 ~~law judge's decision allowing judgment on the pleadings or summary judgment pursuant to~~  
43 ~~G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If~~  
44 ~~the order of the court does not fully adjudicate the case, the court shall remand the case to the~~  
45 ~~administrative law judge for such further proceedings as are just."~~

46 **SECTION 28.** G.S. 7A-759(e) reads as rewritten:

47 "(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~ An order entered by an  
48 administrative law judge after a contested case hearing on the merits of a deferred charge is a  
49 final agency decision and is binding on the parties. The administrative law judge may order  
50 whatever remedial action is appropriate to give full relief consistent with the requirements of  
51 federal statutes or regulations or State statutes or rules."

1           **SECTION 29.** G.S. 74-58(b) reads as rewritten:

2           "(b) The effective date of any suspension or revocation shall be 30 days following the  
3 date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the  
4 effective date until ~~the Commission makes issuance of~~ a final decision. If the Department finds  
5 at the time of its initial decision that any delay in correcting a violation would result in  
6 imminent peril to life or danger to property or to the environment, it shall promptly initiate a  
7 proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil  
8 Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have  
9 no effect upon an action for injunctive relief."

10           **SECTION 30.** G.S. 74-61 reads as rewritten:

11       **"§ 74-61. Administrative and judicial review of decisions.**

12           An applicant, permittee, or affected person may contest a decision of the Department to  
13 deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all  
14 of a bond or other security, or to assess a civil penalty by filing a petition for a contested case  
15 under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission~~  
16 ~~shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B  
17 of the General Statutes governs judicial review of a decision of the Commission."

18           **SECTION 31.** G.S. 74-85 reads as rewritten:

19       **"§ 74-85. Administrative and judicial review of decisions.**

20           Any affected person may contest a decision of the Department to approve, deny, suspend,  
21 or revoke a permit, to require additional abandonment work, to refuse to release part or all of a  
22 bond or other security, or to assess a civil penalty by filing a petition for a contested case under  
23 G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall~~  
24 ~~make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the  
25 General Statutes governs judicial review of a decision of the Commission."

26           **SECTION 32.** G.S. 108A-70.9A(f) reads as rewritten:

27           "(f) Final Decision. – After a hearing before an administrative law judge, the judge shall  
28 return the decision and record to the Department in accordance with ~~G.S. 108A-70.9B.~~  
29 G.S. 150B-37. The Department shall ~~make a final decision in the case within 20 days of receipt~~  
30 ~~of the decision and record from the administrative law judge and promptly notify the recipient~~  
31 of the final decision and of the right to judicial review of the decision pursuant to Article 4 of  
32 Chapter 150B of the General Statutes."

33           **SECTION 33.** G.S. 108A-70.9B(g) reads as rewritten:

34           "(g) Decision. – The administrative law judge assigned to a contested Medicaid case  
35 shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the~~  
36 ~~audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~  
37 The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with  
38 G.S. 150B-37. ~~The decision shall be sent together with the record to the agency within 20 days~~  
39 ~~of the conclusion of the hearing."~~

40           **SECTION 34.** G.S. 113-171(e) reads as rewritten:

41           "(e) A licensee served with a notice of suspension or revocation may obtain an  
42 administrative review of the suspension or revocation by filing a petition for a contested case  
43 under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing  
44 shall be whether the licensee was convicted of a criminal offense for which a license must be  
45 suspended or revoked. A license remains suspended or revoked pending the final ~~decision by~~  
46 ~~the Secretary.~~ decision."

47           **SECTION 35.** G.S. 113-202 reads as rewritten:

48       **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**  
49 **prior to January 1, 1966.**

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

...

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate a contested case, or the Secretary's final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

...."

**SECTION 36.** G.S. 113-229(f) reads as rewritten:

"(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the ~~Commission makes issuance of~~ a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit."

**SECTION 37.** G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final Commission decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

**SECTION 38.** G.S. 113A-126(d) reads as rewritten:

- "(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor development violation and ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:

...

- (3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

...."

**SECTION 39.** G.S. 122C-24.1(h) reads as rewritten:

"(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in ~~G.S. 150B-36.~~ G.S. 150B-37."

**SECTION 40.** G.S. 122C-151.4(f) reads as rewritten:

"(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. ~~The Secretary shall make a final decision in the contested case.~~"

**SECTION 41.** G.S. 126-4.1 is repealed.

**SECTION 42.** G.S. 126-14.4(e) reads as rewritten:

"(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall

1 include findings of fact and conclusions of law and, if the administrative law judge has found a  
2 violation of G.S. 126-14.2, an appropriate ~~recommended remedy~~ remedy, which may include:

- 3       (1) Directing the State agency, department, or institution to declare the position  
4       vacant and to hire from among the most qualified State employees or  
5       applicants for initial State employment who had applied for the position, or  
6       (2) Requiring that the vacancy be posted pursuant to this Chapter."

7 **SECTION 43.** G.S. 126-14.4(f) is repealed.

8 **SECTION 44.** G.S. 126-37 reads as rewritten:

9 "**§ 126-37. ~~Personnel Commission to review Administrative Law Judge's recommended~~**  
10 **~~decision and make final decision.~~**

11       (a) Appeals involving a disciplinary action, alleged discrimination or harassment, and  
12 any other contested case arising under this Chapter shall be conducted in the Office of  
13 Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance  
14 may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel~~  
15 ~~Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as~~  
16 ~~provided in subsection (b1) of this section. The State Personnel Commission administrative law~~  
17 ~~judge is hereby authorized to reinstate any employee to the position from which the employee~~  
18 ~~has been removed, to order the employment, promotion, transfer, or salary adjustment of any~~  
19 ~~individual to whom it has been wrongfully denied or to direct other suitable action to correct~~  
20 ~~the abuse which may include the requirement of payment for any loss of salary which has~~  
21 ~~resulted from the improperly discriminatory action of the appointing authority.~~

22       (b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

23       ~~(b1) In appeals involving local government employees subject to this Chapter pursuant to~~  
24 ~~G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this~~  
25 ~~Chapter is found or in any case where a binding decision is required by applicable federal~~  
26 ~~standards, the decision of the State Personnel Commission shall be advisory to the local~~  
27 ~~appointing authority. The State Personnel Commission shall comply with all requirements of~~  
28 ~~G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90~~  
29 ~~days of receipt of the advisory decision of the State Personnel Commission, issue a written,~~  
30 ~~final decision either accepting, rejecting, or modifying the decision of the State Personnel~~  
31 ~~Commission. If the local appointing authority rejects or modifies the advisory decision, the~~  
32 ~~local appointing authority must state the specific reasons why it did not adopt the advisory~~  
33 ~~decision. A copy of the final decision shall be served on each party personally or by certified~~  
34 ~~mail, and on each party's attorney of record.~~

35       (b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B  
36 of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6  
37 of this Chapter has occurred or in any case where a binding decision is required by applicable  
38 federal standards shall be heard as all other appeals, ~~except that the decision of the State~~  
39 ~~Personnel Commission shall be final.~~ appeals.

40       (c) If the local appointing authority is other than a board of county commissioners, the  
41 local appointing authority must give the county notice of the appeal taken pursuant to  
42 subsection (a) of this section. Notice must be given to the county manager or the chairman of  
43 the board of county commissioners by certified mail within 15 days of the receipt of the notice  
44 of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the  
45 action is appealed to superior court the county may intervene in the superior court proceeding  
46 even if it has not intervened in the administrative proceeding. The decision of the superior court  
47 shall be binding on the county even if the county does not intervene."

48 **SECTION 45.** G.S. 131D-34(e) reads as rewritten:

49       "(e) Any facility wishing to contest a penalty shall be entitled to an administrative  
50 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes.  
51 A petition for a contested case shall be filed within 30 days after the Department mails a notice

of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

**SECTION 46.** G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.
- (5) ~~The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension."~~

**SECTION 47.** G.S. 131F-5(b) reads as rewritten:

"(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The



1 Department shall make rules regarding the custody and control of any funds collected during  
2 the review period and disposal of such funds in the event the denial of the application is  
3 affirmed on appeal."

4 **SECTION 48.** G.S. 131F-15(e) reads as rewritten:

5 "(e) Departmental Review. – The Department shall examine each application or renewal  
6 filed by a fund-raising consultant and determine whether the requirements are satisfied. If the  
7 Department determines that the requirements are not satisfied, the Department shall notify the  
8 fund-raising consultant within 10 days after its receipt of the application or renewal. If the  
9 Department does not respond within 10 days, the license is deemed approved. Within seven  
10 days after receipt of a notification that the license requirements are not satisfied, the applicant  
11 may file a petition for a contested case. The State has the burden of proof in the contested case.  
12 The contested case hearing must be held within seven days after the petition is filed. A  
13 ~~recommended- final~~ decision must be made within ~~three- five~~ days of the hearing. A ~~final~~  
14 ~~decision must be made within two days after the recommended decision.~~ The contested case  
15 hearing proceedings shall be conducted in accordance with Chapter 150B of the General  
16 Statutes, except that the time limits and provisions set forth in this section shall prevail to the  
17 extent of any conflict. The applicant shall be permitted to continue to operate or continue  
18 operations pending judicial review of the Department's denial of the application. The  
19 Department shall make rules regarding the custody and control of any funds collected during  
20 the review period and disposal of such funds in the event the denial of the application is  
21 affirmed on appeal."

22 **SECTION 49.** G.S. 135-44.7(c) is repealed.

23 **SECTION 50.** G.S. 143-215.22L(o) reads as rewritten:

24 "(o) Administrative and Judicial Review. – Administrative and judicial review of a final  
25 decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed  
26 by Chapter 150B of the General Statutes."

27 **SECTION 51.** G.S. 143-215.94E(e3) reads as rewritten:

28 "(e3) The Department shall not pay any third party or reimburse any owner or operator  
29 who has paid any third party pursuant to any settlement agreement or consent judgment relating  
30 to a claim by or on behalf of a third party for compensation for bodily injury or property  
31 damage unless the Department has approved the settlement agreement or consent judgment  
32 prior to entry into the settlement agreement or consent judgment by the parties or entry of a  
33 consent judgment by the court. The approval or disapproval by the Department of a proposed  
34 settlement agreement or consent judgment shall be subject to challenge only in a contested case  
35 filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency~~  
36 ~~decision in a contested case proceeding under this subsection."~~

37 **SECTION 52.** G.S. 143-215.94U(e) reads as rewritten:

38 "(e) The Department may revoke an operating permit only if the owner or operator fails  
39 to continuously meet the requirements set out in subsection (a) of this section. If the  
40 Department revokes an operating permit, the owner or operator of the facility for which the  
41 operating permit was issued shall immediately surrender the operating permit certificate to the  
42 Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator  
43 may challenge a decision by the Department to deny or revoke an operating permit by filing a  
44 contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall~~  
45 ~~make the final agency decision regarding the revocation of a permit under this section."~~

46 **SECTION 53.** G.S. 143-215.104P(d) reads as rewritten:

47 "(d) The Secretary shall notify any person assessed a civil penalty for the assessment and  
48 the specific reasons therefor by registered or certified mail or by any means authorized by  
49 G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30  
50 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision~~  
51 ~~regarding assessment of a civil penalty under this section."~~



1           **SECTION 54.** G.S. 143-215.104S reads as rewritten:

2   **"§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

3       Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F  
4 through G.S. 143-215.104O may commence a contested case by filing a petition under  
5 G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated  
6 within the allotted time period, the Commission's decision shall be final and not subject to  
7 review. ~~The Commission shall make the final agency decision in contested cases initiated~~  
8 ~~pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to  
9 compel remediation of dry-cleaning solvent contamination in excess of that required by a  
10 dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to  
11 recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency~~  
12 ~~decision pursuant to this section."~~

13           **SECTION 55.** G.S. 153A-223 reads as rewritten:

14   **"§ 153A-223. Enforcement of minimum standards.**

15       If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and  
16 supervisory and administrative personnel of a local confinement facility do not meet the entry  
17 level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local  
18 confinement facility does not meet the minimum standards published pursuant to  
19 G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility  
20 jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the  
21 Secretary may order corrective action or close the facility, as provided in this section:

- 22           (1) The Secretary shall give notice of his determination to the governing body  
23 and each other local official responsible for the facility. The Secretary shall  
24 also send a copy of this notice, along with a copy of the inspector's report, to  
25 the senior resident superior court judge of the superior court district or set of  
26 districts as defined in G.S. 7A-41.1 in which the facility is located. Upon  
27 receipt of the Secretary's notice, the governing body shall call a public  
28 hearing to consider the report. The hearing shall be held within 20 days after  
29 the day the Secretary's notice is received. The inspector shall appear at this  
30 hearing to advise and consult with the governing body concerning any  
31 corrective action necessary to bring the facility into conformity with the  
32 standards.
- 33           (2) The governing body shall, within 30 days after the day the Secretary's notice  
34 is received, request a contested case hearing, initiate appropriate corrective  
35 action or close the facility. The corrective action must be completed within a  
36 reasonable time.
- 37           (3) A contested case hearing, if requested, shall be conducted pursuant to  
38 G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the  
39 minimum standards; (ii) whether the conditions in the facility jeopardize the  
40 safe custody, safety, health, or welfare of persons confined therein; and (iii)  
41 the appropriate corrective action to be taken and a reasonable time to  
42 complete that action.
- 43           (4) If the governing body does not, within 30 days after the day the Secretary's  
44 notice is received, or within 30 days after service of the final agency  
45 decision if a contested case hearing is held, either initiate corrective action or  
46 close the facility, or does not complete the action within a reasonable time,  
47 the Secretary may order that the facility be closed.
- 48           (5) The governing body may appeal an order of the Secretary or a final decision  
49 to the senior resident superior court judge. The governing body shall initiate  
50 the appeal by giving by registered mail to the judge and to the Secretary  
51 notice of its intention to appeal. The notice must be given within 15 days

- 1 after the day the Secretary's order or the final decision is received. If notice  
2 is not given within the 15-day period, the right to appeal is terminated.
- 3 (6) The senior resident superior court judge shall hear the appeal. He shall cause  
4 notice of the date, time, and place of the hearing to be given to each  
5 interested party, including the Secretary, the governing body, and each other  
6 local official involved. The ~~Secretary,~~ Office of Administrative Hearings, if  
7 a contested case hearing has been held, shall file the official record, as  
8 defined in G.S. 150B-37, with the senior resident superior court judge and  
9 shall serve a copy on each person who has been given notice of the hearing.  
10 The judge shall conduct the hearing without a jury. He shall consider the  
11 official record, if any, and may accept evidence from the Secretary, the  
12 governing body, and each other local official which he finds appropriate.  
13 The issue before the court shall be whether the facility continues to  
14 jeopardize the safe custody, safety, health, or welfare of persons confined  
15 therein. The court may affirm, modify, or reverse the Secretary's order."

16 **SECTION 55.1.** Pursuant to 31 U.S.C. § 6504, the Department of Health and  
17 Human Services shall request a waiver from the single State agency requirement contained in  
18 42 C.F.R. § 432.10(e)(3) with regard to final decisions in administrative hearings. The waiver  
19 application shall include the following:

- 20 (1) The waiver request is made at the direction of the North Carolina General  
21 Assembly, which is responsible for the organizational structure of State  
22 government.
- 23 (2) The single State agency requirement prevents the establishment of the most  
24 effective and efficient arrangement for providing administrative hearings to  
25 claimants because it requires that after a hearing and decision by an  
26 administrative law judge, the case must be returned to the agency for a final  
27 decision. The return to the agency is an unnecessary, time-consuming, and  
28 costly additional step.
- 29 (3) The use of another State administrative hearings arrangement will not  
30 endanger the objectives of the law authorizing the Medicaid program  
31 because the administrative law judges will abide by the properly adopted  
32 policies, rules, and regulations of the State Medicaid agency in making final  
33 decisions.

### 34 **PART III. MISCELLANEOUS ISSUES**

35 **SECTION 56.** G.S. 150B-4 reads as rewritten:

#### 36 **"§ 150B-4. Declaratory rulings.**

37 (a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the  
38 validity of a rule or as to the applicability to a given state of facts of a statute administered by  
39 the agency or of a rule or order of the agency, ~~except when the agency for good cause finds~~  
40 ~~issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory  
41 ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the  
42 law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for  
43 requesting a declaratory ruling and the circumstances in which rulings shall or shall not be  
44 issued. A declaratory ruling is binding on the agency and the person requesting it unless it is  
45 altered or set aside by the court. An agency may not retroactively change a declaratory ruling,  
46 but nothing in this section prevents an agency from prospectively changing a declaratory ruling.  
47 ~~A declaratory ruling is subject to judicial review in the same manner as an order in a contested~~  
48 ~~ease. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the~~  
49 ~~request for such ruling shall constitute a denial of the request as well as a denial of the merits of~~  
50 ~~the request and shall be subject to judicial review.~~

- 51 (a1) An agency shall respond to a request for a declaratory ruling as follows:

- (1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.
- (2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.
- (3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.
- (4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits, and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved.

(b) Repealed by Session Laws 1997-34, s. 1."

**SECTION 57.** Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

- (1) Whether the rule is mandated by a federal law or regulation.
- (2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.
- (3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

**SECTION 58.** The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

**SECTION 59.(a)** G.S. 113A-12 reads as rewritten:

**"§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

- (1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.
- (2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).
- (3) A lease or easement granted by a State agency for:
  - a. The use of an existing building or facility.
  - b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
  - c. A shellfish cultivation lease granted under G.S. 113-202.
- (4) The construction of a driveway connection to a public roadway.

(5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

(6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes."

**SECTION 59.(b)** This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

**SECTION 60.(a)** G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years."

**SECTION 60.(b)** G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other

1 person requesting notice. At least 30 days prior to the date of hearing, the  
2 Commission shall also cause a copy of the notice thereof to be published at  
3 least one time in a newspaper having general circulation in such county. In  
4 any county in which there is more than one newspaper having general  
5 circulation in that county, the Commission shall cause a copy of such notice  
6 to be published in as many newspapers having general circulation in the  
7 county as the Commission in its discretion determines may be necessary to  
8 assure that such notice is generally available throughout the county. The  
9 Commission shall prescribe the form and content of the notices.

10 The Commission shall prescribe the procedures to be followed in  
11 hearings. If the hearing is not conducted by the Commission, detailed  
12 minutes of the hearing shall be kept and shall be submitted, along with any  
13 other written comments, exhibits or documents presented at the hearing, to  
14 the Commission for its consideration prior to final action granting or  
15 denying the permit.

16 (4) Not later than 60 days following notice of intent or, if a public hearing is  
17 held, within 90 days following consideration of the matters and things  
18 presented at such hearing, the Commission shall grant or deny any  
19 application for issuance of a new permit or for renewal of an existing permit.  
20 All permits or renewals issued by the Commission and all decisions denying  
21 application for permit or renewal shall be in writing.

22 ~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed~~  
23 ~~for a term exceeding five years.~~

24 (6) The Commission shall not act upon an application for a new nonmunicipal  
25 domestic wastewater discharge facility until it has received a written  
26 statement from each city and county government having jurisdiction over  
27 any part of the lands on which the proposed facility and its appurtenances  
28 are to be located which states whether the city or county has in effect a  
29 zoning or subdivision ordinance and, if such an ordinance is in effect,  
30 whether the proposed facility is consistent with the ordinance. The  
31 Commission shall not approve a permit application for any facility which a  
32 city or county has determined to be inconsistent with its zoning or  
33 subdivision ordinance unless it determines that the approval of such  
34 application has statewide significance and is in the best interest of the State.  
35 An applicant for a permit shall request that each city and county government  
36 having jurisdiction issue the statement required by this subdivision by  
37 mailing by certified mail, return receipt requested, a written request for such  
38 statement and a copy of the draft permit application to the clerk of the city or  
39 county. If a local government fails to mail the statement required by this  
40 subdivision, as evidenced by a postmark, within 15 days after receiving and  
41 signing for the certified mail, the Commission may proceed to consider the  
42 permit application notwithstanding this subdivision."

43 **SECTION 60.(c)** G.S. 143-215.1 is amended by adding a new subsection to read:

44 "(d2) No permit issued pursuant to subsection (c) of this section shall be issued or  
45 renewed for a term exceeding five years. All other permits issued pursuant to this section for  
46 which an expiration date is specified shall be issued for a term of eight years."

47 **SECTION 60.(d)** The Department of Environment and Natural Resources shall  
48 review the types of permits issued by the Department and the rule-making agencies under the  
49 Department and recommend whether the duration of any of the types of permits should be  
50 extended beyond their duration under current law or rule. The Department shall report its

1 findings and recommendations to the Environmental Review Commission no later than  
2 February 1, 2012.

3 **SECTION 60.(e)** This section is effective when this act becomes law and applies  
4 to permits that are issued on or after July 1, 2011.

5 **SECTION 61.** The Secretary of Environment and Natural Resources shall develop  
6 a uniform policy for notification of deficiencies and violations for all of the regulatory  
7 programs within the Department of Environment and Natural Resources. In developing the  
8 notification policy, the Secretary shall establish different types of notification based on the  
9 potential or actual level of harm to public health, the environment, and the natural resources of  
10 the State. The Secretary shall also review the notification policies of the United States  
11 Environmental Protection Agency and the environmental regulatory programs of other states.  
12 The Secretary shall report on the development of the notification policy to the Environmental  
13 Review Commission and the Joint Select Regulatory Reform Committee no later than October  
14 1, 2011. The Secretary shall implement the uniform notification policy no later than February  
15 1, 2012.

16 **SECTION 61.1.** The Office of Administrative Hearings shall evaluate the use of  
17 mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the  
18 use of mediation in the contested case process. The Office of Administrative Hearings shall  
19 report its findings and recommendations to the Joint Legislative Regulatory Reform Committee  
20 by February 1, 2012.

21 **SECTION 61.2.** S.L. 2011-13 is repealed.

22 **SECTION 61.3.** G.S. 66-58 is amended by adding a new subsection to read:

23 "(m) Any person, firm, or corporation who or which is injured or suffers damages as a  
24 result of a violation of this section may maintain an action in the Wake County Superior Court  
25 for injunctive relief against any unit, department or agency of the State government, or any  
26 division or subdivision of the unit, department or agency, or any individual employee or  
27 employees of the unit, department or agency, in his or her, or their capacity as employee or  
28 employees, who or which has committed a violation. In a proceeding under this subsection, the  
29 court shall determine whether a violation has been committed and enter any judgment or decree  
30 necessary to remove the effects of any violation it finds and to prevent continuation or renewal  
31 of the violation in the future. Upon a judicial finding that any contract or contractual obligation  
32 is in violation of this section, such contract or contractual obligation shall be null and void. Any  
33 person, firm, or corporation who or which believes that a proposed activity will be in violation  
34 of this section may request a declaratory judgment under G.S. 1-253 or injunctive relief or both,  
35 notwithstanding the fact that such activity has not been commenced."

36 **SECTION 61.4.** If House Bill 200, 2011 Regular Session, becomes law, then  
37 G.S. 95-14.2, 106-22.6, and 143B-279.16, as amended by Section 13.11B of that bill are  
38 repealed.

39 **SECTION 62.** If any provision of this act is held invalid by a court of competent  
40 jurisdiction, the invalidity does not affect other provisions of this act that can be given effect  
41 without the invalid provision.

42 **SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011,  
43 and apply to rules adopted on or after that date. Sections 15 through 55 of this act become  
44 effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless  
45 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes  
46 law.

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

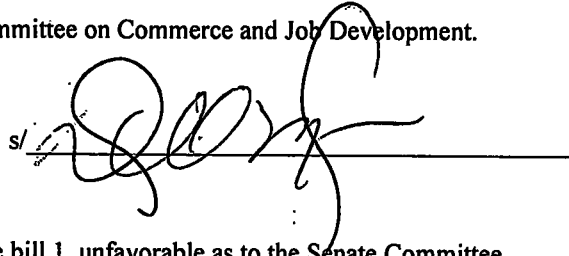
☒ Committee Substitute for

**SB 781** A BILL TO BE ENTITLED AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB CREATION AND ENVIRONMENTAL PROTECTION.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill 1, unfavorable as to the Senate Committee Substitute Bill 1

**(FOR JOURNAL USE ONLY)**

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

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

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

\* Needs to be referred \*

Brought to meeting  
NOT heard.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 791\*

Short Title: Amend Cos. Art Law/Grandfr. Natural Hair Care. (Public)

Sponsors: Representatives Parmon and Floyd (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE  
3 PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH  
4 PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED  
5 TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 88B-11(e) is amended by adding a new subdivision to read:

8 "(e) The Board shall issue a license to practice as a natural hair care teacher to any  
9 individual who meets the requirements of subsection (a) of this section and who meets all of the  
10 following:

- 11 (1) Holds in good standing a natural hair care license issued by the Board.  
12 (2) Submits proof of either practice as a natural hair care specialist in a cosmetic  
13 art shop or any Board-approved employment capacity in the cosmetic art  
14 industry for a period equivalent to two years of full-time work immediately  
15 prior to application or successful completion of at least 320 hours of a  
16 natural hair care teacher curriculum in an approved cosmetic art school.  
17 (3) Passes an examination for natural hair care teachers conducted by the  
18 Board."

19 SECTION 2. G.S. 88B-21(e) reads as rewritten:

20 "(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care  
21 specialist, or manicurist shall annually complete eight hours of Board-approved continuing  
22 education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of  
23 required continuing education at any time within the cosmetologist's three-year licensing cycle.  
24 Licensees shall submit written documentation to the Board showing that they have satisfied the  
25 requirements of this subsection. A licensee who is in active practice as a cosmetologist,  
26 esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive  
27 years in that profession, and is 60 years of age or older does not have to meet the continuing  
28 education requirements of this subsection. A licensee who is in active practice as a  
29 ~~cosmetologist~~ cosmetologist, esthetician, natural hair care specialist, or manicurist and has at  
30 least 20 consecutive years of experience as ~~a cosmetologist~~ in that profession does not have to  
31 meet the continuing education requirements of this subsection, ~~but shall report any continuing~~  
32 ~~education classes completed to the Board, whether the continuing education classes are~~  
33 ~~Board approved or not subsection.~~ Promotion of products and systems shall be allowed at  
34 continuing education given in-house or at trade shows. Continuing education classes may also





1 be offered in secondary languages as needed. No member of the Board may offer continuing  
2 education courses as required by this section."

3 **SECTION 3.** Section 13 of S.L. 2009-521 reads as rewritten:

4 **"SECTION 13.(a)** Any natural hair care specialist who meets the following requirements  
5 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by  
6 Section 2 of this act:

7 (1) ~~submits~~ Submits proof to the Board that the natural hair care specialist is  
8 actively engaged in the practice of a natural hair care specialist ~~on the~~  
9 ~~effective date of this act, passes an examination conducted by the Board, for~~  
10 two years on or before July 1, 2011. For purposes of this subdivision,  
11 submission of proof to the Board shall include any of the following:

12 a. Any two of the following:

13 1. Copies of tax records of employment, including W-2s, 1099s,  
14 tax returns, or other relevant tax records.

15 2. An affidavit from the applicant or the applicant's immediate  
16 supervisor, when applicable, verifying the applicant's practice  
17 of natural hair care for two years immediately preceding the  
18 date of application for licensure.

19 3. Copies of an applicable business license issued by a local  
20 government agency.

21 b. Any other means of proof acceptable to the Board.

22 (2) Passes a practical examination as approved by the Board.

23 (3) ~~and pays~~ Pays the required fee under ~~G.S. 88B-20 shall be licensed without~~  
24 ~~having to satisfy the requirements of G.S. 88B-10.1, G.S. 88B-20, enacted by~~  
25 Section 2 of this act.

26 **"SECTION 13.(b)** A cosmetic art shop that practices natural hair care only and that  
27 submits proof to the Board that the shop is actively engaged in the practice of natural hair care  
28 on the effective date of this act shall have one year from the date of this act to comply with the  
29 requirements of G.S. 88B-14. All persons who do not make application to the Board within one  
30 year of the effective date of this act shall be required to complete all training and examination  
31 requirements prescribed by the Board and to otherwise comply with the provisions of Chapter  
32 88B of the General Statutes."

33 **SECTION 4.** Section 14 of S.L. 2009-521 reads as rewritten:

34 **"SECTION 14.** Section 1.2 of this act is effective when it becomes law. The remainder of  
35 this act becomes effective July 1, ~~2010, 2013,~~ and applies to acts occurring on or after that  
36 date."

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

W

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Business and Labor

DATE: 14 June 11 Room: LOB 544

\*Name: Marcel Boss

County: Mecklenburg

Sponsor: Speaker Thom Thill's

\*Name: Meghan Brooks

County: Wake

Sponsor: Representative Efton Sager

\*Name: Carter Scotthy

County: Davidson

Sponsor: Representative Rayne Brown

\*Name: Benton Kribbs

County: Rowan

Sponsor: Rep. Harry Warren

\*Name: Jacob Keady

County: Union

Sponsor: Rep. Craig Horn

House Sgt-At Arms:

1. Name: Champ Claris

4. Name: \_\_\_\_\_

2. Name: Earl Coker

5. Name: \_\_\_\_\_

3. Name: RL Carter

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

Business and Labor

Name of Committee

June 14, 2011

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Med Selzer	DCR
Dave Faxon	Cof Charlotte
Michael Adams	Charlotte-Mecklenburg PO
Robin Smith	DENR
May Mule Abdul	SELC
Tom BEAN	EDF, NCWF
Dan Conrad	NCCN
Will Morgan	Sever
Chris Valauri	Valauri Group, LLC
Daniel Raimi	DENR
Sam Walker	NCEA

Nobby Higgins Laura Clark

# VISITOR REGISTRATION SHEET

Business and Labor

Name of Committee

June 14, 2011

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Darlene H	NCL EG
Nathan Knutson	OSBM
Janet Thoren	NCREC
Tim KENT	NC Beer & Wine Wholesalers
Sara Burrows	Carolina Journal
Barbara Canale	BBCA
Jessi Hays	NCHBA
DOUG HERON	WILLIAMS MULLEN
Lachelle Pulliam	Dmz Wainwright

## VISITOR REGISTRATION SHEET

Business and Labor

Name of Committee

June 14, 2011

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

George Everett	Duke Energy
Allison Fowler	NC Grange
Paul Haden	Talbot Tree
Lisa Martin	NC Home Builders
Rick Zechini	Progress Energy
Cailey Huff	NC Housing Coalition
Cody Thomas	NCLAR

# VISITOR REGISTRATION SHEET

Business and Labor

Name of Committee

June 14, 2011

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Natalie Caviness	NCDOL
Bill Rowe	NC Justice Center
BERRY Jenkins	CAROLINAS AGC
Manuel Ortiz	Pinco Anderson
Jim Johnson	BSA
Doug Miskin	PSG
W. McDowell	NCICU
David Dooz	Public Staff - Utilities
Colleen Kochanek	KLG
Jake Cashion	NC Chamber
Preston Howard	MCIC

# MINUTES

## Business and Labor Subcommittee

Wednesday, June 15, 2011

10:00 a.m.

Room 544 LOB

The Business and Labor Subcommittee met on Wednesday, June 15, 2011 at 10:00 a.m. in Room 544 of the Legislative Office Building. Representative Darrell G. McCormick presided.

The following members were present:

- |   |                                   |
|---|-----------------------------------|
| 1. Representative Jeff Collins              |                                   |
| 2. Representative Ken Goodman               | 6. Representative Tim Moffitt     |
| 3. Representative Charles Graham            | 7. Representative Rodney Moore    |
| 4. Representative Mike Hager                | 8. Representative Efton Sager     |
| 5. Representative Danny McComas             | 9. Representative Phillip Shepard |
| <i>Chair – Commerce and Job Development</i> |                                   |

Meeting was called to Order at 10:06 a.m.

Introduction of Sergeant at Arms:

- Bill Bass
- James Worth
- Bob Rossi

Introduction of Pages:

- Patrick Nail – Stokes County – Sponsor: Representative Bryan Holloway
- Tyler Coe – Davidson County – Sponsor: Representative Jerry Dockham

Bills:

BILL NO.	SHORT TITLE	SPONSOR
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith

Representative Mike Hager moved to hear the proposed committee substitute (PCS).

Senator Wesley Meredith explained SB 144.

Representative Tim Moffitt motioned for a favorable report to the House proposed committee substitute, unfavorable to the Senate committee substitute – Passed

**SB 144 – Received a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute Bill.**

Representative Phillip Shepard will sponsor SB144 in the House.

HB 791	Amend Cos. Art Law/Grandfr. Natural Hair Care.	Representative Parmon
		Representative Floyd

Representative Rodney Moore moved to hear the proposed committee substitute (PCS).

Representative Earline Parmon explained HB 791.

Public Speaker:

- Lynda Elliott, Executive Director – Board of Cosmetic Art Examiners, spoke in favor

Representative Charles Graham motioned for a favorable report to the proposed committee substitute, unfavorable to the original bill and be re-referred to House Finance – Passed  
**HB 791 – Received a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill # be re-referred to the Committee on FINANCE.**

SB 346      Exempt Cooking Schools from Food Regulations.    Senator Kinnaird

Representative Verla Insko explained SB 346.

Representative Rodney Moore motioned for a favorable report – Passed

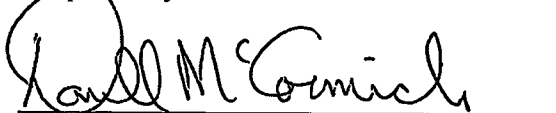
**SB 346 – Received a favorable report.**

Representative Verla Insko will sponsor SB 346 in the House.

### Adjournment

Meeting adjourned at 10:15 am

Respectfully submitted



Representative Darrell McCormick  
Chairman



Anne Murtha  
Committee Clerk



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, June 15, 2011

**TIME:** 10:00 am

**LOCATION:** 544 LOB

**COMMENTS:**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 791	Amend Cos. Art Law/Grandfr. Natural Hair Care.	Representative Parmon Representative Floyd
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith
SB 346	Exempt Cooking Schools from Food Regulations.	Senator Kinnaird

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **June 15, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Anne Murtha** (Committee Assistant)

# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 15, 2011**

**10:00 a.m.**

**Room 544 LOB**

**Chair: Representative Darrell G. McCormick**

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Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

### **Bills:**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 791	Amend Cos. Art Law/Grandfr. Natural Hair Care.	Representative Parmon Representative Floyd
SB 144	Cash Converters Must Keep Purchase Records.	Senator Meredith
SB 346	Exempt Cooking Schools from Food Regulations.	Senator Kinnaird

Adjournment



## SENATE BILL 144: Cash Converters Must Keep Purchase Records

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 15, 2011
<b>Introduced by:</b>	Sen. Meredith	<b>Prepared by:</b>	Karen Cochrane-Brown Committee Counsel
<b>Analysis of:</b>	PCS to Second Edition S144-CSRO-27		

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**SUMMARY:** *SB144 would regulate businesses that purchase goods from individuals for cash ("cash converters") by amending the Pawnbrokers Modernization Act of 1989 to require that cash converters keep records of cash purchases for inspection by law enforcement. Failure to keep the required records would be a Class 2 misdemeanor. If a cash converter knowingly purchases stolen goods, he or she would be prosecuted under existing law related to receipt and possession of stolen goods. The act does not require cash converters to be licensed.*

*The PCS adds a provision to the Check-Cashing Businesses Act exempting certain licensed check cashers from the reporting requirements of the Act.*

**CURRENT LAW:** Chapter 91A of the General Statutes provides that any business that conducts itself as a pawnbroker must be licensed by the municipality or county where the business is located. A pawnbroker is a person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders. Pawnbrokers must keep consecutively numbered records of each pawn transaction including: a description of the item being pawned; the name, address, telephone number and date of birth of the person pledging the pawned item; the date of the transaction; the type of identification provided by the person pledging the goods; a description of the pledger; the amount of money advanced; the date due and amount charged; all pawn charges including interest; and the agreed upon value of the pledged item. Among other things, a pawnbroker is prohibited from taking any item in pledge that the pawnbroker knows or has reason to know is stolen. Knowing violations of Chapter 91A are punishable as Class 2 misdemeanors, but receipt of stolen goods is punishable as a Class H felony under G.S. 14-71, G.S. 14-71.1 and G.S. 14-72(b) respectively (receipt and/or possession of stolen goods) provided the person receiving or possessing the goods knew or had reasonable grounds to believe the goods were stolen.

**BILL ANALYSIS:** SB144 would amend the Pawnbroker Modernization Act of 1989 to create a class of businesses known as "cash converters". A cash converter is defined as a person engaged in the business of purchasing goods from the public for cash and who is permanently located in a retail store that holds himself out to the public as engaging the cash converting business. The definition does not apply to:

1. Pawnbrokers
2. Persons who purchase goods directly from manufacturers or wholesalers
3. Precious metal dealers to the extent their transactions are regulated under Article 15 of Chapter 66 (Regulation of Precious Metal Businesses)
4. Purchases of individual items for less than \$50 by persons primarily in the business of buying children's items from the public.
5. Purchases of individual items for less than \$50 by persons primarily in the business of buying sporting goods and sporting equipment from the public.

# Senate PCS 144

Page 2

A cash converter must keep consecutively numbered records of each cash purchase including: a description of the item purchased; the name, address, telephone number and date of birth of the seller; the date of the transaction; the type of identification provided by the seller; a description of the seller including height, weight, sex and race; the purchase price; and a statement signed by the seller that the item is not stolen, has no liens or encumbrances, and is the seller's to sell. The seller must receive an exact copy of the record, and the cash converter must keep the records available for inspection and pickup by local law enforcement during regular business hours. A cash converter is prohibited from purchasing property which the cash converter knows is stolen.

A violation of the record keeping requirements by a cash converter would be a Class 2 misdemeanor. Receiving or possession stolen goods would be punishable under G.S. 14-71, 14-71.1 and/or 14-72(b) as applicable.

SB144 does not require cash converters to be licensed by the city or county where the business is located.

Section 10 amends the Check-Cashing Businesses Act to exempt a licensee who derives less than 20% of annual gross revenue from check cashing from the requirement to maintain separate accounts and records.

**EFFECTIVE DATE:** This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

*SI44-SMRO-43(CSRO-27) v1*



(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Article 25 of Chapter 66 of the General Statutes.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture and children's products, provided the amount paid for the individual item purchased is less than fifty dollars (\$50).

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, of sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than fifty dollars (\$50).

~~(1)(3) "Pawn" or "Pawn transaction" means a Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.~~

~~(2)(4) "Pawnbroker" means any Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.~~

~~(3)(5) "Pawnshop" means the Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.~~

~~(4)(6) "Person" means any Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.~~

~~(5)(7) "Pledged goods" means tangible Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.~~

~~(6)(8) "Purchase" means any Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."~~

SECTION 5. The catch line of G.S. 91A-7 reads as rewritten:

"§ 91A-7. ~~Record keeping requirements.~~ Record-keeping requirements for pawnbrokers."

SECTION 6. Chapter 91A of the General Statutes is amended by adding a new section to read:

**"§ 91A-7.1. Record-keeping requirements for cash converters.**

(a) Every cash converter shall keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.

(2) The name, residence address, phone number, and date of birth of the seller.

(3) The date of the purchase.

- (4) The type of identification and the identification number accepted from the seller.
- (5) A description of the seller, including approximate height, weight, sex, and race.
- (6) The purchase price.
- (7) The statement that 'THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.'

(b) The seller shall sign the record and shall receive an exact copy of the record, which shall be signed or initialed by the cash converter or any employee of the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the cash converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.

(c) This section does not apply to purchases directly from a manufacturer or wholesaler for a cash converter's inventory."

SECTION 7. G.S. 91A-10 reads as rewritten:

**"§ 91A-10. Prohibitions.**

(a) A pawnbroker shall not:

- (1) Accept a pledge from a person under the age of 18 years;years.
- (2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;transaction.
- (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Chapter; Chapter.
- (4) Fail to exercise reasonable care to protect pledged goods from loss or damage; damage.
- (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to G.S. 91A-7(b); G.S. 91A-7(b).
- (6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State police;police.
- (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with G.S. 91A-7(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers;wholesalers.
- (8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business; or business.
- (9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

1       (b) A cash converter shall not purchase from any person property which is known to the  
2 cash converter to be stolen, unless there is a written agreement with local or State police."

3       **SECTION 8.** G.S. 91A-11 reads as rewritten:

4       **"§ 91A-11. Penalties.**

5       (a) Every person, firm, or corporation, their guests or employees, who shall knowingly  
6 violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a  
7 Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner  
8 of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or  
9 managing partner of the pawnshop, then the license of the pawnshop may be suspended at the  
10 discretion of the court.

11       (b) The provision of subsection (a) shall not apply to violations of ~~G.S. 91A-10(6)~~  
12 G.S. 91A-10(a)(6) or (b) which shall be prosecuted under the North Carolina criminal statutes.

13       (c) Any contract of pawn the making or collecting of which violates any provision of  
14 this Chapter, except as a result of accidental or bona fide error of computation, shall be void,  
15 and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever  
16 with respect to such pawn."

17       **SECTION 9.** G.S. 25-9-201(b) reads as rewritten:

18       "(b) Applicable consumer laws and other law. – A transaction subject to this Article is  
19 subject to any applicable rule of law which establishes a different rule for consumers, to any  
20 other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and  
21 practices for loans, credit sales, or other extensions of credit, and to any consumer-protection  
22 statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail  
23 Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer  
24 Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash  
25 Converters Modernization Act of 1989 (Chapter 91A of the General Statutes)."

26       **SECTION 10.** This act becomes effective December 1, 2011, and applies to  
27 purchases by cash converters on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 144  
Commerce Committee Substitute Adopted 4/28/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S144-PCS55330-RO-27

Short Title: Cash Converters Must Keep Purchase Records.

(Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CASH CONVERTER BUSINESSES TO KEEP RECORDS OF PURCHASES AND TO MAKE THOSE RECORDS AVAILABLE TO LOCAL LAW ENFORCEMENT AGENCIES, AND TO EXEMPT CERTAIN LICENSED CHECK CASHERS FROM THE REPORTING REQUIREMENTS OF THE CHECK-CASHING BUSINESSES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Chapter 91A of the General Statutes reads as rewritten:

"Pawnbrokers and Cash Converters Modernization Act of 1989 Act."

SECTION 2. G.S. 91A-1 reads as rewritten:

"§ 91A-1. Short title.

This Chapter shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization Act of 1989 Act."

SECTION 3. G.S. 91A-2 reads as rewritten:

"§ 91A-2. Purpose.

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act of 1989 to do all of the following:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers; pawnbrokers.

(1a) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.

(2) Provide for pawnbroker licensing fees and investigation fees of licensees; licensees.

(3) Ensure financial responsibility to the State and the general public; public.

(4) Ensure compliance with federal and State laws; and laws.



(5) Assist local governments in the exercise of their police authority."

SECTION 4. G.S. 91A-3 reads as rewritten:

**"§ 91A-3. Definitions.**

~~As used in this Article, the following definitions shall apply:~~ The following definitions apply in this Chapter:

(1) Cash. – Lawful currency of the United States.

(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Article 25 of Chapter 66 of the General Statutes.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).

~~(1)(3)~~ "Pawn" or "Pawn transaction" means a Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

~~(2)(4)~~ "Pawnbroker" means any Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

~~(3)(5)~~ "Pawnshop" means the Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

~~(4)(6)~~ "Person" means any Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

~~(5)(7)~~ "Pledged goods" means tangible Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

~~(6)(8)~~ "Purchase" means any Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 5. The catch line of G.S. 91A-7 reads as rewritten:

**"§ 91A-7. ~~Record-keeping requirements.~~ Record-keeping requirements for pawnbrokers."**

SECTION 6. Chapter 91A of the General Statutes is amended by adding a new section to read:

**"§ 91A-7.1. Record-keeping requirements for cash converters.**

(a) Every cash converter shall keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:

- (1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.
- (2) The name, residence address, phone number, and date of birth of the seller.
- (3) The date of the purchase.
- (4) The type of identification and the identification number accepted from the seller.
- (5) A description of the seller, including approximate height, weight, sex, and race.
- (6) The purchase price.
- (7) The statement that 'THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.'

(b) The seller shall sign the record and shall receive an exact copy of the record, which shall be signed or initialed by the cash converter or any employee of the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the cash converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.

(c) This section does not apply to purchases directly from a manufacturer or wholesaler for a cash converter's inventory."

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- (2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;transaction.
- (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Chapter; Chapter.
- (4) Fail to exercise reasonable care to protect pledged goods from loss or damage; damage.
- (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to G.S. 91A-7(b); G.S. 91A-7(b).
- (6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State police;police.
- (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with G.S. 91A-7(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers;wholesalers.

(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of ~~business; or business.~~

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

(b) A cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police.

**SECTION 8.** G.S. 91A-11 reads as rewritten:

**"§ 91A-11. Penalties.**

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) shall not apply to violations of ~~G.S. 91A-10(6)~~ G.S. 91A-10(a)(6) or (b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this Chapter, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

**SECTION 9.** G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters ~~Modernization Act of 1989~~ (Chapter 91A of the General Statutes)."

**SECTION 10.** G.S. 53-282(a) reads as rewritten:

"(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner. A person required to be licensed under this Article that derives less than twenty percent (20%) of the person's annual gross revenues from check cashing shall not be required to maintain separate accounts and records."

**SECTION 11.** This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

3

SENATE BILL 144  
Commerce Committee Substitute Adopted 4/28/11  
House Committee Substitute Favorable 6/15/11

Short Title: Cash Converters Must Keep Purchase Records.

(Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CASH CONVERTER BUSINESSES TO KEEP RECORDS OF PURCHASES AND TO MAKE THOSE RECORDS AVAILABLE TO LOCAL LAW ENFORCEMENT AGENCIES, AND TO EXEMPT CERTAIN LICENSED CHECK CASHERS FROM THE REPORTING REQUIREMENTS OF THE CHECK-CASHING BUSINESSES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Chapter 91A of the General Statutes reads as rewritten:

"Pawnbrokers and Cash Converters Modernization Act of 1989-Act."

SECTION 2. G.S. 91A-1 reads as rewritten:

"§ 91A-1. Short title.

This Chapter shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization Act of 1989-Act."

SECTION 3. G.S. 91A-2 reads as rewritten:

"§ 91A-2. Purpose.

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act ~~of 1989~~ to do all of the following:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating ~~pawnbrokers;~~ pawnbrokers.

(1a) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.

(2) Provide for pawnbroker licensing fees and investigation fees of ~~licensees;~~ licensees.

(3) Ensure financial responsibility to the State and the general ~~public;~~ public.

(4) Ensure compliance with federal and State ~~laws;~~ and laws.

(5) Assist local governments in the exercise of their police authority."

SECTION 4. G.S. 91A-3 reads as rewritten:

"§ 91A-3. Definitions.



As used in this Article, the following definitions shall apply: The following definitions apply in this Chapter:

(1) Cash. – Lawful currency of the United States.

(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Article 25 of Chapter 66 of the General Statutes.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).

(1)(3) "Pawn" or "Pawn transaction" means a Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

(2)(4) "Pawnbroker" means any Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

(3)(5) "Pawnshop" means the Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

(4)(6) "Person" means any Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

(5)(7) "Pledged goods" means tangible Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(6)(8) "Purchase" means any Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 5. The catch line of G.S. 91A-7 reads as rewritten:

"§ 91A-7. Record-keeping requirements. Record-keeping requirements for pawnbrokers."

SECTION 6. Chapter 91A of the General Statutes is amended by adding a new section to read:

"§ 91A-7.1. Record-keeping requirements for cash converters.

(a) Every cash converter shall keep consecutively numbered records of each cash purchase. The cash converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property purchased by the cash converter from the seller, including model and serial number if indicated on the property.

- (2) The name, residence address, phone number, and date of birth of the seller.
- (3) The date of the purchase.
- (4) The type of identification and the identification number accepted from the seller.
- (5) A description of the seller, including approximate height, weight, sex, and race.
- (6) The purchase price.
- (7) The statement that 'THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL.'

(b) The seller shall sign the record and shall receive an exact copy of the record, which shall be signed or initialed by the cash converter or any employee of the cash converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the cash converter is located. These records may be electronically reported to the sheriff of the county or the chief of police of the municipality in which the cash converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.

(c) This section does not apply to purchases directly from a manufacturer or wholesaler for a cash converter's inventory."

SECTION 7. G.S. 91A-10 reads as rewritten:

"§ 91A-10. Prohibitions.

(a) A pawnbroker shall not:

- (1) Accept a pledge from a person under the age of 18 years; years.
- (2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction; transaction.
- (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Chapter; Chapter.
- (4) Fail to exercise reasonable care to protect pledged goods from loss or damage; damage.
- (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to G.S. 91A-7(b); G.S. 91A-7(b).
- (6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State police; police.
- (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with G.S. 91A-7(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers; wholesalers.
- (8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business; or business.

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

(b) A cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police."

SECTION 8. G.S. 91A-11 reads as rewritten:

"§ 91A-11. Penalties.

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) shall not apply to violations of G.S. 91A-10(6) G.S. 91A-10(a)(6) or (b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this Chapter, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

SECTION 9. G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters Modernization Act of 1989 (Chapter 91A of the General Statutes)."

SECTION 10. G.S. 53-282(a) reads as rewritten:

"(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner. A person required to be licensed under this Article that derives less than twenty percent (20%) of the person's annual gross revenues from check cashing shall not be required to maintain separate accounts and records."

SECTION 11. This act becomes effective December 1, 2011, and applies to purchases by cash converters on or after that date.



## 2011 PERMANENT SUBCOMMITTEE REPORT

### HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

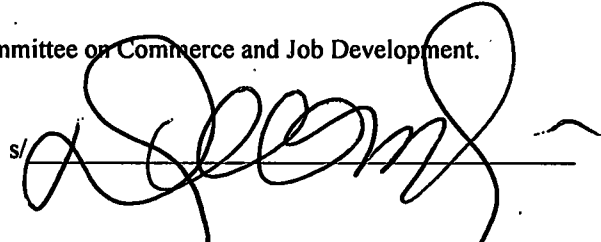
☒ Committee Substitute for

**SB 144** A BILL TO BE ENTITLED AN ACT TO REQUIRE CASH CONVERTER BUSINESSES TO KEEP RECORDS OF PURCHASES AND TO MAKE THOSE RECORDS AVAILABLE TO LOCAL LAW ENFORCEMENT AGENCIES.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill. *which changes the title*

#### (FOR JOURNAL USE ONLY)

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

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

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

# Daily Bulletin

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## School of Government

### The University of North Carolina at Chapel Hill

Legislative Reporting Service, State Legislative Building, Raleigh, NC 27601  
Phone 919.733.2484 ~ Fax 919.715.3464 ~ [www.dailybulletin.unc.edu](http://www.dailybulletin.unc.edu)

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April 7, 2011

**H 791. AMEND COS. ART LAW/GRANDFR. NATURAL HAIR CARE.** Filed 4/6/11. *MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.*

Amends GS 88B-11(e) to provide that in addition to meeting the other specified qualifications to obtain a license as a natural hair care teacher issued by the North Carolina Board of Cosmetic Art Examiners (Board), an individual must also pass an examination for natural hair care teachers conducted by the Board.

Amends GS 88B-21(e) to provide that an esthetician, natural hair care specialist, cosmetologist, or manicurist with at least 20 consecutive years of experience in their respective professions do not have to meet the continuing education requirements of this subsection (was, exemption applied only to cosmetologist). Deletes the requirement to report any continuing education classes completed to the Board, whether the classes were approved or not by the Board.

Under current law, GS 88B-10.1 requires that individuals seeking a license to practice as a natural hair care specialist must successfully complete at least 300 hours of a natural hair care curriculum in an approved cosmetic art school, pass an exam conducted by the Board, and pay the fees required by G.S. 88B-20. Amends Section 13 of SL 2009-521 to provide that an individual who meets the following requirements is licensed without having to satisfy the requirements of GS 88B-10.1: (1) passes a practical exam as approved by the Board; and (2) submits proof to the Board that the individual is actively engaged in the practice of a natural hair care specialist for two years on or before July 1, 2011. Provides that the proof may include any two of the following: (a) copies of tax records of employment, (b) an affidavit from the applicant or the applicant's immediate supervisor verifying the applicant's practice of natural hair care for two years immediately preceding the date of the application for a license, or (c) copies of an applicable business license issued by a local government agency. Also provides that the applicant for a license may submit any other means of proof acceptable to the Board. Includes requirement from GS 88B-10.1 that an applicant for licensure following this alternative route to licensing pay the fee required under GS 88B-20.

Provides that a cosmetic art shop that practices natural hair care only and submits proof to the Board that the shop is actively engaged in that practice on the effective date of this act, has one year from the date of this act to comply with the requirements of GS 88B-14 (*Licensing of Cosmetic Art Shops*). Requires persons who do not apply for licensing to the Board within one year of the effective date of this act to complete all training and requirements set by the Board and to otherwise comply with the provisions of GS Chapter 88B.

Amends Section 14 of SL 2009-521 to make the amendments to the Cosmetic Art Act in SL 2009-521 effective July 1, 2013 (was, July 1, 2010) and applicable to acts occurring on or after that date.

Intro. by Parmon, Floyd.

GS 88B

Business and Commerce

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 791\***

**Short Title:** Amend Cos. Art Law/Grandfr. Natural Hair Care.

**(Public)**

**Sponsors:** Representatives Parmon and Floyd (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

**Referred to:** Commerce and Job Development.

April 7, 2011

**A BILL TO BE ENTITLED**  
**AN ACT MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE**  
**PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH**  
**PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED**  
**TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.**

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 88B-11(e) is amended by adding a new subdivision to read:

"(e) The Board shall issue a license to practice as a natural hair care teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a natural hair care license issued by the Board.
- (2) Submits proof of either practice as a natural hair care specialist in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for natural hair care teachers conducted by the Board."

**SECTION 2.** G.S. 88B-21(e) reads as rewritten:

"(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care specialist, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a ~~cosmetologist~~ cosmetologist, esthetician, natural hair care specialist, or manicurist and has at least 20 consecutive years of experience as a cosmetologist, in that profession does not have to meet the continuing education requirements of this subsection, ~~but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not.~~ subsection. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also



\* H 7 9 1 - V - 1 \*

be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section."

SECTION 3. Section 13 of S.L. 2009-521 reads as rewritten:

"SECTION 13.(a) Any natural hair care specialist who meets the following requirements shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act:

(1) ~~submits~~ Submits proof to the Board that the natural hair care specialist is actively engaged in the practice of a natural hair care specialist ~~on the effective date of this act, passes an examination conducted by the Board, for two years on or before July 1, 2011. For purposes of this subdivision, submission of proof to the Board shall include any of the following:~~

a. Any two of the following:

1. Copies of tax records of employment, including W-2s, 1099s, tax returns, or other relevant tax records.

2. An affidavit from the applicant or the applicant's immediate supervisor, when applicable, verifying the applicant's practice of natural hair care for two years immediately preceding the date of application for licensure.

3. Copies of an applicable business license issued by a local government agency.

b. Any other means of proof acceptable to the Board.

(2) Passes a practical examination as approved by the Board.

(3) ~~and pays~~ Pays the required fee under ~~G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, G.S. 88B-20,~~ enacted by Section 2 of this act.

"SECTION 13.(b) A cosmetic art shop that practices natural hair care only and that submits proof to the Board that the shop is actively engaged in the practice of natural hair care on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes."

SECTION 4. Section 14 of S.L. 2009-521 reads as rewritten:

"SECTION 14. Section 1.2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, ~~2010, 2013,~~ and applies to acts occurring on or after that date."

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 791\*  
PROPOSED COMMITTEE SUBSTITUTE H791-CSRO-28 [v.1]

6/15/2011 9:37:20 AM

Short Title: Amend Cos. Art Law/Grandfr. Natural Hair Care.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE  
PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH  
PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED  
TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 88B-11(e) is amended by adding a new subdivision to read:

"(e) The Board shall issue a license to practice as a natural hair care teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a natural hair care license issued by the Board.
- (2) Submits proof of either practice as a natural hair care specialist in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for natural hair care teachers conducted by the Board."

**SECTION 2.** G.S. 88B-21(e) reads as rewritten:

"(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care specialist, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a ~~cosmetologist-cosmetologist, esthetician, natural hair care specialist, or manicurist~~ and has at least 20 consecutive years of experience as a cosmetologist in that profession does not have to meet the continuing education requirements of this subsection, ~~but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not.~~ subsection. Promotion of products and systems shall be allowed at



1 continuing education given in-house or at trade shows. Continuing education classes may also  
2 be offered in secondary languages as needed. No member of the Board may offer continuing  
3 education courses as required by this section."

4 **SECTION 3.** Section 13 of S.L. 2009-521 reads as rewritten:

5 **"SECTION 13.(a)** Any natural hair care specialist who meets the following requirements  
6 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by  
7 Section 2 of this act:

8 (1) ~~submits~~ Submits proof to the Board that the natural hair care specialist is  
9 actively engaged in the practice of a natural hair care specialist ~~on the~~  
10 ~~effective date of this act, passes an examination conducted by the Board, for~~  
11 ~~two years on or before July 1, 2011. For purposes of this subdivision,~~  
12 ~~submission of proof to the Board shall include any of the following:~~

13 a. Any two of the following:

- 14 1. Copies of tax records of employment, including W-2s, 1099s,  
15 tax returns, or other relevant tax records.
- 16 2. An affidavit from the applicant or the applicant's immediate  
17 supervisor, when applicable, verifying the applicant's practice  
18 of natural hair care for two years immediately preceding the  
19 date of application for licensure.
- 20 3. Copies of an applicable business license issued by a local  
21 government agency.

22 b. Any other means of proof acceptable to the Board.

23 (2) Passes a practical examination as approved by the Board.

24 (3) ~~and pays~~ Pays the required fee under G.S. 88B-20 shall be licensed without  
25 having to satisfy the requirements of G.S. 88B-10.1, G.S. 88B-20, enacted by  
26 Section 2 of this act.

27 **"SECTION 13.(b)** A cosmetic art shop that practices natural hair care only and that  
28 submits proof to the Board that the shop is actively engaged in the practice of natural hair care  
29 on the effective date of this act shall have ~~one year~~ three years from the date of this act to  
30 comply with the requirements of G.S. 88B-14. All persons who do not make application to the  
31 Board within ~~one year~~ three years of the effective date of this act shall be required to complete  
32 all training and examination requirements prescribed by the Board and to otherwise comply  
33 with the provisions of Chapter 88B of the General Statutes. The Board may impose a fee not to  
34 exceed ten dollars (\$10.00) on any person who submits an application pursuant to this section."

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

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**D**

**HOUSE BILL 791\*  
PROPOSED COMMITTEE SUBSTITUTE H791-PCS30402-RO-28**

**Short Title:** Amend Cos. Art Law/Grandfr. Natural Hair Care.

**(Public)**

**Sponsors:**

**Referred to:**

April 7, 2011

**A BILL TO BE ENTITLED**

**AN ACT MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE  
PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH  
PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED  
TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.**

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 88B-11(e) is amended by adding a new subdivision to read:

"(e) The Board shall issue a license to practice as a natural hair care teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a natural hair care license issued by the Board.
- (2) Submits proof of either practice as a natural hair care specialist in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for natural hair care teachers conducted by the Board."

**SECTION 2.** G.S. 88B-21(e) reads as rewritten:

"(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care specialist, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a ~~cosmetologist~~ cosmetologist, esthetician, natural hair care specialist, or manicurist and has at least 20 consecutive years of experience ~~as a cosmetologist, in that profession~~ as a cosmetologist, in that profession does not have to meet the continuing education requirements of this subsection, ~~but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not.~~ subsection. Promotion of products and systems shall be allowed at



continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section."

SECTION 3. Section 13 of S.L. 2009-521 reads as rewritten:

"SECTION 13.(a) Any natural hair care specialist who meets the following requirements shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act:

(1) ~~submits~~ Submits proof to the Board that the natural hair care specialist is actively engaged in the practice of a natural hair care specialist ~~on the effective date of this act, passes an examination conducted by the Board, for two years on or before July 1, 2011. For purposes of this subdivision, submission of proof to the Board shall include any of the following:~~

a. Any two of the following:

1. Copies of tax records of employment, including W-2s, 1099s, tax returns, or other relevant tax records.

2. An affidavit from the applicant or the applicant's immediate supervisor, when applicable, verifying the applicant's practice of natural hair care for two years immediately preceding the date of application for licensure.

3. Copies of an applicable business license issued by a local government agency.

b. Any other means of proof acceptable to the Board.

(2) Passes a practical examination as approved by the Board.

(3) ~~and pays~~ Pays the required fee under ~~G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, G.S. 88B-20, enacted by~~ Section 2 of this act.

"SECTION 13.(b) A cosmetic art shop that practices natural hair care only and that submits proof to the Board that the shop is actively engaged in the practice of natural hair care on the effective date of this act shall have ~~one year~~ three years from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within ~~one year~~ three years of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes. The Board may impose a fee not to exceed ten dollars (\$10.00) on any person who submits an application pursuant to this section."

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



**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

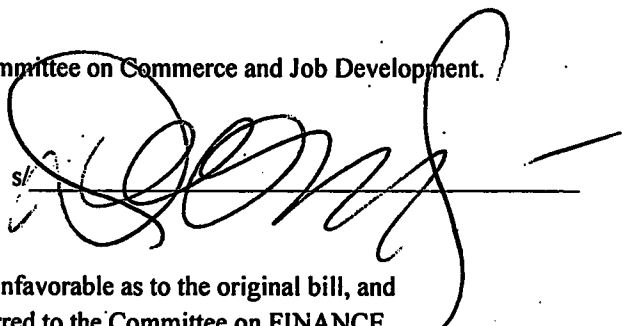
☐ Committee Substitute for

**HB 791** A BILL TO BE ENTITLED AN ACT MAKING CLARIFYING CHANGES UNDER THE LAWS REGULATING THE PRACTICE OF COSMETIC ART AND EXTENDING THE PERIOD WITHIN WHICH PERSONS PRACTICING AS NATURAL HAIR CARE SPECIALISTS ARE REQUIRED TO BE LICENSED UNDER THE NORTH CAROLINA COSMETIC ART ACT.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.



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

**(FOR JOURNAL USE ONLY)**

---

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

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

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

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

S

2

**SENATE BILL 346\*  
Second Edition Engrossed 3/31/11**

Short Title:   Exempt Cooking Schools From Food Regulations. (Public)

Sponsors:     Senators Kinnaird; Graham and McKissick.

Referred to:   Health Care.

March 16, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BONA FIDE COOKING SCHOOLS FROM REGULATIONS  
GOVERNING THE SANITATION OF ESTABLISHMENTS THAT PREPARE OR  
SERVE FOOD OR DRINK TO THE PUBLIC.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 130A-250 is amended by adding a new subdivision to read:

"(13) Bona fide cooking schools, defined for the purpose of this subdivision as cooking schools that (i) primarily provide courses or instruction on food preparation techniques that participants can replicate in their homes, (ii) prepare or serve food for cooking school participants during instructional time only, and (iii) do not otherwise prepare or serve food to the public."

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



\* S 3 4 6 - V - 2 \*

**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

**FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE**

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

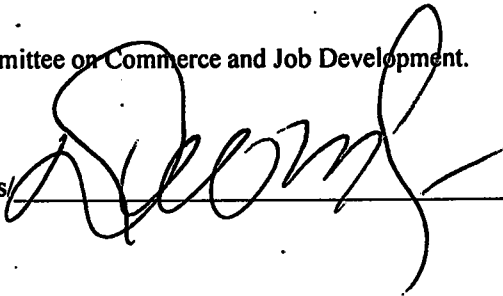
☐ Committee Substitute for

**SB 346** A BILL TO BE ENTITLED AN ACT TO EXEMPT BONA FIDE COOKING SCHOOLS FROM REGULATIONS GOVERNING THE SANITATION OF ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC.

---

**WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:**

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

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

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

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE BUSINESS & LABOR

DATE: 6-15-2011 Room: 544

\*Name: PATRICK NAIL

County: STOKES

Sponsor: REP. HOLLOWAY

\*Name: TYLER COE

County: DAVIDSON

Sponsor: REP. DOCKHAM

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: BILL BASS

4. Name: \_\_\_\_\_

2. Name: JAMES WORTH

5. Name: \_\_\_\_\_

3. Name: BOB ROSSI

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

BUSINESS & LABOR

Name of Committee

6-15-11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lynda Elliott	Board of Cosmetic Art Examiners
Stefanie Kuzdrall	Board of Cosmetic Art Examiners
Abby Dunn	Lenoir County 4-H
Emma Burch	Lenoir County 4-H
James Jordan	Greene County, 4-H
Tara Taylor	Lenoir County 4-H, Cooperative Extension
BM Swagin	NS
W. Lynn Pugh	DLC & Assoc
Tan V. Lee	CFTF
Mark Lee	DER
DL Rasmussen	NC T Ctr

# VISITOR REGISTRATION SHEET

# BUSINESS & LABOR

Name of Committee

6-15-2011

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

**FIRM OR AGENCY AND ADDRESS**

MARILYN MARKEL

# A SOUTHERN SEASON

# ✓ R MARKEL

alisha gdl

Intern

# MINUTES

## Business and Labor Subcommittee

Wednesday, June 15, 2011

10:00 a.m.

House Floor

The Business and Labor Subcommittee met on Wednesday, June 15, 2011 at 10:00 a.m. on the House Floor of the North Carolina General Assembly.

Representative Darrell G. McCormick presided.

The following members were present:

- |                                   |                                    |
|-----------------------------------|------------------------------------|
| 1. Representative Kelly Alexander | 7. Representative Tim Moffitt      |
| 2. Representative Becky Carney    | 8. Representative Rodney Moore     |
| 3. Representative Jeff Collins    | 9. Representative Mitchell Setzer  |
| 4. Representative Elmer Floyd     | 10. Representative Phillip Shepard |
| 5. Representative Charles Graham  | 11. Representative Mike Stone      |
| 6. Representative Mike Hager      | 12. Representative Winkie Wilkins  |

Meeting was called to Order at 4:30 p.m.

Introduction of Sergeant at Arms: None

Introduction of Pages: None

Bills:

BILL NO.	SHORT TITLE	SPONSOR
SB 297	Durham/Small Business Enterprise.	Senator McKissick
		Senator Atwater

Representatives Paul Luebke and Representative Larry Hall explained the SB 297.

Representative Winkie Wilkins motioned for a favorable report – Passed

**SB 297 – Received a favorable report**

Representative Larry Hall will sponsor SB 297 in the House.

Adjournment - Meeting adjourned at 4:40 p.m.

Respectfully submitted



Representative Darrell McCormick  
Chairman



Anne Murtha  
Committee Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

S

1

**SENATE BILL 297**

Short Title:	Durham/Small Business Enterprise.	(Local)
Sponsors:	Senators McKissick and Atwater.	
Referred to:	Commerce.	

March 10, 2011

1                                   A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE  
3 THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO  
4 PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO  
5 ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN  
6 CITY CONTRACTS.

7 The General Assembly of North Carolina enacts:  
8           **SECTION 1.** Article 8 of Chapter VI of the Charter of the City of Durham, being  
9 Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to  
10 read as follows:

11       "Sec. 84.5. Small Business Enterprise Program. (a) The City may establish a race and  
12 gender neutral small business enterprise program to promote the development of small  
13 businesses in the Durham Metropolitan Statistical Area, and to enhance opportunities for small  
14 businesses to participate in City contracts. The City may define the term 'small business  
15 enterprise' as appropriate and consistent with the City's contracting practices. The City may  
16 establish bid and proposal specifications that include subcontracting goals and good faith  
17 efforts requirements to enhance participation by small business enterprises in City contracts.  
18 Notwithstanding the provisions of G.S. 143-129 and G.S. 143-131, the City may consider a  
19 bidder's efforts to comply with small business enterprise program requirements in its award of  
20 City contracts and, if a bidder is determined to have failed to comply with the requirements, the  
21 City may, within its discretion, refuse to award a contract to the bidder.

22       (b) The small business enterprise program authorized by this section is intended to  
23 supplement and not replace the requirements of G.S. 143-128.2, 143-131, or 143-135.5. Any  
24 goals or efforts established to achieve minority and women business participation consistent  
25 with the requirements of G.S. 143-128.2, 143-131, or 143-135.5 shall take precedence over  
26 goals for small business enterprise participation established under the program authorized by  
27 this section. A small business enterprise program established pursuant to this section shall be  
28 deemed consistent with the public policy of the State of North Carolina to promote and utilize  
29 small and underutilized business enterprises as set forth in G.S. 143-128.2, 143-128.3, and  
30 143-135.5."

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

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





**2011 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

☐ Committee Substitute for

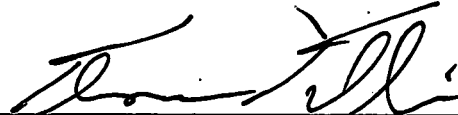
**SB 297** A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO AUTHORIZE THE CITY TO ESTABLISH A SMALL BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE DEVELOPMENT OF SMALL BUSINESSES IN THE CITY AND TO ENHANCE THE OPPORTUNITIES FOR SMALL BUSINESSES TO PARTICIPATE IN CITY CONTRACTS.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

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

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

# NORTH CAROLINA GENERAL ASSEMBLY

## Commerce and Job Development Subcommittee on Business and Labor 2011 – 2012 SESSION



**Representative  
Darrell McCormick  
Chair**



**Representative  
Kelly Alexander, Jr.**



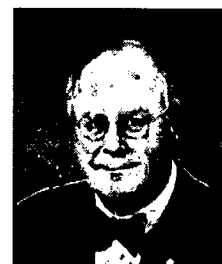
**Representative  
Harold Brubaker**



**Representative  
Becky Carney**



**Representative  
Jeff Collins**



**Representative  
Jerry Dockman**



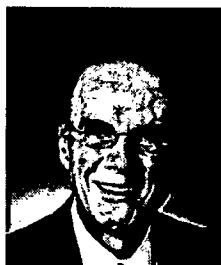
**Representative  
Nelson Dollar**



**Representative  
Elmer Floyd**



**Representative  
Dale Folwell**



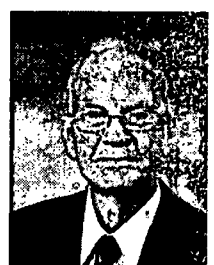
**Representative  
Ken Goodman**



**Representative  
Charles Graham**



**Representative  
Mike Hager**



**Representative  
Dewey Hill**



**Representative  
Bryan Holloway**



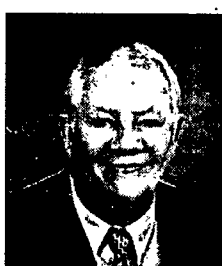
**Representative  
Stephen LaRoque**



**Representative  
Tim Moffitt**



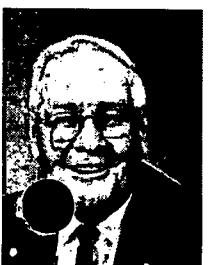
**Representative  
Rodney Moore**



**Representative  
Bill Owens**



**Representative  
Garland Pierce**



**Representative  
Efton Sager**



**Representative  
Mitchell Setzer**



**Representative  
Phil Shepard**



**Representative  
Michael Stone**



**Representative  
William Wainwright**



**Representative  
Winkie Wilkins**

## HOUSE SUBCOMMITTEE ON BUSINESS AND LABOR

<u>CHAIR</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
McCORMICK, Darrell	Murtha, Anne	733-5654	2119	64
<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
ALEXANDER, Kelly	Conner, Marjorie	733-5778	404	119
BRUBAKER, Bru	Coley, Cindy	715-4946	302	1
CARNEY, Becky	Jordan, Ann	733-5827	1221	91
COLLINS, Jeff	Farrell, Marissa	733-5802	1006	65
DOCKHAM, Jerry	Irwin, Regina	715-2526	2204	3
DOLLAR, Nelson	Slate, Candace	715-0795	307B1	31
FLOYD, Elmer	McPhaul, Latasha	733-5959	1311	114
FOLWELL, Dale	Fitzgerald, Paige	733-5787	301F	99
GOODMAN, Ken	Veorse, Judy	733-5823	1111	120
GRAHAM, Charles	Laton, Linda	715-0875	1315	115
HAGER, Mike	Brenco, Christine	733-5749	306C	66
HILL, Dewey	ThurLOW, Gennie	733-5830	1309	22
HOLLOWAY, Bryan	Philon, Cara	733-5609	529	32
LAROQUE, Stephen	Kennedy, Lisa	715-3017	635	9
*McCOMAS, Danny	Lowe, Judy	733-5786	506	6
CHAIR: Commerce & Job Development				
MOFFITT, Tim	Carter, Melissa	715-3012	1025	85
MOORE, Rodney	Morgan, Charmey	733-5606	1211	110
OWENS, Bill	Johnson, Linda A.	733-0010	611	21
PIERCE, Garland	Alston, Mildred	733-5803	1204	46
SAGER, Efton	Winstead, Shirley	733-5755	416B	51
SETZER, Mitchell	Herring, Margaret	733-4948	1206	13
SHEPARD, Phillip	Pate, Pamela	715-9644	301N	98
STONE, Mike	Voss, Kathy	715-3026	1008	97
WAINWRIGHT, William	Edwards, Blinda	733-5995	613	12
WILKINS, Winkie	Brantley, Nancy	715-0850	1301	47
<u>RESEARCH STAFF</u>		<u>PHONE</u>	<u>OFFICE</u>	
COCHRANE-BROWN, Karen		733-2578	545	
KREHELY, Brad		733-2578	545	

## ATTENDANCE 2012

**Business and Labor Subcommittee - Rep. Darrell McCormick, Chair**

[illegible]

# MINUTES

## Business and Labor Subcommittee

Wednesday, June 6, 2012

11:00 a.m.

Room 643 LOB

The Business and Labor Subcommittee met on Wednesday, June 6, 2012 at 11:00 a.m. in room 643 of the Legislative Office Building. Representative Darrell G. McCormick presided.

The following members were present:

- |                                   |                                   |
|-----------------------------------|-----------------------------------|
| 1. Representative Becky Carney    | 6. Representative Rodney Moore    |
| 2. Representative Jeff Collins    | 7. Representative Efton Sager     |
| 3. Representative Elmer Floyd     | 8. Representative Mitchell Setzer |
| 4. Representative Stephen LaRoque | 9. Representative Mike Stone      |
| 5. Representative Tim Moffitt     | 10. Representative Winkie Wilkins |

The following staff was present:

- Karen Cochran-Brown
- Brad Krehely

Meeting was called to Order at 11:03 a.m.

Introduction of Sergeant at Arms:

- Jesse Hayes
- Fred Hines
- Wayne Davis
- Larry Elliott

Introduction of Pages:

- Spence Hutcheson – Durham County – Sponsor: Representative Paul Luebke
- Marcus Alexander – Lincoln County – Sponsor: Representative Jason Saine
- Richard Wetherill – New Hanover County – Sponsor: Representative Danny McComas

Bills:

BILL NO.	SHORT TITLE	SPONSOR
HB 1149	New Markets Job Act	Representative Murry Representative McComas

Business and Labor Subcommittee Wednesday, April 6, 2011 Meeting – continued (page 2)

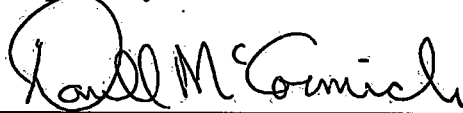
- On motion of Representative Tim Moffitt, the Proposed Committee Substitute for HB 1149 is heard.
- On motion of Chair, Representative Darrell McCormick, the Proposed Committee Substitute HB 1149 is explained by Representative Tom Murry.
- Questions and discussion were provided by the following; Representative Becky Carney, Representative Jeff Collins, Representative Steven LaRoque, Representative Tim Moffitt, Representative Mitchell Setzer, Representative Mike Stone, Representative Winkie Wilkins.
- Questions were answered by Jeff Craver, of the American Capital Partnership, and Brad Krehely, of the research division.
- On motion of Representative Mitchell Setzer, the committee move for a favorable report to the proposed committee substitute and unfavorable to the original bill and the proposed committee substitute for HB 1149 be re-referred to the House Committee on Finance – Passed

**Received a favorable report as to the committee substitute bill, unfavorable as to the original bill, and a recommendation that the committee substitute bill # 1149 be re-referred to the Committee on Finance**

**Adjournment**

Meeting adjourned at 11:36 am

Respectfully submitted



Representative Darrell McCormick  
Chairman



Olivia McCormick  
Committee Clerk

# **AGENDA**

## **Business and Labor Subcommittee**

**Wednesday, June 6, 2012**

**11:00 a.m.**

**Room 643 LOB**

**Chair: Representative Darrell G. McCormick**

---

Call to Order

Introduction of Sergeant at Arms

Introduction of Pages

Bills:

**BILL NO. SHORT TITLE**

**SPONSOR**

HB 1149 New Markets Job Act

Representative Murry

Representative McComas

Adjournment

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Business and Labor** will meet as follows:

**DAY & DATE:** Wednesday, June 6, 2012

**TIME:** 11:00 am

**LOCATION:** 643 LOB

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 1149	New Markets Job Act.	Representative Murry Representative McComas

Respectfully,  
Representative McCormick, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
3:30 PM o'clock on **June 05, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Olivia McCormick** (Committee Assistant)



Public

June 6, 2012

Adjourned 11:03

H.B. 1149

SESSION LAW

**A BILL TO BE ENTITLED**

**AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE.**

*Introduced by Representative(s): Murry and McComas (Primary Sponsors).*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

*Principal Clerk's Use Only*

**Filed May 24, 2012**

**Passed 1st Reading**

**May 29, 2012**

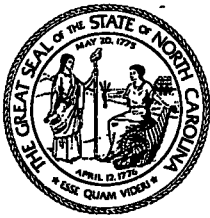
**and Referred to Committee On  
Commerce and Job Development**

~~The Committee on~~  
~~Commerce & Job Development~~  
~~the bill to~~ Sub Committee on  
Business & Labor  
Rep. Danny McComas  
For the Committee  
Commerce  
referred to Committee/Subcommittee  
Business & Labor

MAY 30 2012

needs to go to  
Finance 38(b)

The Sub Committee on Commerce  
& Job Development Business &  
Labor - unfavorable to Original Bill  
- favorable to the ~~Bill~~ Committee substitute  
↳ PCS  
- PCS re-referred to House  
Committee on Finance



# HOUSE BILL 1149: New Markets Job Act

2011-2012 General Assembly

<b>Committee:</b>	House Commerce and Job Development Subcommittee on Business and Labor	<b>Date:</b>	June 6, 2012
<b>Introduced by:</b>	Reps. Murry, McComas	<b>Prepared by:</b>	Greg Roney
<b>Analysis of:</b>	PCS to First Edition H1149-CSRO-35		Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute to House Bill 1149 would allow a tax credit equal to 39% of the amount invested through federally-recognized development entities in small businesses with less than 500 employees in high-poverty-counties. The Statewide total investment that could qualify for the tax credit is \$500 million with a maximum investment in any one business limited to \$10 million. The \$500 million investment pool would yield \$195 million in tax credits.*

**CURRENT LAW:** The State does not currently have a tax credit program modeled after the federal New Markets Tax Credit (NMTC) under §45D of the Internal Revenue Code. The State's primary tax credit program is the Article 3J Tax Credits that provide tax credits to qualifying businesses for job creation, investment in business property, and in some cases investment in real property.

**BILL ANALYSIS:** The Proposed Committee Substitute would create a State-level tax credit that generally follows the federal New Markets Tax Credit (NMTC) under §45D of the Internal Revenue Code. The State tax credit would be available for investments receiving the federal credit, acting as an incentive to attract the federally-credited investments to NC. Additionally, the State tax credit is available where the federal credit is not received if NC has sufficient availability of tax credits to allocate to the investment.

The Proposed Committee Substitute would permit individual and corporate taxpayers to receive a credit against income, franchise, or gross premiums taxes for making Qualified Equity Investments (QEI) in qualified community development entities (CDEs). The small businesses that receive the State tax credit must have less than 500 employees and be located in a high-poverty county.<sup>1</sup>

The credit equals 39% of the investment and is claimed during a seven-year credit period as follows:

Year One:	0%
Year Two:	0%
Year Three:	7%
Year Four:	8%
Year Five:	8%
Year Six:	8%
Year Seven:	8%
Total:	39%

The federal credit is also 39% of the investment but is claimed at different percentages over the seven-year credit period. Investments could receive both the federal credit (39%) and State credit (39%).

<sup>1</sup> A "low-income community" is defined as any population census tract where the poverty rate for such tract is at least 20% or in the case of a tract not located within a metropolitan area, median family income for such tract does not exceed 80 of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.

**EFFECTIVE DATE:** The proposed Committee Substitute would be effective for taxable years beginning January 1, 2013, and applications for the tax credit must be submitted before January 1, 2015.

*H1149-SMTM-68(CSRO-35) v2*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 1149

Short Title: New Markets Job Act.

(Public)

Sponsors: Representatives Murry and McComas (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

May 29, 2012

A BILL TO BE ENTITLED  
AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"North Carolina New Markets Job Growth Investment Initiative.

"§ 105-129.100. Short title.

The provisions of this section shall be known as and may be cited as the "North Carolina New Markets Job Growth Investment Initiative."

"§ 105-129.101. Definitions.

The following definitions apply in this Article:

- (1) Applicable percentage. – Zero percent (0%) for the first two credit allowance dates, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four credit allowance dates.
- (2) Credit allowance date. – With respect to any qualified equity investment, the date on which an investment is initially made and each of the six anniversary dates thereafter.
- (3) Department. – The Department of Commerce.
- (4) Long-term debt security. – Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under section 45D, Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such cash interest payments. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code of 1986, as amended.



\* H 1 1 4 9 - V - 1 \*

- (5) Purchase price. – The amount paid to the issuer of a qualified equity investment for such qualified equity investment.
- (6) Qualified active low-income community business. – Defined in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. § 1.45D-1. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business (i) does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the first business.
- (7) Qualified community development entity. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by section 45D of the Internal Revenue Code of 1986, as amended, which includes the State of North Carolina within the service area set forth in such allocation agreement. The term shall include affiliated community development entities of any such qualified community development entity.
- (8) Qualified equity investment. – Any equity investment in, or long-term debt security issued by, a qualified community development entity that meets each of the following requirements:
- a. Is acquired after the effective date of this act at its original issuance solely in exchange for cash.
- b. Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this State by the first anniversary of the initial credit allowance date.
- c. Is designated by the issuer as a qualified equity investment under this subdivision and is certified by the Department as not exceeding the limitation contained in subdivision (5) of this section. This term shall include any qualified equity investment that does not meet the provisions of sub-subdivision a. of this subdivision if such investment was a qualified equity investment in the hands of a prior holder.
- (9) Qualified low-income community investment. – Any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates, shall be ten million dollars (\$10,000,000) whether issued to one or several qualified community development entities.
- (10) Secretary. – The Secretary of Commerce.

(11) Tax credit. – A credit against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter. A taxpayer claiming a credit against state premium tax liability earned under this section shall not be required to pay additional retaliatory premium tax. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

**"§ 105-129.102. Credit for qualified equity investment.**

(a) Credit Established. – A person that makes a qualified equity investment earns a vested right to a tax credit. On each credit allowance date of the qualified equity investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the tax credit during the taxable year including the credit allowance date. The tax credit amount is equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any subsequent taxable year.

(b) Transferability. – Tax credits earned by a partnership, limited liability company, S-corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Such allocation shall be not considered a sale for purposes of this section.

(c) Annual Cap on Credits. – The Department shall limit the monetary amount of qualified equity investments permitted under this section to a level necessary to limit tax credit utilization at no more than forty million dollars (\$40,000,000) of tax credits in any fiscal year. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(d) Certification of qualified equity investments. – A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this section shall apply to the Department. The qualified community development entity must submit an application on a form that the Department provides that includes each of the following:

- (1) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this State.
- (2) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund.
- (3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.
- (4) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security.
- (5) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment.
- (6) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment, if known. Applicants are not required to identify

qualified active low-income community businesses in which they will invest when submitting an application.

- (7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee shall be paid to the Department and shall be required of each application submitted.

Within 30 days after receipt of a completed application containing the information necessary for the Department to certify a potential qualified equity investment, including the payment of the application fee, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is denied and must be resubmitted in full with a new submission date.

If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this section, subject to the limitations contained in subdivision (5) of this subsection. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to this subsection, the qualified community development entity shall notify the Department of such change.

Once the Department has certified a qualified equity investment, the qualified community development entity may suballocate all or any portion of the amount of the certified equity investment to one or more qualified community development entities with the same controlling entity as the applicant qualified community development entity, provided that the applicant qualified community development entity files a notice of such suballocation with the Department and the recipient of the suballocation meets all the requirements of a qualified community development entity under this section. The notice of suballocation shall include the information required in the application for all suballocates.

The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ration of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

Once the Department has certified quality equity investments that, on a cumulative basis, are eligible for the maximum limitations contained in this subsection, the Department may not certify any more qualified equity investments. If a pending request cannot be fully certified, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

Within 30 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity must provide the Department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice, the

1 certification shall lapse and the entity may not issue the qualified equity investment without  
2 reapplying to the Department for certification. A certification that lapses reverts back to the  
3 Department and may be reissued only in accordance with the application process outline in this  
4 subsection.

5 (e) Recapture. – The Department shall recapture from the taxpayer that claimed the  
6 credit on a return the tax credit allowed under this section if any of the following occurs:

7 (1) Any amount of the federal tax credit available with respect to a qualified  
8 equity investment that is eligible for a tax credit under this section is  
9 recaptured under section 45D of the Internal Revenue Code of 1986, as  
10 amended. In such case, the Department's recapture shall be proportionate to  
11 the federal recapture with respect to such qualified equity investment.

12 (2) The issuer redeems or makes principal repayment with respect to a qualified  
13 equity investment prior to the seventh anniversary of the issuance of such  
14 qualified equity investment. In such case, the Department's recapture shall be  
15 proportionate to the amount of the redemption or repayment with respect to  
16 such qualified equity investment.

17 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase  
18 price of the qualified equity investment in qualified low-income investments  
19 in the State within 12 months of the issuance of the qualified equity  
20 investment and maintain such level of investment in qualified low-income  
21 community investments in the State until the last credit allowance date for  
22 the qualified equity investment. For purposes of this section, an investment  
23 shall be considered held by an issuer even if the investment has been sold or  
24 repaid if the issuer reinvests an amount equal to the capital returned to or  
25 recovered by the issuer from the original investment, exclusive of any profits  
26 realized, in another qualified low-income community investment within 12  
27 months of the receipt of such capital. An issuer shall not be required to  
28 reinvest capital returned from qualified low-income community investments  
29 after the sixth anniversary of the issuance of the qualified equity investment,  
30 the proceeds of which were used to make the qualified low-income equity  
31 investment, and the qualified low-income community investment shall be  
32 considered held by the issuer through the seventh anniversary of the  
33 qualified equity investment issuance.

34 Enforcement of the recapture under this subsection shall occur until the qualified  
35 community development entity shall have been given notice of noncompliance and afforded six  
36 months from the date of such notice to cure the noncompliance.

37 (f) Letter Rulings. – The Secretary shall issue letter rulings regarding the tax credit  
38 program authorized under this section, subject to the terms and conditions set forth in this  
39 subsection. For the purposes of this section, the term "letter ruling" means a written  
40 interpretation of law to a specific set of facts provided by the applicant requesting a letter  
41 ruling.

42 The Secretary shall respond to a request for a letter ruling within 60 days of receipt of such  
43 request. The applicant may provide a draft letter ruling for the Secretary's consideration. The  
44 application may withdraw the request for a letter ruling, in writing, prior to the issuance of the  
45 letter ruling. The Secretary may refuse to issue a letter ruling for good cause, but must list the  
46 specific reasons for refusing to issue the letter ruling. Good cause includes any of the  
47 following:

48 (1) The applicant requests the director to determine whether a statute is  
49 constitutional or a regulation is lawful.

50 (2) The request involves a hypothetical situation or alternative plans.



1           (3)    The facts or issues presented in the request are unclear, overbroad,  
2               insufficient, or otherwise inappropriate as a basis upon which to issue a letter  
3               ruling.

4           (4)    The issue is currently being considered in a rule-making procedure,  
5               contested case, or other agency or judicial proceeding that may definitely  
6               resolve the issue.

7           Letter rulings shall bind the Secretary and the Secretary's agents and their successors as set  
8           forth in properly published regulations. The letter ruling shall apply only to the applicant.

9           In rendering letter rulings and making other determinations under this section, to the extent  
10          applicable, the Department and the Department of Revenue shall look for guidance to section  
11          45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued  
12          thereunder."

13          **SECTION 2.** This act is effective for taxable years beginning on or after January 1,  
14          2013, and applies to qualified equity investments made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

*Markets Sub. on  
Comm. & Labor  
6-6-12*

H

HOUSE BILL 1149  
PROPOSED COMMITTEE SUBSTITUTE H1149-PCS80382-RO-35

*D  
passed*

Short Title: New Markets Job Act.

(Public)

Sponsors:

Referred to:

May 29, 2012

A BILL TO BE ENTITLED

AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"North Carolina New Markets Job Growth Investment Initiative.

**"§ 105-129.100. Short title.**

The provisions of this section shall be known as and may be cited as the "North Carolina New Markets Job Growth Investment Initiative."

**"§ 105-129.101. Definitions.**

The following definitions apply in this Article:

- (1) Applicable percentage. – Zero percent (0%) for the first two credit allowance dates, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four credit allowance dates.
- (2) Credit allowance date. – With respect to any qualified equity investment, the date on which an investment is initially made and each of the six anniversary dates thereafter.
- (3) Department. – The Department of Commerce.
- (4) Long-term debt security. – Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under section 45D, Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of such long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure



\* H 1 1 4 9 - P C S 8 0 3 8 2 - R O - 3 5 \*

compliance with this section or section 45D of the Internal Revenue Code of 1986, as amended.

(5) Low income community. – Defined in section 45D of the Internal Revenue Code of 1986, as amended, and also including all Tier 1 counties.

(6) Purchase price. – The amount paid to the issuer of a qualified equity investment for such qualified equity investment.

(7) Qualified active low-income community business. – Defined in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. § 1.45D-1, but limited to those businesses meeting the SBA size eligibility standards established in 13 C.F.R. § 121.101-201 at the time the qualified area low income investment is made. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business (i) does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the first business.

(8) Qualified community development entity. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by section 45D of the Internal Revenue Code of 1986, as amended, which includes the State of North Carolina within the service area set forth in such allocation agreement. The term shall include affiliated community development entities of any such qualified community development entity.

(9) Qualified equity investment. – Any equity investment in, or long-term debt security issued by, a qualified community development entity that meets each of the following requirements:

a. Is acquired after the effective date of this act at its original issuance solely in exchange for cash.

b. Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this State by the first anniversary of the initial credit allowance date.

c. Is designated by the issuer as a qualified equity investment under this subdivision and is certified by the Department as not exceeding the limitation contained in subdivision (5) of this section. This term shall include any qualified equity investment that does not meet the provisions of sub-subdivision a. of this subdivision if such investment was a qualified equity investment in the hands of a prior holder.

(10) Qualified low-income community investment. – Any capital or equity investment in, or loan to, any qualified active low-income community

business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates that shall be counted toward the satisfaction of the requirements of G.S. 105-129.101(9) and G.S. 105-129.102(e)(3), shall be ten million dollars (\$10,000,000) whether issued to one or several qualified community development entities.

(11) Secretary. – The Secretary of Commerce.

(12) Tax credit. – A credit against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter. A taxpayer claiming a credit against State premium tax liability earned under this section shall not be required to pay additional retaliatory premium tax. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

**"§ 105-129.102. Credit for qualified equity investment.**

(a) Credit Established. – A person that makes a qualified equity investment earns a vested right to a tax credit. On each credit allowance date of the qualified equity investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the tax credit during the taxable year, including the credit allowance date. The tax credit amount is equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any of the next five subsequent taxable years.

(b) Transferability. – Tax credits earned under this section may not be sold or transferred on the open market. Tax credits earned by a partnership, limited liability company, S Corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Such allocation shall be not considered a sale for purposes of this section.

(c) Annual Cap on Credits. – The Department shall limit the monetary amount of qualified equity investments permitted under this section to a level necessary to limit tax credit utilization at no more than forty million dollars (\$40,000,000) of tax credits in any fiscal year. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(d) Certification of Qualified Equity Investments. – A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this section shall apply to the Department. The Department shall set a date on which it will first accept such applications, which shall be no later than January 31, 2013. The qualified community development entity must submit an application on a form that the Department provides that includes each of the following:

(1) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this State.

- (2) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund.
- (3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.
- (4) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security.
- (5) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment.
- (6) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment, if known. Applicants are not required to identify qualified active low-income community businesses in which they will invest when submitting an application.
- (7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee shall be paid to the Department and shall be required of each application submitted.

Within 30 days after receipt of a completed application containing the information necessary for the Department to certify a potential qualified equity investment, including the payment of the application fee, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is denied and must be resubmitted in full with a new submission date.

If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this section, subject to the limitations contained in subsection (c) of this section. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to subsection (b) of this section, the qualified community development entity shall notify the Department of such change.

Once the Department has certified a qualified equity investment, the qualified community development entity may suballocate all or any portion of the amount of the certified equity investment to one or more qualified community development entities with the same controlling entity as the applicant qualified community development entity, provided that the applicant qualified community development entity files a notice of such suballocation with the Department and the recipient of the suballocation meets all the requirements of a qualified community development entity under this section. The notice of suballocation shall include the information required in the application for all suballocates.

The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

1 Once the Department has certified quality equity investments that, on a cumulative basis,  
2 are eligible for the maximum limitations contained in subsection (c) of this section, the  
3 Department may not certify any more qualified equity investments. If a pending request cannot  
4 be fully certified, the Department shall certify the portion that may be certified unless the  
5 qualified community development entity elects to withdraw its request rather than receive  
6 partial credit.

7 Within 30 days after receiving notice of certification, the qualified community development  
8 entity shall issue the qualified equity investment and receive cash in the amount of the certified  
9 amount. The qualified community development entity must provide the Department with  
10 evidence of the receipt of the cash investment within 10 business days after receipt. If the  
11 qualified community development entity does not receive the cash investment and issue the  
12 qualified equity investment within 30 days following receipt of the certification notice, the  
13 certification shall lapse and the entity may not issue the qualified equity investment without  
14 reapplying to the Department for certification. A certification that lapses reverts back to the  
15 Department and may be reissued only in accordance with the application process outline in this  
16 subsection.

17 (e) Recapture. – The Department shall recapture from the taxpayer that claimed the  
18 credit on a return the tax credit allowed under this section if any of the following occurs:

19 (1) Any amount of the federal tax credit available with respect to a qualified  
20 equity investment that is eligible for a tax credit under this section is  
21 recaptured under section 45D of the Internal Revenue Code of 1986, as  
22 amended. In such case, the Department's recapture shall be proportionate to  
23 the federal recapture with respect to such qualified equity investment.

24 (2) The issuer redeems or makes principal repayment with respect to a qualified  
25 equity investment prior to the seventh anniversary of the issuance of such  
26 qualified equity investment. In such case, the Department's recapture shall be  
27 proportionate to the amount of the redemption or repayment with respect to  
28 such qualified equity investment.

29 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase  
30 price of the qualified equity investment in qualified low-income investments  
31 in the State within 12 months of the issuance of the qualified equity  
32 investment and maintain such level of investment in qualified low-income  
33 community investments in the State until the last credit allowance date for  
34 the qualified equity investment. For purposes of this section, an investment  
35 shall be considered held by an issuer even if the investment has been sold or  
36 repaid if the issuer reinvests an amount equal to the capital returned to or  
37 recovered by the issuer from the original investment, exclusive of any profits  
38 realized, in another qualified low-income community investment within 12  
39 months of the receipt of such capital. An issuer shall not be required to  
40 reinvest capital returned from qualified low-income community investments  
41 after the sixth anniversary of the issuance of the qualified equity investment,  
42 the proceeds of which were used to make the qualified low-income equity  
43 investment, and the qualified low-income community investment shall be  
44 considered held by the issuer through the seventh anniversary of the  
45 qualified equity investment issuance.

46 Enforcement of the recapture under this subsection shall not occur until the qualified  
47 community development entity shall have been given notice of noncompliance and afforded six  
48 months from the date of such notice to cure the noncompliance.

49 (f) Letter Rulings. – The Secretary shall issue letter rulings regarding the tax credit  
50 program authorized under this section, subject to the terms and conditions set forth in this  
51 subsection. For the purposes of this section, the term "letter ruling" means a written

1 interpretation of law to a specific set of facts provided by the applicant requesting a letter  
2 ruling.

3 The Secretary shall respond to a request for a letter ruling within 60 days of receipt of such  
4 request. The applicant may provide a draft letter ruling for the Secretary's consideration. The  
5 application may withdraw the request for a letter ruling, in writing, prior to the issuance of the  
6 letter ruling. The Secretary may refuse to issue a letter ruling for good cause but must list the  
7 specific reasons for refusing to issue the letter ruling. Good cause includes any of the  
8 following:

- 9 (1) The applicant requests the director to determine whether a statute is  
10 constitutional or a regulation is lawful.
- 11 (2) The request involves a hypothetical situation or alternative plans.
- 12 (3) The facts or issues presented in the request are unclear, overbroad,  
13 insufficient, or otherwise inappropriate as a basis upon which to issue a letter  
14 ruling.
- 15 (4) The issue is currently being considered in a rule-making procedure,  
16 contested case, or other agency or judicial proceeding that may definitely  
17 resolve the issue.

18 Letter rulings shall bind the Secretary and the Secretary's agents and their successors as set  
19 forth in properly published regulations. The letter ruling shall apply only to the applicant.

20 In rendering letter rulings and making other determinations under this section, to the extent  
21 applicable, the Department and the Department of Revenue shall look for guidance to section  
22 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued  
23 thereunder.

24 (g) Applications for qualified equity investments shall not be accepted by the  
25 Department on or after January 1, 2015. Nothing in this subsection precludes a taxpayer who  
26 makes a qualified equity investment prior to the expiration of authority of the Department to  
27 receive applications from claiming tax credits relating to that qualified equity investment for  
28 each applicable credit allowance date, including carried-forward credits."

29 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,  
30 2013, and applies to qualified equity investments made on or after that date.

*Monahan*  
*6-6-12*

**2012 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) McCormick (Chair) for the Commerce and Job Development Subcommittee on Business and Labor.

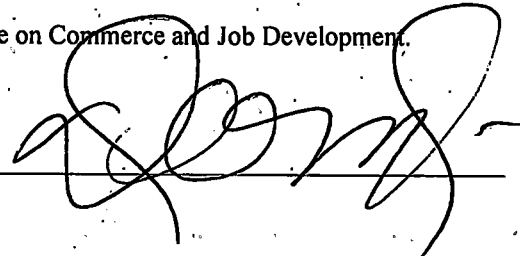
☐ Committee Substitute for

**HB 1149** A BILL TO BE ENTITLED AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



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

**(FOR JOURNAL USE ONLY)**

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

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

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



## **New Markets Jobs Act**

- **Objective** – Job creation for rural & emerging urban communities:
  - The 11 other states that have New Markets programs have seen strong job creation and have attracted billions of dollars of private capital
  - The North Carolina New Markets Small Business Program will make the state more attractive to highly qualified, federally certified investors
  - North Carolina will get a larger share of federal money awarded for New Markets investments
  - The program drives patient risk capital into lower-income and distressed communities throughout the state
- **Scale** - The program will lever \$500M of direct investment by authorizing authorize up to \$40M in annual tax credits with no cost in the first 2 years
- **Simplicity** - The North Carolina program follows the federal model and uses a financing structure familiar to investors and transaction experts.
- **Leverage** - The state incentive leverages federal credits and private capital:
  - The incentive leverages the federal program and is a magnet for investing national dollars in new or existing businesses, leading to greater job creation
  - By delaying the use of tax credits for two years after investment, the early risk is borne solely by private sector investors
  - The GAO reports the New Markets structure levers 14:1 of private dollars for every public dollar
- **“But for”** - Investments are only made in businesses that are ineligible for traditional financing. Targeted communities must have a median income of less than 80% of the state average income or a 20% poverty rate.
- **Proven Concept** – Enacted in 11 states
  - The federal NMTC program, enacted by Congress in 2000 and extended in 2006, 2008 and 2009, authorizes up to \$37B of investment in low-income areas nationwide
  - Exists in: Alabama, Florida, Illinois, Kentucky, Louisiana, Maine, Mississippi, Missouri, Nebraska, Ohio, Oregon
  - Florida, Illinois, and Missouri have gone on to expand their programs after proven success
- **Safeguards** - Several features are in place to protect the taxpayers
  - Credits are only available to those entities that have secured federal credits through a thorough, pier-reviewed, vetting process.
  - North Carolina benefits from federal regulation and auditing of the program.
  - The bill has a seven-year credit recapture or “clawback” if the business, jobs or the investment capital leave qualified areas of the state

# New Markets Capital Access Program

## WHY NEW MARKETS?

Since 2000, states have benefited differently from billions of dollars of investment capital raised using the federal New Markets program. States with their own programs draw more federal money and actively harness this successful economic development tool. Focused on small business in low-income communities, these investments are preserving and growing the backbone of the American economy.



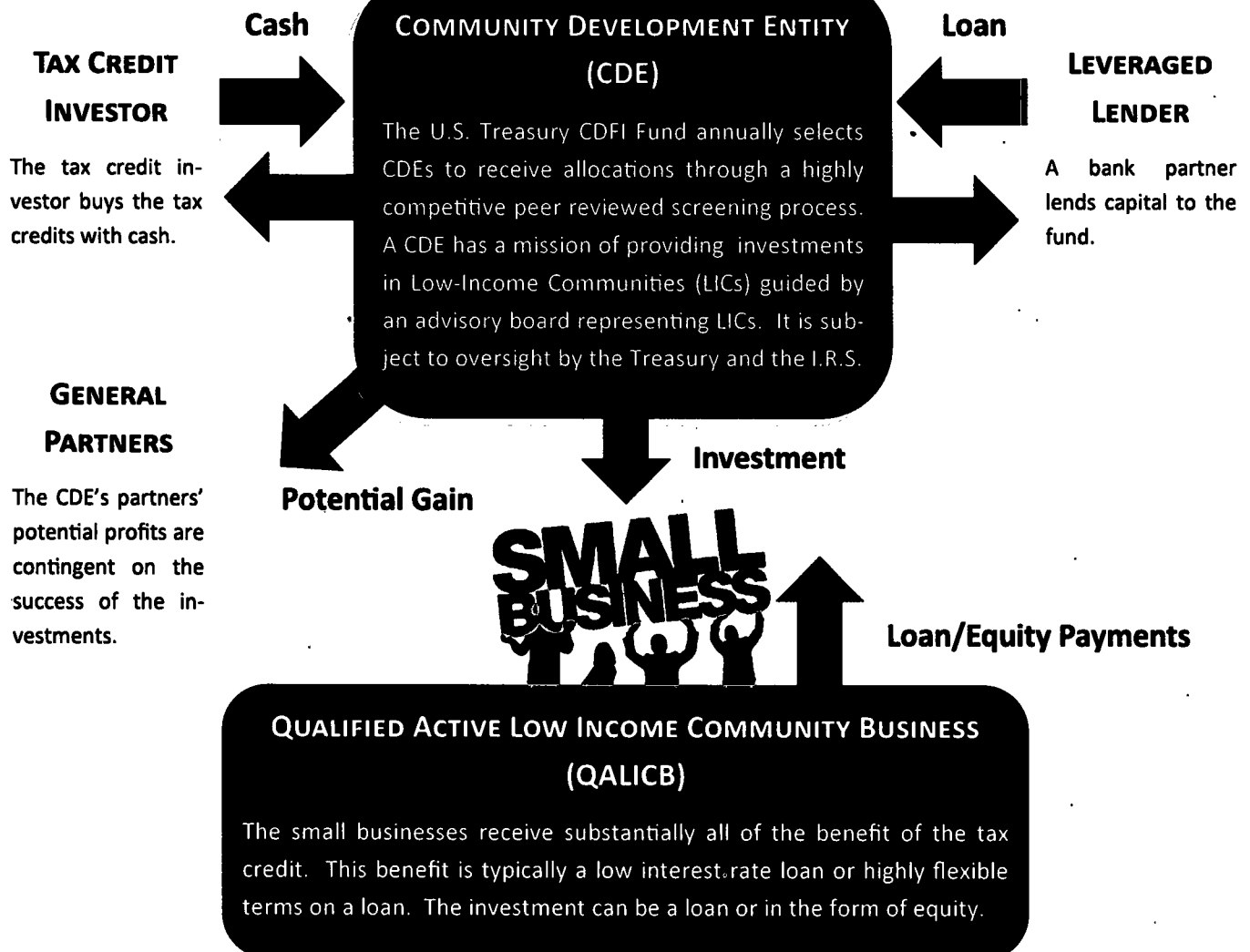
### THE STATE

Offers a 39% credit spread over seven years.

**Tax Credit**

## NEW MARKETS HIGHLIGHTS

- ⇒ Nine states have enacted their own New Markets programs
- ⇒ Federal program has awarded \$33B in allocations since 2000
- ⇒ 3,300+ investments have been made since the program began
- ⇒ Capital access is maintained for at least seven years to bring long-term growth & job creation
- ⇒ 14:1 leverage of private to public dollars—U.S. Treas. CDFI Fund report



## **New Markets Jobs Act**

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# New Markets Investment Impact Overview

*Job-Creating Companies That Have Accessed Needed Private Capital Through the New Markets Program*

## New Markets Program Highlights

### Missouri State New Markets Program

An economic impact study completed for the Missouri Legislature by nationally respected economist *Donald Phares, Ph.D.*, Professor Emeritus of Economics and Public Policy at the University of Missouri-St. Louis in 2011 reported that the...

- Supports nearly **6,000** jobs created, retained, or supported
- Generated **\$38.7** million in new state and local tax revenue
- Generates **\$1.53** in new state tax revenue for every dollar of credit deployed
- Attracted additional **\$222 million** of private capital

### Florida State New Markets Program

An economic impact study completed for the Florida Legislature by *The Washington Economics Group*, a nationally respected economic development consulting firm, reported that the...

- Supports nearly **5,300** jobs created, retained, or supported
- **\$932 million** in gross operating revenues ("output") to Florida businesses
- Annualized cost per direct job created is **\$5,286**
- Attracted additional **\$236 million** of private capital

### National New Markets Program

- **\$33 billion** of investment authority awarded over decade long program
- Induces **\$14** in economic activity in economically distressed communities for every one dollar of tax credit deployed; *U.S. Department of the Treasury*
- Created or retained **300,000** jobs in economically distressed areas
- Since 2007, starting with Missouri, **nine** states have enacted state initiatives

## New Markets in the News: *Impact on a Rural Community*

In 2011, the USDA Rural Development State Director, Clarence W. Hawkins, recognized Game Equipment, LLC as the "Business of the Year". "These two businesses [Game Equipment, LLC and Bank of Montgomery] have worked hard to strengthen our rural communities by providing avenues for job creation and economic growth in Louisiana," said Hawkins.



**GAME Equipment, LLC**, located in Napoleonville, LA, is an agricultural machinery manufacturer and distributor. In 2002 John Deere ceased production of pineapple, vegetable and Kenaf harvesting product lines. GAME was able to obtain rights to manufacture the discontinued machinery lines and fill the production gap. In 2007, GAME became an official John Deere dealer/distributor, which allows them to utilize Deere parts and suppliers. Also in 2007, GAME was able to add continuous sugar cane loaders to their offerings. The company exports their locally made products internationally. At a time when GAME needed additional funding for equipment purchases, their traditional lender refused to extend their line of credit. BizCapital

provided the funding needed to maintain operations and retain 21 full-time employees. Since BizCapital's investment, GAME has hired an additional three employees, and the business expects to hire more in the coming months.

## New Markets in the News: *Impact on a Rural Community*

## THE CONSERVATION FUND

*America's Partner in Conservation*

### **Communities in Rural Appalachia and the Southeast To Benefit From Treasury Award**

*By: Vanessa Vaughan, The Conservation Fund, January 13, 2010*

Shepherdstown, WV—The Conservation Fund and its **Natural Capital Investment Fund** NCIF—both working partners of **Coastal Enterprises Inc.** (CEI)—announced today that rural communities in West Virginia, North Carolina, Virginia and Tennessee stand to benefit from a \$125 million award from the U.S. Treasury.

The Treasury allocated the funding to CEI as part of the federal New Markets Tax Credit (NMTC) Program. CEI received the highest allocation of the 100 recipients nationwide. Through its subsidiary, CEI Capital Management LLC (CCML), CEI will use the allocation to attract private capital investments for rural economic development projects throughout the country. The Conservation Fund and NCIF will help CEI deploy funding in NCIF's four-state service area and throughout the Southeast, targeting projects with significant economic, social and environmental benefits.

**"As a working partner of CEI's NMTC program, we are giving distressed communities access to significant investment capital that can accelerate the development and implementation of new businesses and projects that conserve natural resources and enhance the economic capacity of the communities that are supported by them,"** said Marten Hensler, President of The Conservation Fund/NCIF.

CEI has previously used NMTC financing in West Virginia for a project with The Forestland Group that preserves 131,000 acres of working forestland in the central part of the state. This investment impacts 13 different sawmills with 925 direct jobs and another 840 jobs in the forest products industry.

**"West Virginia is blessed with a wonderful natural resource in its hardwood forests,"** said Chris Zinkhan, managing director of The Forestland Group. **"This program will help to insure the sustainable management of these forests while they are being responsibly utilized to create value-added products for the global marketplace and jobs for citizens living in rural areas."**

In South Carolina, CEI previously used \$10 million in NMTC funding for a project with Horsehead Zinc Recycling (HZR) in Snelling, SC, that financed the construction of a recycling facility that will divert hazardous waste from landfills by turning it into usable materials. This investment creates 55 new jobs in an area hard hit by textile mill closings.

**"Horsehead Zinc Recycling appreciates the efforts and assistance of CEI and looks forward to beginning operations in the Spring of 2010,"** said Jim Hensler, President & CEO of HZR. **"The availability of the New Market Tax Credit was a key element in support of our efforts to bring green jobs to the Town of Snelling and Barnwell County,"** added Hensler.

**"Our new markets subsidiary is being recognized for its impact on jobs and the environment in our most rural regions,"** said Ron Phillips, president of CEI and one of the original architects of the new markets program. **"Many of the real estate and business projects that benefit from NMTC financing create and sustain jobs, reduce energy costs or rely on renewable sources of energy, representing the triple bottom line of economic impact, social gains in meaningful jobs, and care for the environment."**...

## **New Markets in the News: Impact on a Rural Community**

## **Mason Mfg. in Decatur Receives Big Investment Through State's Tax-Incentive Program**

*By: Tony Reid - H&R Staff Writer Herald-Review.com | Posted: Thursday, July 15, 2010*

DECATUR - A Decatur firm got a multimillion-dollar shot of investment capital, thanks to a new state program designed to steer private investor dollars to underserved areas.

**Mason Mfg. LLC**, which employs 35 workers making heat exchangers and vessels used by companies such as Archer Daniels Midland Co., will use the money for recapitalization and to fund growth, according to Jad Mason, a vice president of the firm along with his brother, Ty. "We are thrilled that this investment will allow us to expand and enhance our offerings to customers around the world from our headquarters here in Decatur," Jad Mason said. The state initiative that prompted the investment is called the Illinois New Markets Development Program, which offers tax breaks to investment companies provided they invest in areas with a history of being cold-shouldered by capital providers...

## **New Markets in the News: Impact on an Urban Community**

*Article Focused on New Markets Urban Impact*

### **CHICAGOBUSINESS**

POWERED BY CRAI'S

## **New Markets Loan Program Tosses Small Illinois Firms a Lifeline**

*By: H. Lee Murphy October 11, 2010*

Late last year, when it needed more capacity at its Far West Side plant, Charter Steel Trading Co. counted itself lucky to find a nearby building that had been abandoned by rival Leeco Steel Co. But how to finance the deal?

**Charter**, a processor of steel coils with annual revenue exceeding \$50 million, took advantage of a little-noticed initiative called the New Markets Tax Credit Program offered by the state and federal government. It provides tax credits of up to 39% for investment of up to \$10 million in companies like Charter. Pools of investors, including big banks such as J. P. Morgan Chase & Co. with outsized tax liabilities, are recruited to take advantage of the credits, typically extending loans to recipients at below-market interest rates. The program's goal is job creation, or at least job conservation. Charter landed a \$4.8-million loan at 1.3% interest, giving it enough cash to finance the \$1.5-million purchase of Leeco's building and to buy equipment for an expansion expected to add 10 to 20 jobs in the next 12 months to its workforce of 70. "We might have gotten a bank loan, but New Markets made more sense to us," says Michael Cipolla, Charter's chief financial officer. "We saved at least two percentage points on the loan, maybe more. It reduces our costs substantially and makes the addition feasible." ...

## **New Markets in the News: Impact on an Urban Community**

*Article Focused on New Markets Urban Impact*

# St. Louis Business Journal

## **Thiel Tool Gets \$3M From Advantage Capital**

*St. Louis Business Journal Date: Thursday, May 26, 2011*

**Thiel Tool & Engineering**, a woman-owned metal stamping manufacturer in north St. Louis, has received \$3.2 million in New Markets financing from BizCapital, the small business lending division of Advantage Capital Partners. The funding will allow the company to retain 50 full-time employees and grow over the next 12 months, Clayton-based Advantage Capital said.

Thiel, which is led by President Michele Thiel, has completed a 30,000-square-foot addition to its existing 70,000-square-foot facility. Thiel serves the automotive, transportation and construction markets.

The federal New Markets Tax Credit program and the Missouri New Markets Development program are designed to enable job growth and retention in communities that historically have been underserved by traditional sources of investment capital. The Missouri New Markets Development program enables up to \$186 million of capital investment in Missouri's small businesses.

"Although Thiel Tool has a long-established presence in the city of St. Louis, the company was turned away by their existing lender," said Rick Hummell, principal at Advantage Capital Partners. "The New Markets program will allow Thiel Tool to keep all 50 of their current employees and hopefully expand in the future."

## **Job-Creating Companies Served by New Markets**

The companies below represent a sample of actual job-creating companies that have accessed needed private capital through the New Markets investment initiative. Had it not been for the New Markets initiative, many of these companies would have been unable to secure the capital they needed to grow their business, add new employees, or retain existing employees during tough economic conditions limited access to capital.



**Agri-Source**, located in Dade City, Florida, is a company committed to bringing green jobs to a community hard hit by the southward movement of the citrus industry. The facility, a former citrus processing plant converted earlier into a bio-diesel manufacturer, is being retrofitted to produce high grade glycerin.



**Barton Nelson Inc. (BNI)**, located in Kansas City, Missouri, is ranked as one of the Top 25 manufacturers of specialty advertising products nationwide. The company rebranded the original sticky note as a self-adhesive marketing tool. Multicolor printing, die cuts, cubes, bright papers, pastels, raised printing, and multiple imprints are all innovations first introduced by BNI. Into the new century, BNI continues with a host of new innovations including multicolor SpiderTac® Flag Dispensers, high quality 4 color Cubes, Lenticular Products, Magnets, E-commerce and a promise of more to come



**Blue Northern National Trail (BNNT)**, located in Newton, IL, intends to build and operate a production facility to produce 37 mmgpy of biodiesel in Phase I of operations. The plant is engineered to scale up to 50mmgpy to meet expected long-term demand for biodiesel output. The facility will make use of the most efficient, proven technology and managerial expertise, which will be a model for future biodiesel production in the United States. The plant will produce biodiesel from the base-catalyzed transesterification of vegetable oil with methanol. The by-product of this manufacturing process is natural glycerol. The vegetable oil feedstock will be predominantly comprised of soybean oil from local suppliers, further improving the local agriculture-dependent economy. This minority- owned project will bring new jobs and technical innovation to a rural Illinois community suffering from high unemployment and population decline.

## Chicago Lakeshore Hospital

**Chicago Lakeshore Hospital (CLH)**, located in the Uptown, IL neighborhood, has been providing behavioral health services to Chicago's low-income community since 1964. Considered one of Chicago's premier behavioral health facilities, CLH is currently licensed to operate 146 inpatient beds. Chicago

Lakeshore Hospital has a master plan to expand its services to include redevelopment of new acquired and existing properties. The current project includes redevelopment of a newly acquired property that will include retrofitting a partially completed building originally designed as an assisted living facility by a previous owner. This building was previously in foreclosure and sat vacant for nearly 10 years. Chicago Lakeshore hospital will remodel this building and adjacent properties for use as a child and adolescent inpatient pavilion to include 60 beds and related hospital support services. The project scope will include build-out of approximately 41,000 square feet along with developmental of adjacent parcels for parking and green space. The new building will allow the hospital to operate at its licensed capacity and serve approximately 1000 additional children per year.



**Inner City Entertainment (ICE)**, located in Chicago, IL, was the first African-American owned movie theater chain in the country when established in 1997. ICE Theaters operates in low-income, minority communities in Chicago and provides quality alternative entertainment sources for local residents. It also spurs economic activity surrounding the theaters. With the benefit of \$10 million in Illinois New Markets Development Program financing, the company was able to make improvements to its Chatham Theater, reopen its Lawndale Theater, and position

itself for additional growth. The financing provided through the Illinois New Markets Development Program enabled the



creation or retention of 99 jobs, and the reopening of the Lawndale Theater will help revitalize the surrounding area. for the Illinois New Markets Development Program, ICE could not obtain financing to support the project.

### **KENTUCKY CHROME WORKS**

**Kentucky Chrome Works (KCW)**, located in Horse Cave, KY, began adding chrome plating to RONAL Speedline wheels in 2009. Switzerland-based RONAL is the preferred supplier to the top names in automotive industry. KCW and RONAL provide chrome-plated aluminum wheels for luxury vehicles produced by car companies including General Motors, BMW, Volkswagen, Mercedes and Fiat. New Markets financing helped KCW retain 54 employees with expectations to add 20 new employees to their workforce.

### **MARQUE MEDICOS**

**Marque Medicos**, located in Chicago, Illinois, is a health care services provider to the Hispanic community in the Chicago metropolitan area. Marque Medicos operates seven outpatient clinics and an Ambulatory Surgical Care Facility (ASCF). This state-of-the-art outpatient based surgical facility treats spine, orthopedic, interventional pain management and podiatric needs. The company focuses on being able to readily treat significantly medically underserved individuals in the Chicago area.



**The Nussbaum Center for Entrepreneurship**, located in Greensboro, North Carolina, is a successful business incubator that provides space and support to emerging companies in fields such as manufacturing, technology, distribution, and health. By focusing on an entrepreneurial culture and business foundations, the center produces a significant and measurable impact upon the community. The center has graduated 130 businesses with an 80% success rate, which is nearly twice the national rate. The center, which has led to the creation of 1,200 jobs, currently serves 64 emerging companies.



**Odom Industries**, located in Waynesboro, MS, deals primarily with herbicides and fungicides. Odom mixes and packages special formulas created by companies such as Scotts Lawn Corporation, Amvac Chemical, and Bayer Chemicals. They operate a 24/7 quality control lab staffed with three degreed chemists and 12 trained technicians. Financing from the New Markets program has helped them to retain 130 employees and they expect to hire 30 new employees with full benefits in the near future.



**Prioria Robotics**, located in Gainesville, FL, was founded in 2003 by University of Florida alumni. The flagship product, the Maveric UAS, is the first "smart" Unmanned Aerial Vehicle of its class with advanced autonomy and navigation capabilities. Prioria Robotics holds contracts with the U.S. Military and was recognized on the Inc. 500 list as one of the fastest growing companies in the country. The company received \$8.5 million from the New Markets Program which helped them retain 32 well-paid employees. The company anticipates that the New Markets funding will help them add 10 new employees in the near future.



**Martco**, located in Chopin, Louisiana, is a middle-market manufacturer of plywood and is the largest employer in its economically distressed community. Absent needed financing for a modernization and expansion, Martco's ownership was planning to relocate the plant out-of-state due to concerns about the workforce and community infrastructure. Since accessing capital through the New Markets investment initiative, Martco has substantially increased its workforce.



**Roseland Community Hospital (RCH)**, located in Chicago, IL, is a 162 bed, private, not-for profit health care organization committed to providing quality, patient-driven health care services to the Greater Roseland Community. RCH provides a full range of health care services, including medical and surgical care in both inpatient and outpatient settings. The hospital provides Roseland and the

surrounding communities with an extensive range of services. Urban Development Funds's (UDF) investment will fund the creation of the Adolescent Behavioral Health Unit (ABHU), a 28-bed inpatient psychiatric care program for at-risk teenagers, and investment in a new, state-of the-art Electronic Health Record (EHR) and information technology backbone.



**SolarSink**, located in Tallahassee, Florida, is a manufacturer of heat sink devices that enhance heat dissipation from a hot surface, usually the case of a heat-generating component, to a cooler ambient. Through tech-transfer, SolarSink is commercializing this new technology, which was developed by the Florida State University Physics

Department for use in the renewable energy industry. Access to capital through the New Markets investment initiative enabled this Florida-invented technology and the economic development associated with it to remain in state.



**Stereotaxis, Inc.**, located in St. Louis, Missouri, is a medical device company engaged in the field of image guided interventional surgery. The company's proprietary technology, the Magnetic Surgery System, is composed of a surgical workstation that uses superconducting magnets and digital computer imaging to guide surgical instruments to precise targets in the body. This technology will allow practitioners to exercise digital control of imaging, device movement and positioning using

minimally invasive medical techniques. The company had its Initial Public Offering in August 2004 and trades on NASDAQ (STXS).



**Sunburst Farms**, located in Miami, Florida, is one of the oldest and most respected fresh cut flower importers and distributors in the U.S. Sunburst supplies over 32 different flower types to national supermarket chains, big box retailers and traditional wholesale florists. The company sources its products from some of the best known quality farms in Colombia and Ecuador. The company also provides merchandising, product design, marketing and category management

support to its customers.



**Turbo Squid, Inc.**, located in New Orleans, Louisiana, is the fastest growing on-line marketplace for 3D assets, such as models, images, textures, motion files, behaviors and sound files. The marketplace is a venue for professional developers to post on and

buy from the Turbo Squid system. The company has revolutionized the way that 3D assets are bought, sold and delivered by creating a new and focused digital marketplace designed to offer large selections of affordable products while providing maximum returns to intellectual property owners.

*Data from the Missouri and Florida fiscal and economic impact studies were extrapolated to show the impact of the entire program provided similar performance. The Missouri study covered 63% of the program and the Florida study covered 76% of the program.*

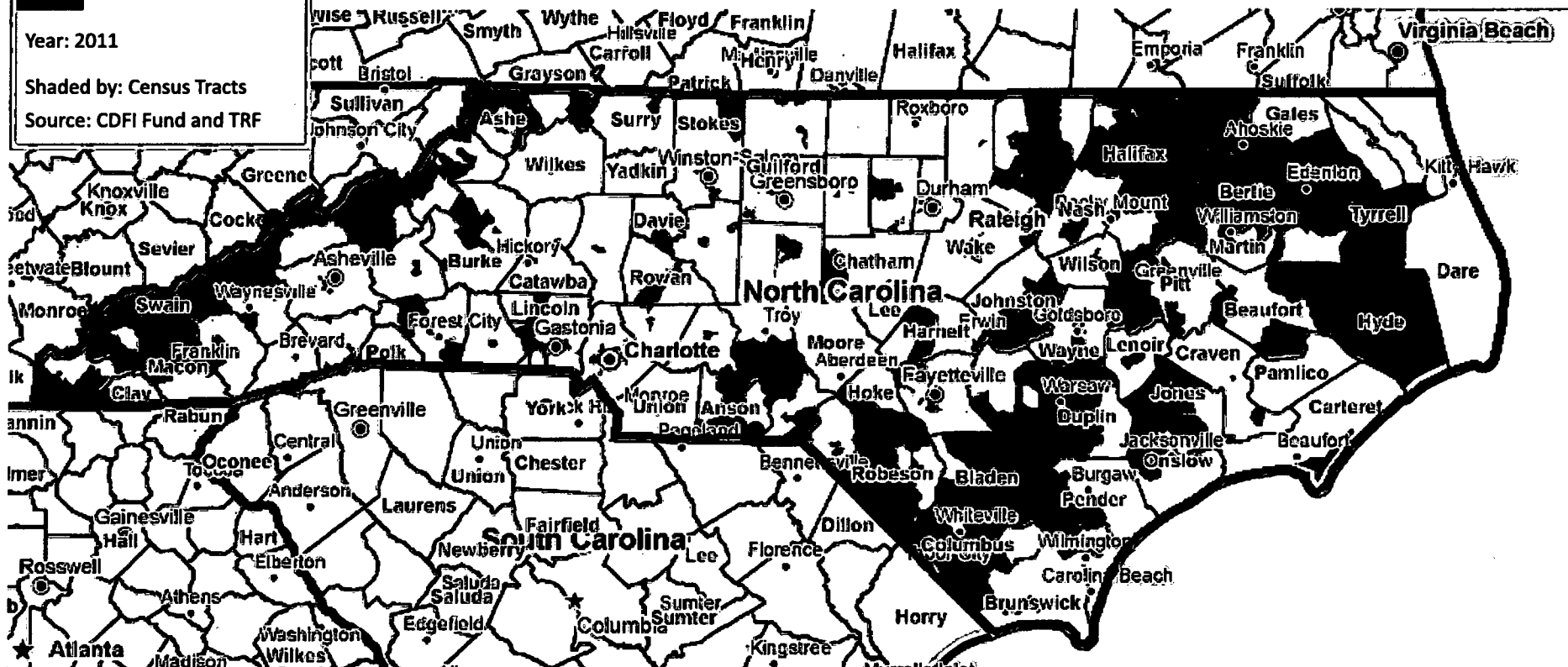
### Legend

**Not Eligible**

Eligible

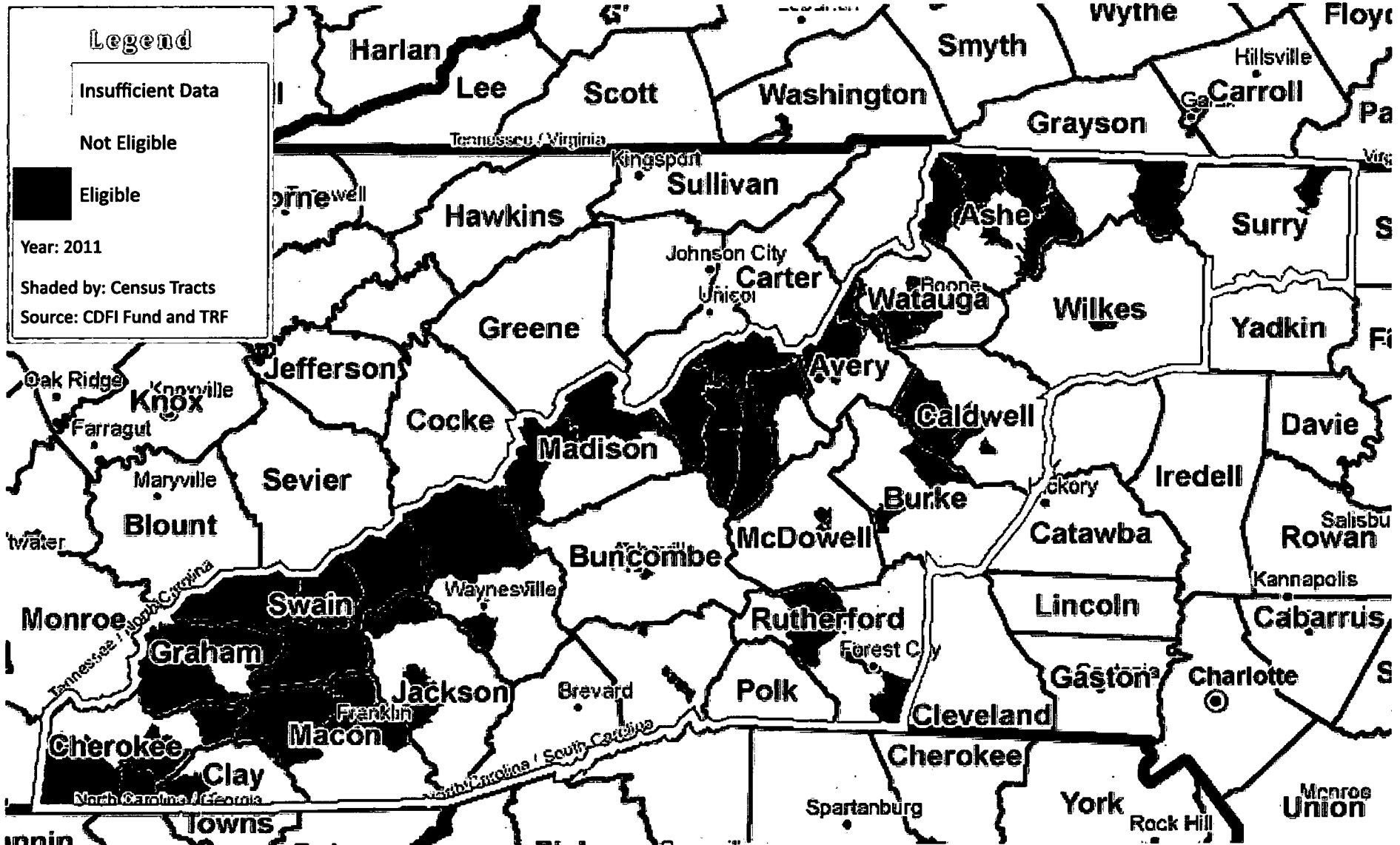
**Shaded by: Census Tracts**

**Source: CDFI Fund and TRF**



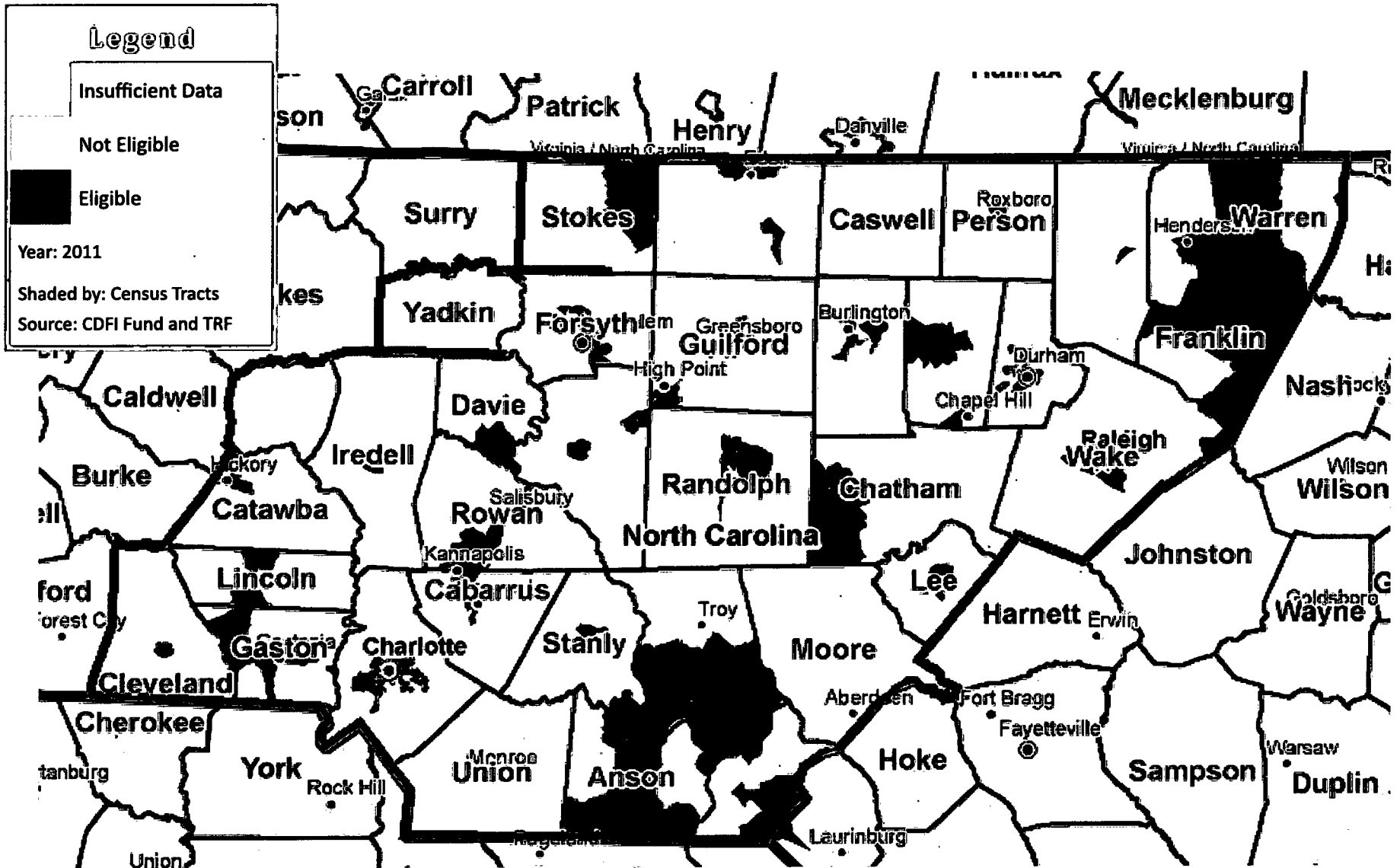
# Mountain Region, North Carolina

### New Market Tax Credit (NMTTC) Program Eligibility Status, as of 2011



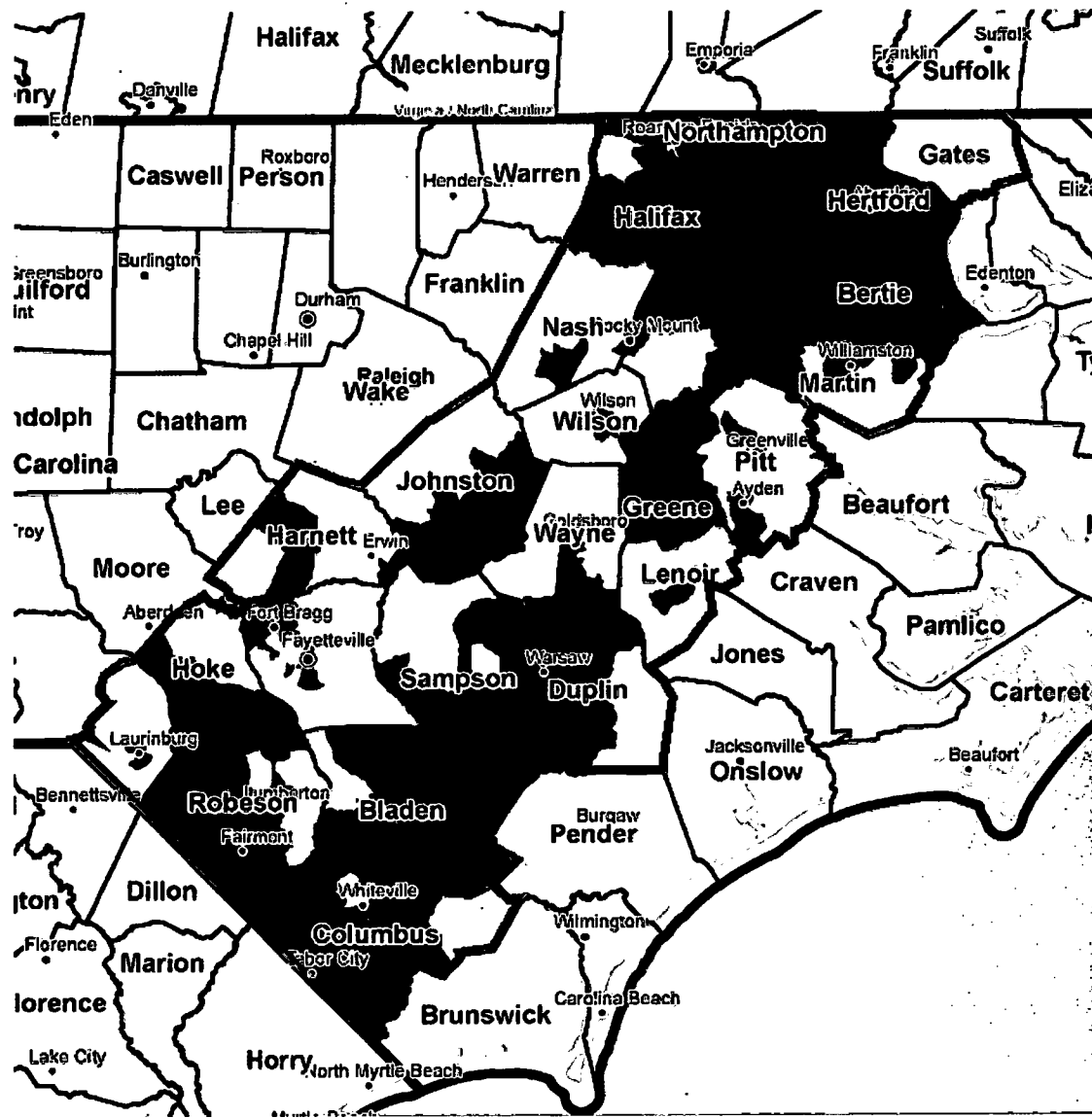
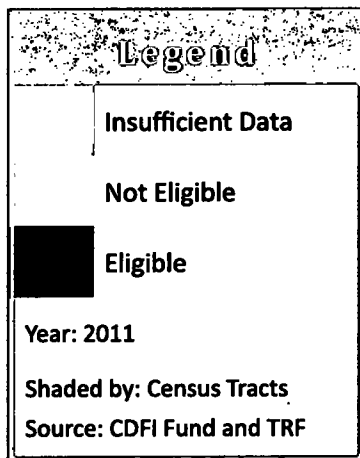
# Piedmont Region, North Carolina

New Market Tax Credit (NMTC) Program Eligibility Status, as of 2011



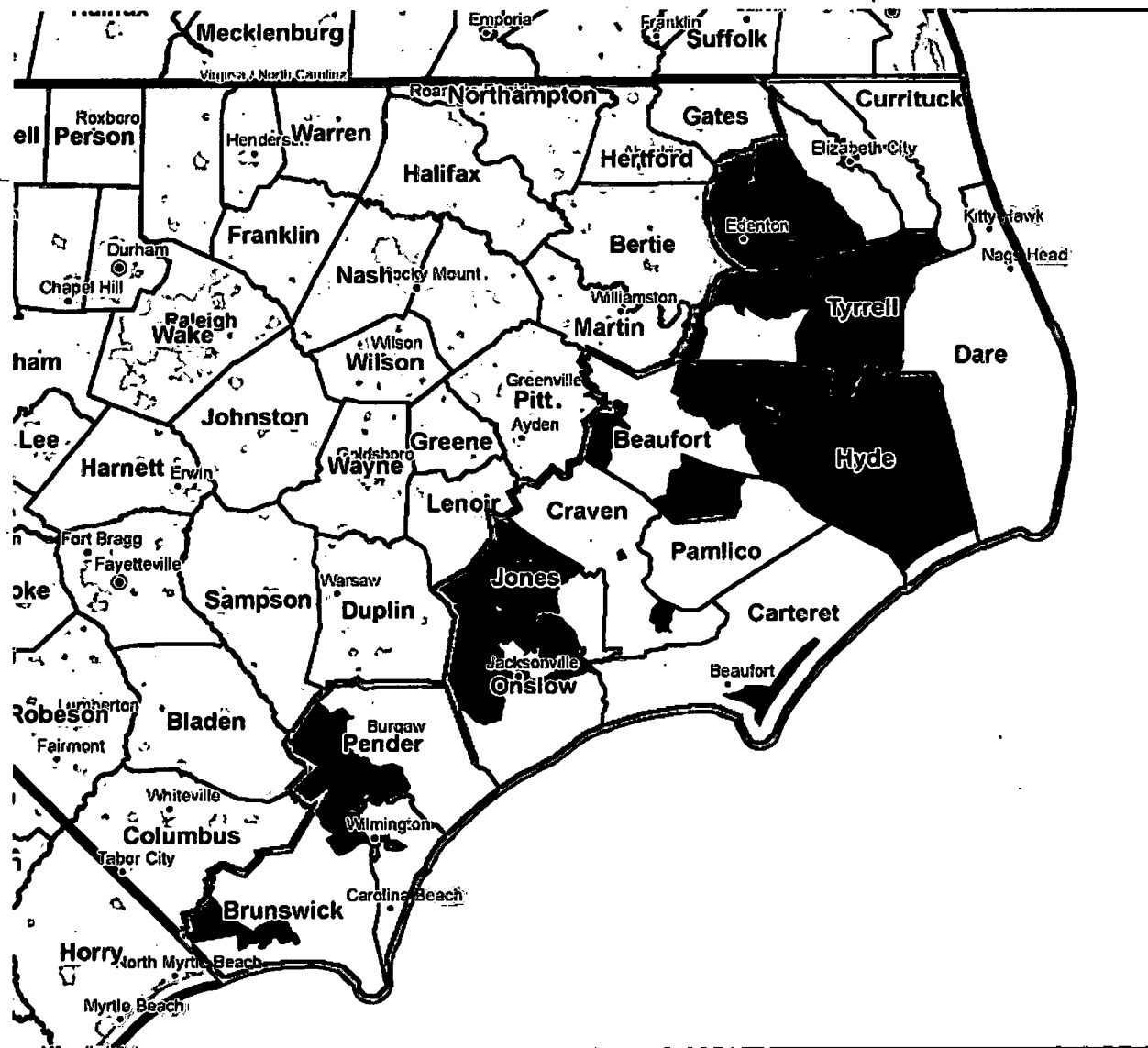
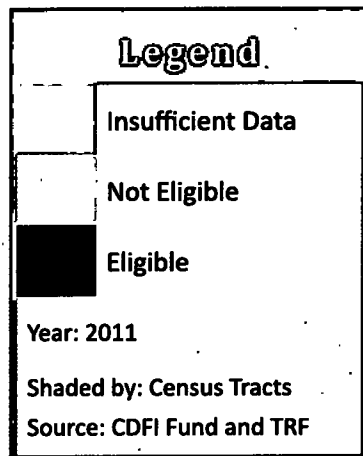
# Inner Coastal Plain Region, North Carolina

New Market Tax Credit (NMTC) Program Eligibility Status, as of 2011



# Tidewater Region, North Carolina

New Market Tax Credit (NMTC) Program Eligibility Status, as of 2011







**PLEASE PRINT**

Room 643

**HOUSE PAGES**

**NAME OF SUBCOMMITTEE:** Business and Labor **DATE:** June 6, 2011

1. NAME: Spence Hutcheson

County: Durham County

Sponsor: Representative Luebke

2. NAME: Richard Wetherill

County: New Hanover County

Sponsor: Representative McComas

3. NAME: Marcus Alexander

County: Lincoln County

Sponsor: Representative Saine

4. NAME: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. NAME: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

**SERGEANTS-AT-ARMS**

1. Name: Larry Elliott

2. Name: Wayne Davis

3. Name: Fred Hines

4. Name: Jesse Hayes

5. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

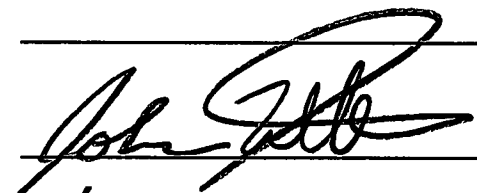
Business and Labor  
Name of Committee

June 6, 2012  
Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

	MWC
Kari Baker	MWC
John Meriwether	MWC
Jeff Gault	ACP (American Capital Partnership)
Jake Gershon	NC Chamber
Mani H.	GSK
Kara Weishaar	SA
Aubrey Incorvaia	NC Dept of Commerce
Wendell Bullard	Realtor
Emilie SWEARINGEN	Town of Kure Beach

# VISITOR REGISTRATION SHEET

## Business and Labor

**(Committee Name)**

6/6/2012

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE**  
**CLERK**

[illegible]